# 2021 DRAFT RATES AND MONETARY AMOUNTS AND REVENUE LAWS AMENDMENT BILL, DRAFT TAXATION LAWS AMENDMENT BILL, DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL

*Presentation to Standing Committee on Finance*

**Presenters**: **National Treasury and SARS | 17 August 2021**

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REPUBLIC OF SOUTH AFRICA

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# EMERGENCY TAX MEASURES IN RESPONSE TO THE CONTINUING COVID-19 PANDEMIC AND RECENT UNREST IN THE COUNTRY

# Overview of Emergency Tax Measures

- Emergency Tax Measures were first announced by the President on 25 July 2021 and by the Minister of Finance on 28 July 2021, and are in response to the continuing Covid-19 Pandemic and recent unrest in the country that resulted in the destruction of businesses.
- These measures are over and above the tax proposals made in the 2021 Budget on 24 February 2021 and are as follows:
  - **Extension of the expanded Employment Tax Incentive age eligibility criteria and amount claimable**
    - Introduction of a tax subsidy of up to R750 per month for 4 months for those private sector employees earning below R6 500 per month.
  - **Extension of the deferral of the payment of employee's tax liabilities for tax compliant small to medium sized businesses**
    - Tax compliant businesses with a turnover of less than R100 million will be allowed to delay 35% of their PAYE liabilities over 3 months without penalties and interest
  - **Deferral of excise duties on alcohol beverages**
    - Tax compliant businesses can apply to SARS to obtain deferrals of up to 3 months for excise duty payments, after setting out the circumstances justifying a deferral.
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# Legislative process for Emergency Tax Measures

- On 12 August 2021, National Treasury and SARS published, for public comment, the second batch of the 2021 Draft Taxation Laws Amendment Bill and 2021 Draft Tax Administration Laws Amendment Bill, containing Emergency Tax Measures, that took effect on 1 August 2021.
- The second batch of the 2021 draft tax bills seek to make amendments in the Disaster Management Tax Relief Act, 2020 and the Disaster Management Tax Relief Administration Act, 2020.
- These measures are over and above the tax proposals made in the 2021 Budget on 24 February 2021, which were included in the initial batch of the 2021 draft tax bills, published for public comment on 28 July 2021 (***also dealt with in this presentation)***
- The initial batch of the 2021 draft tax bills and the second batch of the 2021 draft tax bills will be combined to form the 2021 Draft Taxation Laws Amendment Bill and the 2021 Draft Tax Administration Laws Amendment Bill that will be tabled by the Minister in Parliament during the 2021 MTBPS.
- One measure that does not require legislative amendment is the deferral of excise duties on alcohol beverages, as the customs and excise rules administered by SARS make provision for deferrals of excise duties in cases of temporary financial constraint.

# 2021 DRAFT TAX BILLS

# Overview of the 2021 tax process

- The 2021 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (draft Rates Bill) was first published on Budget Day (24 February 2021) and published for the second time on 28 July 2021, in order to solicit comments on the tax proposals contained therein.
- The draft Rates Bill contains tax announcements made in the 2021 Budget, dealing with changes in rates and monetary thresholds and increases of the excise duties on alcohol and tobacco.
- The 2021 Draft Taxation Laws Amendment Bill (draft TLAB) and the 2021 Draft Tax Administration Laws Amendment Bill (draft TALAB) were published on 28 July 2021 and contain more complex, technical and administrative tax proposals announced in the 2021 Budget.
- These draft tax bills contain tax proposals made in the 2021 Budget on 24 February 2021.

# Overview of 2021 tax legislative 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 and draft TLAB) and an ordinary bill in terms of section 75 of the Constitution, dealing with tax administration issues (draft TALAB).
- The draft tax bills have been published for public comments and the public has been granted a month long period to submit comments in writing.
- SCoF/SeCoF normally convenes public hearings prior to their formal introduction in Parliament.
- NT and SARS will also engage stakeholders submitting comments in more detail through workshops to be held during the month of September 2021.
- NT and SARS will present a response document to the SCoF/SeCoF after which the draft tax bills will be revised taking into account public comments.

# 2021 DRAFT RATES BILL

# Main tax proposals in the 2021 Budget and Rates Bill

- The 2021 Budget contained no tax policy measures to raise additional tax revenue
  - Projected R213.2bn shortfall for 2020/21 compared to estimates from the 2020 Budget
  - Yet this was a R99.6 billion improvement on MTBPS forecasts, on the back of a stronger than expected recovery and commodity price rally
  - To support households and businesses as the pandemic continued, previously announced tax increases of R40 billion were withdrawn
  - Instead, no additional revenue expected as tax increases are offset by tax relief
- Main proposals included:
  - Providing personal income tax relief through an above-inflation increase in the brackets and rebates.
  - Increasing the general fuel levy (15 c / litre) and the RAF levy (11 c / litre), to adjust for inflation.
  - Increasing excise duties on alcohol and tobacco by more than inflation (8%).

# Largest tax relief is from above inflation adjustment of personal income tax brackets

**Table 4.3 Impact of tax proposals on 2021/22 revenue[1]**

| R million | | Effect on tax proposals |
|---|---|---|
| **Gross tax revenue (before tax proposals)** | | **1 365 124** |
| **Budget 2021/22 proposals** | | **-** |
| **Direct taxes** | | **-2 200** |
| **Personal income tax** | | |
| Increasing brackets by more than inflation | -2 200 | |
| *Revenue if no adjustment is made* | *11 200* | |
| *Higher-than-inflation increase in brackets and rebates* | *-13 400* | |
| **Indirect taxes** | | **2 200** |
| **Taxes on international trade and transactions** | | |
| Introduction of export tax on scrap metal | 400 | |
| **Specific excise duties** | | |
| Increase in excise duties on alcohol | 1 100 | |
| Increase in excise duties on tobacco | 700 | |
| **Gross tax revenue (after tax proposals)** | | **1 365 124** |

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

*Source: National Treasury*

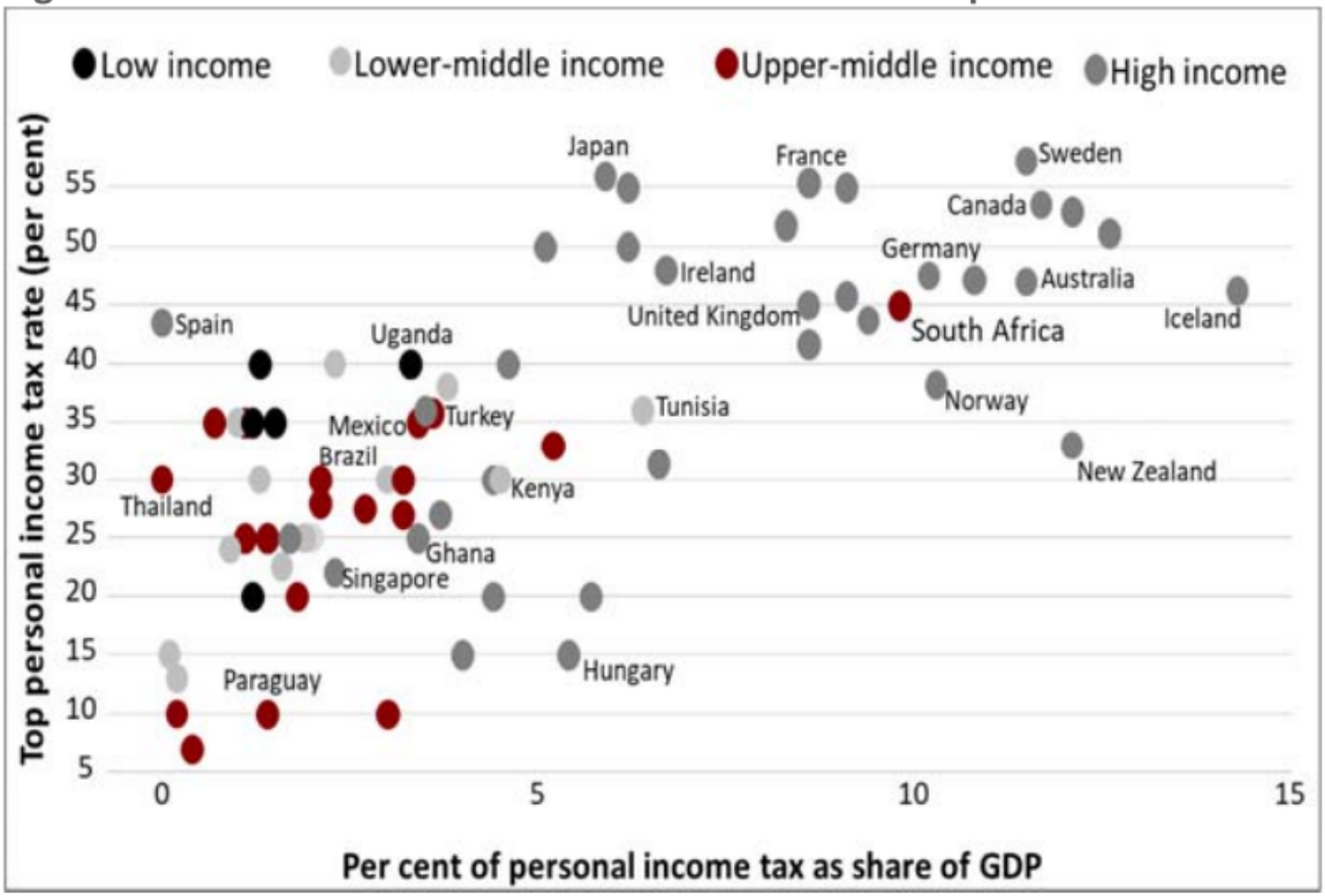
No additional tax revenue

R2.2 billion in personal income tax relief

Offset by R1.9 billion increase in excise duties and R0.4 billion in export duties

# SA has a high share of PIT and top tax rate compared to other upper-middle income countries

Figure 4.3 Personal income tax as a share of GDP and top rates




*Source: OECD, IMF*

# Adjust personal income tax brackets by an amount greater than expected inflation

- Budget 2021 proposes adjusting brackets and rebates by 5 per cent (expected inflation of 4.2 per cent)
- Without any adjustments, Government expected to raise around R11.2 billion if no changes were made to the brackets and rebates

**Table 4.4 Personal income tax rates and bracket adjustments**

| 2020/21 | | 2021/22 | |
|---|---|---|---|
| **Taxable income (R)** | **Rates of tax** | **Taxable income (R)** | **Rates of tax** |
| R0 - R205 900 | 18% of each R1 | R0 - R216 200 | 18% of each R1 |
| R205 901 - R321 600 | R37 062 + 26% of the amount above R205 900 | R216 201 - R337 800 | R38 916 + 26% of the amount above R216 200 |
| R321 601 - R445 100 | R67 144 + 31% of the amount above R321 600 | R337 801 - R467 500 | R70 532 + 31% of the amount above R337 800 |
| R445 101 - R584 200 | R105 429 + 36% of the amount above R445 100 | R467 501 - R613 600 | R110 739 + 36% of the amount above R467 500 |
| R584 201 - R744 800 | R155 505 + 39% of the amount above R584 200 | R613 601 - R782 200 | R163 335 + 39% of the amount above R613 600 |
| R744 801 - R1 577 300 | R218 139 + 41% of the amount above R744 800 | R782 201 - R1 656 600 | R229 089 + 41% of the amount above R782 200 |
| R1 577 300 and above | R559 464 + 45% of the amount above R1 577 300 | R1 656 600 and above | R587 593 + 45% of the amount above R1 656 600 |
| **Rebates** | | **Rebates** | |
| Primary | R14 958 | Primary | R15 714 |
| Secondary | R8 199 | Secondary | R8 613 |
| Tertiary | R2 736 | Tertiary | R2 871 |
| **Tax threshold** | | **Tax threshold** | |
| Below age 65 | R83 100 | Below age 65 | R87 300 |
| Age 65 and over | R128 650 | Age 65 and over | R135 150 |
| Age 75 and over | R143 850 | Age 75 and over | R151 100 |

*Source: National Treasury*

# Inflation-related increase in medical tax credits

- Bulk of the relief announced in the budget goes to middle and lower income earners
- Medical tax credits increased from R319 per month to R332 for first two beneficiaries and from R215 to R224 for additional beneficiaries (increase of 4.2 per cent in line with inflation)

**Table 4.5 Estimates of individuals and taxable income, 2021/22**

| Taxable bracket | Registered individuals | | Taxable income | | Income tax payable before relief | | Income tax relief after proposals | | Income tax payable after proposals | |
|---|---|---|---|---|---|---|---|---|---|---|
| R thousand | Number | % | R billion | % | R billion | % | R billion | % | R billion | % |
| R0 - R80[1] | 7 183 913 | – | 256.2 | – | – | – | – | – | – | – |
| R80 - R150 | 1 855 292 | 26.7 | 211.1 | 8.6 | 15.7 | 3.0 | -1.3 | 9.4 | 14.5 | 2.8 |
| R150 - R250 | 1 691 889 | 24.3 | 329.3 | 13.4 | 29.5 | 5.6 | -1.8 | 13.4 | 27.7 | 5.4 |
| R250 - R350 | 1 283 954 | 18.4 | 378.4 | 15.4 | 54.5 | 10.3 | -2.3 | 16.8 | 52.2 | 10.1 |
| R350 - R500 | 981 993 | 14.1 | 409.1 | 16.6 | 76.6 | 14.5 | -2.6 | 19.5 | 74.0 | 14.3 |
| R500 - R750 | 612 177 | 8.8 | 369.1 | 15.0 | 88.4 | 16.7 | -2.4 | 18.1 | 86.0 | 16.7 |
| R750 - R1 000 | 262 643 | 3.8 | 226.2 | 9.2 | 65.1 | 12.3 | -1.3 | 10.0 | 63.8 | 12.4 |
| R1 000 - R1 500 | 159 127 | 2.3 | 191.1 | 7.8 | 61.9 | 11.7 | -0.8 | 6.1 | 61.0 | 11.8 |
| R1 500 + | 113 192 | 1.6 | 346.3 | 14.1 | 137.7 | 26.0 | -0.9 | 6.6 | 136.8 | 26.5 |
| **Total** | **6 960 267** | **100.0** | **2 460.7** | **100.0** | **529.4** | **100.0** | **-13.4** | **100.0** | **516.0** | **100.0** |
| **Grand total** | **14 144 180** | | **2 716.8** | | **529.4** | | **-13.4** | | **516.0** | |

*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 R1.8 billion

Intentional deviation from previous practice

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

**Table 4.7 Changes in specific excise duties, 2021/22**

| Product | Current excise duty rate | Proposed excise duty rate | Percentage change Nominal | Real |
|---|---|---|---|---|
| Malt beer | R106.56 / litre of absolute alcohol (181,15c / average 340ml can) | R115.08 / litre of absolute alcohol (195,64c / average 340ml can) | 8.0 | 3.8 |
| Traditional African beer | 7,82c / litre | 7,82c / litre | – | -4.2 |
| Traditional African beer powder | 34,70c / kg | 34,70c / kg | – | -4.2 |
| Unfortified wine | R4.39 / litre | R4.74 / litre | 8.0 | 3.8 |
| Fortified wine | R7.34 / litre | R7.92 / litre | 8.0 | 3.8 |
| Sparkling wine | R14.36 / litre | R15.51 / litre | 8.0 | 3.8 |
| Ciders and alcoholic fruit beverages | R106.56 / litre of absolute alcohol (181,15c / average 340ml can) | R115.08 / litre of absolute alcohol (195,64c / average 340ml can) | 8.0 | 3.8 |
| Spirits | R213.13 / litre of absolute alcohol (R68.73 / 750ml bottle) | R230.18 / litre of absolute alcohol (R74.23 / 750ml bottle) | 8.0 | 3.8 |
| Cigarettes | R17.40 / 20 cigarettes | R18.79 / 20 cigarettes | 8.0 | 3.8 |
| HTPs sticks | | R14.09 / 20 sticks | 8.0 | 3.8 |
| Cigarette tobacco | R19.55 / 50g | R21.12 / 50g | 8.0 | 3.8 |
| Pipe tobacco | R5.79 / 25g | R6.26 / 25g | 8.0 | 3.8 |
| Cigars | R96.45 / 23g | R104.16 / 23g | 8.0 | 3.8 |

*Source: National Treasury*

- Most categories were adjusted by more than inflation (8 per cent)
- Effective from 24 February 2021
- It is expected that the excise burden will remain above the previous targeted levels
- (Excise payments for alcohol were deferred to take account of lockdown selling restrictions)

# Other measures announced in the Budget

- Carbon tax rate increased by 5.2 per cent, from R127 to R134 per tonne of carbon dioxide equivalent, from 1 January 2021.

Measures in Chapter 4 that are not in the Rates bill:

- Increase of 15 c/l in the general fuel levy and 11 c/l in the Road Accident Fund Levy
- The levy for 2021 will increase by 1c to 8c/litre for petrol and 9c/litre for diesel from7 April 2021.
- Adjust minimum value for paid-up retirement annuities from R7 000 to R15 000 from 1 March 2021
- Align UIF the benefit ceiling at R17 711.58 per month from 1 March 2021.
- Introduce reduced levy of 12.5c/bag for bio-based plastic bags.

# Summary of the Rates Bill

- **Clause 1**
  - Fixing of rates of normal tax, as detailed in Schedule 1
- **Clause 2**
  - Increase in primary, secondary and tertiary rebates
- **Clause 3**
  - Increase values of medical tax credits
- **Clause 4**
  - Adjustment to align with new tax free threshold
- **Clause 5**
  - Amendment of customs and excise Act to include the excise schedule dealing with increase in alcohol and tobacco
- **Clause 6**
  - Increase in carbon tax rate
- **Clause 7 and 8**
  - Technical amendment to 2020 Rates bill
- **Clause 9**
  - Short title

# 2021 DRAFT TLAB

# INDIVIDUALS, EMPLOYMENT AND SAVINGS

# Reviewing the nature of long-service awards for fringe benefit purposes

**(Clauses 4(d), 42 & 43 of the Draft TLAB: Paragraph (c ) of the definition of gross income, paragraph 5(2)(b & new paragraphs 6(4)(d) and 10(2)( e) pf the Seventh Schedule to the Income Tax Act)**

- The Income Tax Act permits an employer to grant a long-service award (in the form of an asset or a non-cash benefit) to an employee as a no value fringe benefit provided that the value of this award does not exceed R5 000.
- Government recognises that the current prevailing practice is for employers to grant their employees a wide range of awards in recognition of long service, and such awards can take a variety of forms which can be considered as non-cash benefit in terms of the Act.

***Proposal***

- It is proposed that changes be made in the Act so that the current provisions as relates to long service awards are not only limited to non-cash assets, but rather extended to apply to other reasonable awards granted for long service.
- In order to qualify as a no value fringe benefit, all the current requirements in the Act should be met, for example, the number of years required to be considered a long service period together with the requirement that the value of long service awards should not exceed R5 000 will still apply.

# Curbing abuse in the Employment Tax Incentive

## (Clauses 58 & 59 of the Draft TLAB: Definition of "employee" and section 6 of the Employment Tax Incentive Act)

- The ETI programme was introduced in January 2014 to provide employment for young workers, by reducing the cost of hiring young people between the ages of 18 and 29 years old.
- The ETI programme allows employers to reduce their pay-as-you-earn (PAYE) tax payments to the South African Revenue Service (SARS) for the first two years in which they employ qualifying employees with a monthly remuneration of less than R6 500, subject to certain limitations.
- It has come to Government's attention that some taxpayers have devised certain schemes where they claim the ETI in respect of individuals who do not work for them, but rather engaged in training programmes, therefore failing to meet the definition of 'employee' as outlined in section 1(1) of the ETI Act.
- The nature of these schemes is to undermine the original objective of the ETI, which is to give new workforce entrants (full time) experience in a formal working environment to ease their entry into subsequent employment.

# Curbing abuse in the Employment Tax Incentive

## (Clauses 58 & 59 of the Draft TLAB: Definition of "employee" and section 6 of the Employment Tax Incentive Act)

***Proposal***

- In order to address the above-mentioned contraventions, it is proposed that changes be made in the ETI Act to clarify that substance over legal form will be considered when assessing an employer's ability to claim the ETI.
- As such, 'work' must actually be performed in terms of an employment contract and the employee must be documented in the employer's records as envisaged in the record keeping provisions contained in section 31 of the Basic Conditions of Employment Act, 1997 (Act No 75 of 1997).
- In view of the fact that the proposed changes to the legislation are aimed at curbing abusive schemes, it is proposed that these amendments should apply retrospectively and come into operation on 1 March 2021.

# Clarifying the timing disposal rules in respect of an asset acquired from a deceased estate

## (Clauses 4 ( e) and 22 of the Draft TLAB: Definition of "liquidation and distribution account in section 1 and section 25 of the Income Tax Act )

- When a person dies, the Estate Duty Act makes provision for the asset of the person to be transferred to the estate of the deceased before the assets are distributed to their heirs.
- The Estate Duty Act also provides for the executor to administer the estate, which includes preparing and submitting the Liquidation and Distribution account to the Master of the High Court Office, and submitting the relevant tax returns, and making payment of the estate duty to SARS.
- Legally, the Liquidation and Distribution account must remain open for inspection in the Master of the High Court Office for 21 business days. Once the Liquidation and Distribution account is finalised, the personal right of the heirs to claim delivery of the assets is triggered.
- At issue is a timing uncertainty around when the heirs are regarded as having acquired an asset from the estate of the deceased.

***Proposal***

- In order to clarify the time of disposal of the heir's personal right to claim delivery of the deceased estate assets, it is proposed that changes be made in the legislation so that the disposal of assets by the estate occurs on the date when the Liquidation and Distribution account becomes final.

# Tax treatment of a cession of a right to receive asset
## (Clause 33 of the Draft TLAB: New section 57B of the Income Tax Act )

- The Act makes provision for donations tax to be levied on the value of any property disposed of, whether directly or indirectly, under any donation by any resident.
- It has come to Government's attention that some taxpayers have devised schemes aimed at undermining the donations tax provisions. These schemes entail a service provider (for example, an employee or independent contractor) ceding the right to receive or use an asset received from the person to whom the services are rendered or to be rendered. The right to receive or use the asset is generally ceded to a family trust before services are rendered.
- In these instances, the service provider may be able to circumvent donations tax as the right to receive an asset would have been ceded to the trust before the services are rendered and a value can be attached to the asset.

***Proposal***

- In order to address these types of schemes, it is proposed that changes be made in the Income Tax Act to clarify that in instances where a right to receive an asset, which would otherwise have been acquired in respect of services rendered or to be rendered, is disposed of, that asset will be deemed to be disposed of under a donation as envisaged in the Act.

# Strengthening anti-avoidance rules in respect of loan transfers between trusts

## (Clause 5 of the Draft TLAB: Section 7C of the Income Tax Act )

- In 2016, anti-avoidance measures were introduced in the Act to curb the tax-free transfer of wealth to trusts using low interest or interest-free loans in order to avoid estate duty and donations tax on the assets subsequent growth in value.
- In 2017 and in 2020, further changes were made to counter new attempts to undermine these measures.
- Some taxpayers are continuing to undermine these measures by transferring loans, which finance high value assets, between trusts, where the founder of one trust holding the original asset is related to one or more beneficiaries of the other trust to which the loan asset is transferred.

***Proposal***

- It is proposed that further changes be made to the legislation to ensure that these anti-avoidance measures also apply in respect of any loan, advance or credit that a trust, directly or indirectly provides to another trust in relation to which, its beneficiaries or the founder are connected persons in relation to the founder or beneficiaries of the trust that provided the loan, advance or credit.
- In view of the fact that the proposed measure is aimed at curbing further abuse, it is proposed that these amendments should apply retrospectively on the date of the publication of the 2021 draft TLAB for public comment, i.e., 28 July 2021.

# Applying tax on a retirement interest when an individual ceases to be a tax resident

**(Clauses 11 & 12 of the Draft TLAB: Section 9H & new section 9HC of the Income Tax Act)**

- When an individual ceases to be a South African tax resident before he or she retires and becomes a tax resident of another country, that individual's interest in a retirement fund may be subject to tax in the other country on payment of a lump sum or a monthly pension.
- The application of a tax treaty between South Africa and the new tax resident country may in some instances result in South Africa forfeiting its taxing rights.

***Proposal***

- In order to address this, it is proposed that changes be made in the tax legislation to ensure that when an individual ceases to be a South African tax resident, interests in retirement funds are subject to taxation in South Africa at the same tax rates applicable to either a withdrawal benefit or a retirement benefit.
- As a result, Government proposes that the following two pronged approach:

# Applying tax on a retirement interest when an individual ceases to be a tax resident

**(Clauses 11 & 12 of the Draft TLAB: Section 9H & new section 9HC of the Income Tax Act)**

- ***When an individual ceases to be a South African tax resident, and withdraws his or her interest in the retirement fund from a South African retirement fund prior to retirement or death***
  - The individual will be deemed to have disposed of his or her interest in a retirement fund on the day before he or she ceases to be a South African tax resident as envisaged in the Act.
  - The interest in the retirement fund will form part of the assets of the individual subject to tax applicable to withdrawal benefits, however, the tax payment will be deferred until a withdrawal payment is receivable from the retirement fund.
  - When the individual receives a payment from the retirement fund, the tax on the withdrawal benefit will be calculated based on the prevailing withdrawal tax tables.
  - A tax credit will be provided for the deemed tax as calculated when the individual ceased to be a South African tax resident.

# Applying tax on a retirement interest when an individual ceases to be a tax resident

**(Clauses 11 & 12 of the Draft TLAB: Section 9H & new section 9HC of the Income Tax Act)**

- ***When an individual ceases to be a South African tax resident, but retains his or her investment in a South African retirement fund, and only withdraws his or her interest in the fund when he or she dies or retires from employment***
  - The individual will be deemed to have disposed of his or her interest in a retirement fund on the day before he or she ceases to be a South African tax resident as envisaged in the Act.
  - The interest in that retirement fund will form part of the assets of the individual subject to tax applicable to withdrawal benefits, however, the tax payment will be deferred until payments are receivable from the retirement fund.
  - When the individual ultimately receives payments from the retirement fund, the tax on those payments will be calculated based on the prevailing retirement fund lump sum tax tables or in the form of an annuity.
  - A tax credit will be provided for the deemed tax as calculated when the individual ceased to be a South African tax resident.

# Allowing members to use retirement interest to acquire annuities on retirement

**(Clause 4 (f),(g), (h), (i), & (j) of the Draft TLAB: Definitions of retirement annuity fund, pension fund, pension preservation fund, provident fund, provident preservation fund of the Income Tax Act**

- The Act provides that any member retiring from a retirement fund is, upon retirement, allowed to receive a maximum of one third of the total value of the retirement interest as a lump-sum.
- The remainder of the retirement interest must be utilised to purchase or provide an annuity in one of three ways, namely, paid directly by the retirement fund to the member, purchased from a South African registered insurer in the name of the fund, or purchased by the retirement fund from a South African registered insurer in the name of the retiring member.
- A member is therefore prohibited from utilising the retirement interest to acquire various annuities. This prohibition limits flexibility in relation to the types of annuities a member can acquire with their retirement interest following commutation.

***Proposal***

- In order to increase flexibility for a retiring member and maximise the retirement capital available to provide for annuities, Government proposes expanding the types of annuities a member can acquire upon retirement. In turn, the portion of the retirement interest utilised to purchase each type of annuity must exceed R165 000. The R165 000 threshold is required to curb the circumvention of prevailing legislation.

# Transfers between retirement funds by members who are 55 years or older

**(Clause 4 (g), (k), of the Draft TLAB: Definitions of gross income, pension preservation fund & provident preservation fund of the Income Tax Act**

- The Act stipulates that in the event that a member of a pension preservation or provident preservation fund (who has reached normal retirement age in terms of the fund rules but has not yet opted to retire from the respective fund) makes a transfer into a similar fund, such transfer would be taxable in the individual's hands.
- As a result, any individual transfers between preservation funds where the transfer is between similar funds and the member involved has reached normal retirement age in terms of the fund rules but has not yet opted to retire from the relevant fund will be subject to tax, this despite the fact that the policy intention is not to tax transfers from a less to a more restrictive fund, or between similar funds.

***Proposal***

- In order to address this anomaly, it is proposed that changes be made in the tax legislation to allow for tax- neutral transfers from a preservation fund into similar funds by members who have already reached normal retirement age.

# Clarifying the calculation of the fringe benefit in relation to employer contributions to a retirement fund

**(Clause 44 of the Draft TLAB: Paragraph 12D of the Seventh Schedule to the Income Tax Act**

- From March 2016, all employer contributions to a retirement fund on behalf of employees are considered taxable fringe benefits in the employees' hands.
- If the contribution contains a 'defined contribution component', the value of the fringe benefit will be the cash equivalent of that part of the contribution that pertains to that employee. In addition, the employer is not required to provide the employee with a contribution certificate.
- An anomaly arises in instances where a retirement fund provides both a retirement benefit in relation to a "defined contribution component" and a self-insured risk benefit.
- The interpretation of the Act would result in the classification of the total contribution to the said fund as a defined benefit component, subject to valuation in terms of the formula contained in paragraph 12D(3) of the Seventh Schedule to the Act as well as the issuance of a contribution certificate due to the fact that self-insured risk benefits are not considered a defined contribution component.

***Proposal***

- In order to address this anomaly, it is proposed that changes be made in the legislation so that self-insured risk benefits are classified as a 'defined contribution component'.

# GENERAL BUSINESS TAX

# Strengthening the rules dealing with limitation of interest deductions in respect of debts owed to certain persons not subject to tax

## (Clause 20 of the Draft TLAB: Section 23M of the Income Tax Act)

- In 2013, the rules dealing with the limitation of interest deductions in respect of debts owed to persons not subject to tax were introduced in the Act, effective from 1 January 2015 and apply in respect of amounts of interest incurred on or after that date.
- The main aim of these rules is to limit excessive interest deductions in respect of debts owed to persons not subject to tax in South Africa, if the debtor and the creditor are in a controlling relationship.
- On 26 February 2020, Government published a discussion document titled "***Reviewing the Tax Treatment of Excessive Debt Financing, Interest Deductions and Other Financial Payments***" to conduct a review of the current rules dealing with the limitation of interest deductions in respect of debts owed to persons not subject to tax, in line with the OECD/G20 BEPS Action 4 recommendations on interest deductions. The review highlighted the following issues that are problematic in the current rules.
  - Meaning of the term "*interest*" for purposes of these rules
  - Deductible interest limitation: Formula calculation
  - Back to back loans
  - Definition of "*adjusted taxable income*" as it apply to REITS
  - Interaction between the level of withholding tax on interest in terms of tax treaties and section 23 M rules

# Strengthening the rules dealing with limitation of interest deductions in respect of debts owed to certain persons not subject to tax

## (Clause 20 of the Draft TLAB: Section 23M of the Income Tax Act)

***Proposal***

- In order to address the above-mentioned problematic issues, the following changes are proposed in the Act:

***Meaning of the term "interest" for purposes of these rules***

- It is proposed that for purposes of these rules, the meaning of the term "interest" should be expanded beyond the current definition of interest contained in section 24J, to include the following (i) Payments under interest rate swap agreements; (ii) Finance cost element included in finance lease payments; and (iii) Foreign exchange differences.

***Deductible interest limitation: Formula calculation***

- It is proposed that deduction of interest expenditure should be limited to 30 per cent of "adjusted taxable income" instead of the current 40 per cent calculated percentage of adjustable taxable income. Therefore, part of the deduction formula which adjusts up and downwards based on the average repo rate for the year will be deleted. Further, it is proposed that consequential amendments be made in section 23M and section 23N.

# Strengthening the rules dealing with limitation of interest deductions in respect of debts owed to certain persons not subject to tax

## (Clause 20 of the Draft TLAB: Section 23M of the Income Tax Act)

***Back-to-back loans***

- To curb the circumvention of the rules applicable to back-to-back loans, it is proposed that changes be made in the current provisions of section 23M(2) so that the interest limitation rules apply in instances where a debtor incurs an amount of interest owed to a creditor that is in a controlling relationship with that debtor, if that creditor, directly or indirectly through another creditor that is in a controlling relationship with that creditor, obtained the funding for the debt advanced to the debtor from a person that is in a controlling relationship with that creditor or that other creditor and would not be taxed on interest accrued.

***Refining the amount of interest deduction for REITS: Changes to the definition of Adjusted Taxable Income***

- It is proposed that a change be made in the definition of “adjusted taxable income” in section 23M(1) to add back the “qualifying distribution” of a REIT.

# Strengthening the rules dealing with limitation of interest deductions in respect of debts owed to certain persons not subject to tax

## (Clause 20 of the Draft TLAB: Section 23M of the Income Tax Act)

***Interaction between the level of withholding tax on interest in terms of tax treaties and application of section 23M rules***

- It is proposed that changes be made in the legislation so that there is a more consistent treatment for all resident debtors paying interest, so that the restriction is not dependant on which country the payment is routed through.
- In instances where a resident debtor makes an interest payment and either the payment attracts withholding tax on interest at a rate of zero or it is not included in the recipient's income, the deduction for interest expense will be subject to section 23M as under the current rules. For cases where a resident debtor makes an interest payment and the payment attracts withholding tax on interest at a rate higher than zero, a portion of the interest expense will be subject to section 23M.

# Restricting the set-off of the balance of assessed losses in determining taxable income

## (Clause 19 of the Draft TLAB: Section 20 of the Income Tax Act)

- In determining taxable income, the Act enables taxpayers to set off their balance of assessed losses carried forward from the preceding tax year against their income.
- An unutilised balance of assessed loss may be carried forward to future years of assessment to be set off against future income (provided that the non-individual taxpayer's trade continues without interruption). Accordingly, taxpayers will only be liable for income tax once they have earned a taxable profit and their assessed loss balance is depleted.
- The purpose of providing for the deductibility of assessed losses for corporate taxpayers is to smooth the tax burden for companies whose primary business is cyclical in nature and not in line with a standard tax year, and for start-up companies that are not profitable in the early years of trading.
- Over the past few years, there has been an international trend (both OECD & non OECD countries) to restrict the use of assessed losses and reduce the corporate income tax rate.

# Restricting the set-off of the balance of assessed losses in determining taxable income

## (Clause 19 of the Draft TLAB: Section 20 of the Income Tax Act)

- To improve the country's competitiveness, reduce the appeal of base erosion and profit shifting, encourage investment and promote economic growth, the Minister of Finance announced (in the 2020 Budget Review) Government's intention to restructure the corporate income tax system over the medium term by broadening the base and reducing the corporate income tax rate in a revenue neutral manner.

***Proposal***

- In line with the 2020 Budget announcement, government proposes to broaden the corporate income tax base by restricting the offset of the balance of assessed losses carried forward to 80 per cent of taxable income.
- The proposal extends to the balance of assessed losses at the time of implementation, i.e. it is not only the accumulation of losses starting from the date of implementation that will be subject to the new rules. This will contribute to providing the fiscal room for government to lower the corporate tax rate. The effect of the proposed restriction is that only companies that would be in a positive taxable income position before setting off the balance of assessed losses would be affected.

# Clarifying the definition of "Contributed Tax Capital"
## (Clause 4 ( c) of the Draft TLAB: Section 1 of the Income Tax Act)

- The contributed tax capital (CTC) of any company is a notional and ring-fenced amount derived from contributions made to a company by holders of a class of shares as consideration for the issue of that class of shares by that company. It is reduced by any capital amount that is subsequently transferred back by the company to one or more shareholders of that class of shares (commonly known as a capital distribution) utilising the notional tax amount so received.
- The policy rationale of this provision and the wording of the current proviso to the definition of CTC specifically requires that no holder of shares within a particular class of shares may receive CTC in excess of an amount per share derived by dividing the total CTC by the number of shares in that class immediately before that distribution.
- It has come to Government's attention that some companies are exploiting the current provisions of the CTC by allocating CTC on the basis of an alleged "share premium" contributed by a particular shareholder but not to all shareholders holding shares in the same class of shares.

***Proposal***

- It is proposed that changes be made to the definition of CTC to clarify the principle that shareholders within the same class of shares should share equally in the allocation of CTC as a result of a distribution.

# Limiting potential for double taxation under the hybrid debt anti-avoidance rules
## (Clauses 8, 9, 32 of the Draft TLAB: Sections 8F, 8FA and 50A of the Income Tax Act)

- The Act contains hybrid debt anti avoidance rules aimed at curbing artificial generation of interest deductions by an issuer if the debt instrument qualifies as a hybrid debt instrument, or if the yield is determined not to constitute bona fide interest. These rules recharacterise interest labelled returns as dividends *in specie* paid in respect of a share.
- Concerns have been raised that the deeming provisions, which deem any return from tainted debt instruments or any tainted returns to be dividends *in specie* in respect of a share to be declared and paid by the issuer to the person to whom the amount accrued, do not specifically deem the return to be the accrual of dividends *in specie* for the holder or recipient of the return.
- As a result, the return may not qualify for an interest deduction, dividends tax may be payable by the issuer if no exemption applies and the holder may be taxed on the interest. Such a result would be too draconian as the return would be regarded as interest and thus also be taxable for the holder of a tainted instrument or recipient of a tainted return, leading to economic double taxation.

***Proposal***

- It is proposed that changes be made in the law to explicitly extend the deeming provision to apply to the holder of a tainted instrument or recipient of tainted return. In addition, consequential amendments are proposed to the tax treatment of the reclassified return for purposes of withholding tax on interest in terms of the Act.

# Clarifying the meaning of "interest" under the debt relief rules (Clauses 18 , 45 of the Draft TLAB: Section 19(8)(f) and paragraph 12A(6)(g) of the Eighth Schedule to the Income Tax Act)

- The Act contains debt relief rules that trigger tax consequences in respect of a waiver, cancellation, reduction or discharge of a debt owed by a taxpayer.
- In 2017, rules dealing with the tax treatment of converting debt into equity were introduced, along with changes to ensure that the debt relief rules trigger a debt benefit that is subject to tax if the face value of the reduced amount of the debt prior to the entering into of that arrangement exceeds; (i) the market value of the shares acquired by reason or as a result of the implementation of that arrangement, in the instance that the creditor held no interest in the shares in the debtor prior to the arrangement; or (ii) the amount by which the market value of the interest in the shares held by that creditor in that debtor company after the implementation of that arrangement exceeds the market value of the interest in the shares held by that creditor in the debtor company prior to entering into of that arrangement, in the instance that the creditor held an interest in the shares in the debtor prior to the arrangement.
- Concerns have been raised regarding the meaning of the word "interest" in the debt relief rules.

***Proposal***

- To provide clarity as to the meaning of the word "interest" for purposes of applying the debt relief rules, it is proposed that the meaning of the word "interest" be clarified to mean interest as defined in section 24J of the Act.

# Refining the interaction between anti-value shifting rules and corporate reorganisation rules
## (Clause 25 of the Draft TLAB: Section 40CA of the Income Tax Act)

- The Act contains rules in sections 24BA and 40CA that curb the use of structures that shift value between taxpayers free of tax.
- Section 24BA applies to transactions involving asset for share exchanges and triggers a capital gain or deems a distribution of an asset in specie (in respect of which dividends tax is payable) where these exchanges are not effected on a value-for-value basis. Section 40CA prescribes a base cost for assets acquired by companies in exchange for the issue of their shares to the seller of those assets as the sum of the market value of the shares it issued and the amount of the capital gain triggered by the application of the provisions of section 24BA to ensure that there is no double taxation on the future disposal.
- On the other hand, the Act contains corporate reorganisation rules that allow for the tax neutral transfer of assets between companies that are part of the same group of companies and provide that assets transferred in terms of the corporate reorganisation rules are subject to the roll-over base cost rules that deem the acquirer and seller to be one and the same person for purposes of the base cost determination.

# Refining the interaction between anti-value shifting rules and corporate reorganisation rules
## (Clause 25 of the Draft TLAB: Section 40CA of the Income Tax Act)

- The interaction between the anti-value shifting rules in sections 24BA and 40CA and the corporate reorganisation rules in Part III of Chapter II of the Act gives rise to anomalous results as the capital gain triggered under the anti-value shifting rules is only added to the base cost of an asset acquired in exchange for the issue of shares by a company in terms of section 40CA, which is outside of the corporate reorganisation rules.

***Proposal***

- To rectify this anomaly, it is proposed that changes be made in the Act to provide for additional base cost equal to any deemed capital gain resulting from the application of the anti-value shifting rules in section 24BA for corporate reorganisation rules.
- However, such additional base cost is not required until a taxpayer subsequently disposes of an asset by way of a transaction that is not tax deferred in terms of the corporate reorganisation rules. In this regard, it is proposed that a company will be deemed to have incurred expenditure equal to the triggered deemed capital gain immediately before a subsequent disposal of an asset, previously acquired in terms of the abovementioned reorganisation provisions, in a transaction that falls outside corporate reorganisation rules.

# Clarifying the rules that trigger additional consideration in asset for share transactions when a debt is assumed by a company (Clause 26 of the Draft TLAB: Section 42(8) of the Income Tax Act)

- The corporate reorganisation rules contain asset-for-share transaction rules in section 42 of the Act that allow for the tax neutral transfer of assets when a person (transferor) disposes of an asset to a company in exchange for the issue of shares by that company to that transferor or when a transferor disposes of an asset that was acquired using debt and as part of that disposal, that debt is assumed as a consideration by a company acquiring that asset.
- These rules are subject to an anti-avoidance measure that is aimed at preventing a permanent loss to the fiscus, instead of a tax deferral and the measure provides that a proportional part of any qualifying debt that was assumed by a company as part of an asset-for-share transaction will constitute an amount received by or accrued to the transferor in respect of the disposal of any of the shares in the company acquired in terms of the asset-for-share transaction, when such shares are subsequently disposed of by the transferor.
- Consequently, a transferor must account for any debt assumed under an asset-for-share transaction as additional proceeds upon the disposal of the shares.

# Clarifying the rules that trigger additional consideration in asset for share transactions when a debt is assumed by a company
## (Clause 26 of the Draft TLAB: Section 42(8) of the Income Tax Act)

- It has come to Government's attention that the above-mentioned anti-avoidance rules that trigger additional consideration upon disposal are undermined when the shares are subsequently transferred in terms of a corporate reorganisation transaction as other applicable corporate reorganisation rules will enforce the rolled-over base cost of the previous asset-for-share transaction.

***Proposal***

- To prevent the rules from being undermined, it is proposed that these anti-avoidance rules should be amended so that the additional consideration accrues to the transferor in relation to any assumed debt immediately before any subsequent disposal of the shares acquired in terms of an asset-for-share transaction.
- Consequently, a transferor will irrespective of whether such a subsequent disposal of the shares is in terms of tax deferred transaction or not, be subject to tax on the additional consideration that is triggered immediate before that subsequent disposal of the shares.

# Clarifying the early disposal anti-avoidance rules in intra group transactions
## (Clause 27 of the Draft TLAB: Section 45(5) of the Income Tax Act)

- The corporate reorganisation rules contain intra-group transaction rules in section 45 of the Act that allow for tax deferral in respect of a disposal of an asset or a business as a going concern between companies that form part of the same group of companies at the end of the day of that disposal transaction.
- These intra-group transaction rules contain anti-avoidance measures that make provision for the early disposal rules to apply when an acquirer of an asset in terms of an intra-group transaction disposes of that asset within 18 months of such an acquisition.
- For example, a company may dispose of its asset (in respect of which a capital gain was anticipated on the date of an intra-group transaction) to a fellow group company with an assessed loss in order for that fellow group company to offset any capital gain on the disposal of that asset outside the group companies to a third party. Applying the early disposal anti-avoidance rules in the given example, the rules entail that the company that is disposing of an asset within 18 months of acquiring it in terms of a tax deferred intra-group transaction, must ring-fence the resultant tax consequences of such a disposal (i.e. the capital gain in the example provided) and not offset it against its losses, thus enforcing that tax must be paid on such capital gain

# Clarifying the early disposal anti-avoidance rules in intra group transactions
## (Clause 27 of the Draft TLAB: Section 45(5) of the Income Tax Act)

- It has come to Government's attention that in some instances, a capital gain may have been anticipated from the disposal of an asset at the date of the intra-group transaction, yet, at the date of the early disposal of an asset (disposal of an asset within 18 months after the acquisition in terms of the intra group transaction), a capital loss arises in respect of that asset.
- The difference in the nature of the resultant consequences in respect of the disposal of an asset on the date of the intra-group transaction and the date of the early disposal creates ambiguity in the application of the early disposal anti-avoidance rules.

***Proposal***

- In order to address this ambiguity, it is proposed that changes be made in the legislation to ensure that any capital gain, capital loss or income arising in the hands of a transferee company from any early disposal of an asset that was previously acquired in terms of an intra-group transaction should be ring-fenced without regard to any capital gain, capital loss or income that would have arisen on the date of the intra-group transaction.

# Extending the reversal of the nil base cost rules to apply on the sixth anniversary of an intra-group transaction
## (Clause 27 of the Draft TLAB: Section 45(3B) of the Income Tax Act)

- The corporate reorganisation rules in section 45 of the Act contain a provision dealing with intra-group transactions for a tax deferral in instances where one company transfers an asset or a business as a going concern to the other company and both companies form part of the same group of companies at the end of the day of that transaction.
- However, these intra-group transaction rules also contain various anti-avoidance measures aimed at limiting or discouraging abuse by taxpayers, for example, the de-grouping anti-avoidance rule and the zero base cost anti-avoidance rule.
- In 2020, changes were made in section 45 of the Act to remove the potential double taxation arising in instances where an intra-group transaction is subject to the zero base cost anti-avoidance rule resulting in a zero base cost for the holder of a debt or non-equity share that facilitated or funded an intra-group transaction and then subsequently a de-grouping or deemed de-grouping occurs and the de-grouping rules also reverse the tax deferral benefits.

# Extending the reversal of the nil base cost rules to apply on the sixth anniversary of an intra-group transaction
## (Clause 27 of the Draft TLAB: Section 45(3B) of the Income Tax Act)

- Concerns have been raised that in view of the fact that the de-grouping anti-avoidance rule ceases to apply on the sixth anniversary of an intra-group transaction, the zero base cost anti avoidance rule should similarly cease to apply on the sixth anniversary of an intra-group transaction.
- Further, it is counterintuitive that parties that operate within the spirit of the intra-group tax deferral rules and remain within the original group, should not be granted base cost in respect of debt and non-equity shares used to facilitate such an intra-group transaction.

***Proposal***

- In order to address these concerns, it is proposed that changes be made in the intra-group transaction rules to ensure that base cost is restored for holders of debt and non-equity shares used to facilitate the transfer of assets in terms of an intra-group transaction, on the sixth anniversary of that intra-group transaction.

# Clarifying the interaction between early disposal anti-avoidance rules and the nil base cost anti avoidance rules
## (Clause 27 of the Draft TLAB: Section 45(3B) of the Income Tax Act)

- The corporate reorganisation rules in section 45 of the Act allow for a tax deferral in instances where one company transfers an asset or a business as a going concern to the other company and both companies form part of the same group of companies at the end of the day of that transaction.
- These intra-group transaction rules also contain anti-avoidance measures aimed at discouraging abuse by taxpayers. The first anti-avoidance measure, namely, the degrouping anti-avoidance rule, is triggered when a transferor company ceases to form part of any group of companies as the transferee company within six years of the original intra-group transaction.
- The second anti-avoidance measure, namely, the early asset disposal anti-avoidance rule applies when a company within the same group of companies enter into tax deferred intra-group transaction with the aim of transferring assets to another company within the same group of companies that will be able to absorb any tax consequences that may result from a future disposal out of the group of companies.
- The third anti-avoidance measure, namely, the zero base cost anti-avoidance rule applies to a holder of any debt or and non-equity share issued by a fellow group company of an acquirer or company disposing of assets in terms of an intra-group transaction if that debt or non-equity share was used to facilitate or fund that intra-group transaction.

# Clarifying the interaction between early disposal anti-avoidance rules and the nil base cost anti avoidance rules
## (Clause 27 of the Draft TLAB: Section 45(3B) of the Income Tax Act)

- In 2020, changes were made in section 45 of the Act to remove the potential double taxation arising in instances where an intra-group transaction is subject to the zero base cost anti-avoidance rule resulting in a zero base cost for the holder of a debt or non-equity share that facilitated or funded an intra-group transaction and then subsequently a de-grouping or deemed de-grouping occurs and the de-grouping rules also reverse the tax deferral benefits.
- It has come to Government's attention that in view of the fact that the early asset disposal anti-avoidance rule reverses the tax deferral benefit in respect of the disposal of an asset which was acquired in terms of the intra-group transaction within 18 months of such an acquisition, it is therefore appropriate that the zero base cost anti-avoidance rule should be reversed when the early disposal anti-avoidance rule is triggered.

***Proposal***

- In order to address these concerns, it is proposed that changes be made in the intra-group rules to give effect to the reversal of the application of the zero base cost anti-avoidance rule in instances when the early asset disposal anti-avoidance rule applies. It should be noted that the reinstatement of the base cost for any debt or non-equity share will only be provided for to the extent to which the debt and/or non-equity share facilitated or funded an asset disposed of early and in respect of which the provisions of the Act applied to reverse and ring-fence the deferred capital gain, capital loss, taxable income or assessed loss.

# Refining the provisions applicable to unbundling transactions (Clauses 28 & 29 of the Draft TLAB: Sections 46 & 46A of the Income Tax Act)

- The corporate reorganisation rules Act contain unbundling provisions in section 46 of the Act that allow for a tax neutral transfer of shares in instances where shares of a resident company (unbundled company) that are held by another resident company (unbundling company) are distributed to the shareholders of that unbundling company in accordance with the effective interest of those shareholders.
- These unbundling rules contain anti-avoidance measures, namely, exclusions of distributions to disqualified persons and limitation of expenditure in respect of shares held in an unbundling transaction, aimed at limiting or discouraging abuse by taxpayers from distributing shares on a tax neutral basis if the shareholders do not fall within the South African tax net.
- In 2020, changes were made to the anti-avoidance measure dealing with exclusions of distributions to disqualified persons to make provision for the roll-over relief not to apply in respect of any equity share that is distributed by an unbundling company to any shareholder that is a disqualified person and holds at least 5 per cent of the equity shares in the unbundling company immediately before an unbundling transaction.

# Refining the provisions applicable to unbundling transactions
## (Clauses 28 & 29 of the Draft TLAB: Sections 46 & 46A of the Income Tax Act)

- The 2020 changes resulted in the "pro rata" application of the anti-avoidance measure dealing with exclusions of distributions to disqualified persons and results in a more equitable outcome in respect of unbundling transactions as only shares distributed to persons that are not disqualified persons will benefit from the roll-over relief and the rest will be subject to normal tax and dividends tax rules applicable on distribution.
- It came to Government's attention that the anti-avoidance measure dealing with exclusions of distributions to disqualified persons may be applied broadly as the current wording in the legislation may be applied to limit expenditure incurred by a taxpayer in respect of any share held in an unbundling company irrespective of how such share in the unbundling company was acquired by the taxpayer. This is of particular concern in instances that shares are not part of an unbundling transaction, a taxpayer may have acquired shares in an unbundled company from a third party that was subject to tax on the disposal of such shares. The limitation should apply only to shares acquired as part of an unbundling transaction and not limit the base cost of shares that were not acquired as part of a tainted unbundling transaction

# Refining the provisions applicable to unbundling transactions
## (Clauses 28 & 29 of the Draft TLAB: Sections 46 & 46A of the Income Tax Act)

***Proposal***

- It is proposed that changes be made in the anti-avoidance measure dealing with exclusions of tax neutral distributions to disqualified persons so that shareholders in an unbundling company that qualifies for tax deferral for an unbundling transaction should receive additional base cost that is reflective of the tax paid by the unbundling company in respect of their shares in the unbundled company, in accordance with their respective shareholding.
- This will, in practical terms, only benefit non-disqualified persons on future disposal of the unbundled shares as disqualified persons would in any case not be subject to tax. In addition, it is proposed that further changes be made in the anti-avoidance measure dealing with limitation of expenditure in respect of shares held in an unbundling transaction to ensure that this measure only applies to shares that are acquired by way of an unbundling and not to those shares that are acquired through either subscription or acquisition for a full consideration.

# Clarifying rehypothecation of collateral within collateral arrangement provisions
## (Clause 56 of the Draft TLAB: Section 1 of the Securities Transfer Tax Act)

- The Act contain rules that allow for an outright transfer of listed shares or local and foreign government bonds in collateral lending arrangements.
- As a result, if a listed share, local or foreign government bond is transferred as collateral for an amount owed by the transferor to the transferee, there are no income tax (including capital gains tax) and securities transfer tax implications provided that identical shares or bonds are returned to the transferor by the transferee within a limited period of 24 months from the date of transfer of the collateral.
- At issue is the rehypothecation of collateral, where the bank, broker dealer or collateral taker (transferee) intends to use collateral received through a tax-neutral collateral arrangement for trading or as security for its own borrowing. The use of collateral for purposes other than subsequent collateral arrangements is against the policy rationale for the introduction of these provisions and could result in the avoidance of securities transfer tax or capital gains tax.

# Clarifying rehypothecation of collateral within collateral arrangement provisions
## (Clause 56 of the Draft TLAB: Section 1 of the Securities Transfer Tax Act)

***Proposal***

- It is proposed that changes be made to the legislation to clarify the policy intention that the shares or bonds transferred as collateral in terms of a collateral arrangement may subsequently only be used for collateral and not be used for trading or in other financial transactions.
- As a consequential amendment it is also proposed that the same policy clarification be extended to government's ability to identify and sanction the improper use of the collateral received by the transferee during the 24-month time frame of collateral arrangements.
- In view of the fact that the proposed amendments are aimed at curbing abuse, it is proposed that these amendments should apply retrospectively and come into operation on the date of the publication of the 2021 draft TLAB for public comment. i.e. 28 July 2021.

# TAXATION OF FINANCIAL INSTITUTIONS AND PRODUCTS

# Clarifying the transfer of liabilities in respect of insurance business between short term insurers

## (Clause 23 of the Draft TLAB: Section 28 of the Income Tax Act)

- Section 28 of the Act which deals with the taxation of short-term insurers does not specifically address all the tax consequences that arise from the sale of all or a part of insurance business, which involve the transfer of all rights such as premiums receivable and obligations such as claims to be settled under an insurance contract, in which case the general provisions of the Act apply.
- As a general matter, the transaction requires the buyer to assume all outstanding liabilities with the obligation to settle any future claims as recorded in the seller's accounting records at date of transfer and have the right to all future premium's receivable under the insurance contract. In addition, the seller also transfers the rights in respect of the insurance contracts to the buyer. Lastly, for the buyer's assumption of the outstanding liabilities the seller reduces the consideration for the transaction or pays the buyer an amount equal to the value of the outstanding liabilities.

***Proposal***

- In order to address these concerns, it is proposed that changes be made in the Act to clarify the tax treatment applicable to both the seller and the buyer of transfer of liabilities as part of the transfer of short-term insurance business or short-term policies.

# Refining the deduction formula for taxable long term insurer policyholder funds
## (Clause 24 of the Draft TLAB: Section 29A of the Income Tax Act)

- In 2012, changes were made to section 29A of the Act by revising the deduction formula for selling, administration and indirect expenses for long-term insurers. In general, this formula is based on taxable income divided by net economic income.
- For purposes of the denominator, the concept of "net economic income" is intended to reflect total taxable income without a reduction of non-includible dividends, foreign dividends and capital gains.
- At issue is that unrealised gains to be accounted for in the denominator does not specifically refer to any level of aggregation of unrealised gains and losses and is inconsistent with dividends, foreign dividends and realised capital gains which refer to an aggregation of amounts.

***Proposal***

- In order to address this anomaly, it is proposed that changes be made in the deduction formula so that unrealised gains and losses should also be aggregated for all assets allocated to the relevant policyholder fund.

# TAX INCENTIVES

# Extension of the Urban Development Zone (UDZ) tax incentive
## (Clause17 of the Draft TLAB : Section 13 *quat* of the Income Tax Act)

- In 2003, the UDZ tax incentive was introduced in the Act to increase investment in 16 designated inner cities.
- The UDZ tax incentive was designed to encourage property investment in central business districts and to address dereliction and dilapidation, and to promote investment in urban renewal.
- When the UDZ tax incentive was introduced, it contained a sunset date of 31 March 2014. In 2013, the sunset date for the UDZ incentive was extended from 31 March 2014 to 31 March 2020. The UDZ tax incentive was expected to come to an end on 31 March 2020 and before this date, a review had to be concluded to determine the future of the incentive.
- In the 2020 Budget Review, the Minister of Finance announced that the UDZ tax incentive would be extended for one year, to 31 March 2021, while a review of the incentive was completed.
- However, due to the challenges posed by the COVID-19 global pandemic, a comprehensive review of the effectiveness of the UDZ tax incentive could not be concluded.

# Extension of the Urban Development Zone (UDZ) tax incentive
## (Clause 17 of the Draft TLAB : Section 13 *quat* of the Income Tax Act)

- In the 2021 Budget Review, the Minister of Finance announced that the incentive would be extended by a further two years beyond its current sunset date of 31 March 2021, as the review process continues.

***Proposal***

- In line with the Minister's announcement in the 2021 Budget Review, it is proposed that changes be made in the Act to extend the UDZ tax incentive by another two years, to 31 March 2023.
- The extension of the incentive's sunset date will provide time for an extensive review of its effectiveness in achieving its objectives to be conducted.

# Extension of the learnership tax incentive sunset date
## (Clauses 15 of the Draft TLAB : Sections 12H of the Income Tax Act)

- The learnership tax incentive, which was introduced in the Act on 1 October 2001, is a programme that supports skills intensity through the tax system.
- To encourage skills development and job creation, the learnership tax incentive provides employers with an additional tax deduction over and above the normal remuneration that can be deducted. Similar to all other tax incentives, when the learnership tax incentive was introduced, it had a sunset date of 1 October 2011.
- In 2011, a review was conducted to assess the effectiveness of the learnership tax incentive in achieving its objectives, before the sunset date. After the review, the learnership tax incentive was extended by another five years to 1 October 2016. In 2016, a comprehensive review was again conducted to assess the effectiveness of the learnership tax incentive in achieving its objectives.
- The outcome of the review indicated that there was sufficient evidence to support the continuation of the learnership tax incentive beyond its previous sunset date of 1 October 2016.
- However, the review also revealed that claims were not evenly spread across sectors. Sectors with high uptake were those where SETAs where perceived to administer training programmes more effectively.

# Extension of the learnership tax incentive sunset date
## (Clauses 15 of the Draft TLAB : Sections 12H of the Income Tax Act)

- The review then recommended: (i) the extension of the incentive sunset date to 31 March 2022, (ii) improving the targeting of the incentive by encouraging employers to train learners in those skill categories where demand is highest, and (iii) to improve future incentive policy analysis, completion of the SARS IT180 form was made compulsory for taxpayers to claim the learnership tax incentive.

- In the 2021 Budget Review, the Minister of Finance announced that the incentive would be extended by a further two years beyond its current sunset date while a review is completed.

***Proposal***

- In line with the Minister's 2021 Budget announcement, it is proposed that changes be made in section 12H of the Act to extend the learnership tax incentive by another two years, to 31 March 2024.

# Refining the time frames of compliance requirements of Industrial Policy Projects (IPP) tax incentive
## (Clause 16 of the Draft TLAB : Section 12I of the Income Tax Act)

- In 2009, the IPP tax incentive was introduced in section 12I (the section 12I tax incentive) to support investment in manufacturing assets that would improve the productivity of the manufacturing sector.
- The section 12I tax incentive offers support for both capital investment and training, with qualification for the incentive based on points scoring criteria reviewed by an adjudication committee constituted in terms of section 12I(16) of the Act.
- The adjudication committee assesses projects for approval, and if approved, monitors these projects in terms of their compliance. Section 12I(19)(a) of the Act makes provision for the adjudication committee to make recommendations to the Minister of Trade, Industry and Competition to extend the time periods within which approved projects must comply with the provisions of the section, by one year.

# Refining the time frames of compliance requirements of Industrial Policy Projects tax incentive
## (Clause 16 of the Draft TLAB : Section 12I of the Income Tax Act)

- The section 12I tax incentive initially had a sunset date of 31 December 2015. In 2015, the sunset date was extended by two years to 31 December 2017.
- In 2017, the date was again extended by two years 3 months to 31 March 2020. The sunset date of 31 March 2020 fell during the COVID-19 pandemic.
- As a result, many beneficiaries of the section 12I tax incentive experienced some challenges during the 2020 COVID-19 national lockdown.
- This disruption is expected to last throughout 2020 and the whole of 2021. Should these compliance requirements not be met, it would lead to a withdrawal of approval for projects in terms of section 12I of the Act.
- This would place additional strain on the manufacturing sector in an environment where projects face severe challenges in reaching completion, and many businesses struggle to remain operational.

# Refining the time frames of compliance requirements of Industrial Policy Projects tax incentive
## (Clause 16 of the Draft TLAB : Section 12I of the Income Tax Act)

***Proposal***

- In order to ensure that approved projects have a better chance of complying with section 12I provisions and are not adversely affected by COVID-19 and consequent restrictions on economic activity resulting in non-compliance, the following amendments are proposed in section 12I of the Act.
- The proposed amendments will be deemed to have come into effect on 1 January 2020.
- Extension of the time period that the adjudication committee can recommend to the Minister of Trade, Industry and Competition within which approved projects must comply with the provisions of section 12I of the Act
- Extension of “compliance period” within which approved projects must fully comply with the provisions of section 12I of the Act

# INTERNATIONAL TAXATION

# Clarifying the controlled foreign company anti-diversionary rules
## (Clauses 10 of the Draft TLAB: Sections 9D (9A) of the Income Tax Act)

- The Act contains Controlled Foreign Company (CFC) anti-avoidance provisions in section 9D aimed at taxing South African residents on the net income of a CFC.
- In order to strike a balance between protecting the South African tax base and the need for South African multinational entities to be competitive, the CFC rules contain various exemptions of certain types of business income, for example, foreign business establishment exemption.
- This exemption makes provision for CFC income to be exempt if that income is attributable to a foreign business establishment as defined in section 9D of the Act.
- In order to limit tax avoidance, the foreign business establishment exemption does not apply if the CFC foreign business establishment income is regarded as diversionary foreign business income in terms of the CFC anti-diversionary rules. Diversionary foreign business income arises when a CFC engages in transactions such as outbound sale of goods, inbound sale of goods and services with a related South Africa resident in a manner that will most likely lead to transfer pricing tax avoidance.
- In 2011, the anti-diversionary rules in respect of the CFC outbound sale of goods were completely abolished and the rationale for removing these rules was that the transfer pricing rules could be applied as an alternative.

# Clarifying the controlled foreign company anti-diversionary rules
## (Clauses 10 of the Draft TLAB: Sections 9D (9A) of the Income Tax Act)

- In 2016, Government reinstated the anti-diversionary rules in respect of the CFC outbound sale of goods due to their effectiveness in preventing base erosion and profit shifting (BEPS). The 2016 anti-diversionary rules for CFC outbound sale of goods now provide for an exemption if similar goods are purchased by the CFC, from unconnected persons in relation to that CFC, mainly within the country in which the CFC is resident. Notably, these rules do not contain legal reference to physical delivery of the goods.
- It has come to Government's attention that certain taxpayers are circumventing these anti-diversionary rules by merely entering into a contract of purchase in the country of the CFC that implies that the purchase of goods took place in the country of residence of the CFC when the goods are never physically present or delivered in that country.

***Proposal***

- In order to curb this abuse, it is proposed that changes be made in the anti-diversionary rules dealing with the CFC outbound sale of goods to provide clarity that when a CFC purchases those goods, these goods should be physically present or delivered within the country of residence of that CFC.

# Clarifying the interaction between provisions dealing with a foreign company ceasing to be a cfc and the participation exemption
## (Clauses 11 of the Draft TLAB: Sections 9H(5) of the Income Tax Act)

- In 2020, changes were made in the Act to address tax avoidance opportunities that may have emerged as a result of the withdrawal of the approval requirement of the Financial Surveillance Department of South African Reserve Bank for loop structures.
- One of the amendments made was in relation to the participation exemption in paragraph 64B of the Eighth Schedule for gains on the disposal of shares in a non-resident company to a non-resident. This paragraph was amended so that the participation exemption does not apply to the disposal of shares in a CFC to the extent the value of the assets of the CFC are derived from South African assets.
- At issue is that the amendment mentioned above creates uncertainty in the application of section 9H(5) of the Act when a foreign company ceases to be CFC as a direct or indirect result of the disposal of equity shares in that CFC.

***Proposal***

- In order to address this, it is proposed that changes be made in the Act so that when a portion of the resulting gain or loss resulting from a CFC ceasing to be a CFC is not disregarded in terms of paragraph 64B of the Eighth Schedule, the application of section 9H(5) of the Act is not precluded.
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# Clarifying the rules dealing with withholding tax exemption declaration (Clauses 31, 34 & 35 of the Draft TLAB: Sections 49E(2)(b), 64G(2)(a)and 64H(2)(a) of the Income Tax Act)

- The Act contains provisions for withholding tax on royalties, withholding tax on interest and dividends tax respectively.
- With regard to withholding tax on royalties, the withholding tax applies to royalties from a source within South Africa paid by any person, whether that person is a resident or not, to a foreign person. However, this withholding tax on royalties can potentially be reduced or eliminated by a tax treaty.
- Similarly, with regard to withholding tax on interest, the withholding tax applies to interest from a South African source and the withholding tax on interest may be reduced by the application of a tax treaty.
- Also, with regard to dividends tax, dividends tax is withheld from the dividend payment or paid by the company paying the dividend and the dividends tax imposed may be reduced by the application of a tax treaty.
- In relation to withholding tax on interest, the income tax provides that a person must not withhold at the prescribed rate if the foreign person receiving interest has submitted a declaration that the amount is exempt from the withholding tax on interest as a result of an applicable double tax treaty agreement.
- However, a similar declaration does not exist for withholding tax on royalties and dividends tax, which is contrary to the intent to align the three tax regimes.

***Proposal***

- To address this anomaly, it is proposed that the tax legislation be amended to provide for the release from obligation to withhold if the foreign person to or for the benefit of which that payment is to be made has, before the payment is paid, submitted to the person making the payment that an agreement of the avoidance of double taxation exist for royalties or dividends

# Value added tax (VAT)

# Zero rating of super fine maize meal
## (Clause 55 of the Draft TLAB: Schedule 2; Part B of the VAT Act )

- In South Africa, the grading of maize products is regulated in the Agricultural Products Standards Act 119 of 1990.
- Before 2016, the Agricultural Products Standards Act allowed for 18 grades of maize products, including the below mentioned to be sold in South Africa. In turn, Item 2 of Part B of Schedule 2 of the VAT Act 1991 provides for a list of zero-rated items, which includes the following grades of maize meal: super maize meal; special maize meal; sifted maize meal or unsifted maize meal.
- In 2016, another grade of maize meal, namely, super fine maize meal was added to the list regulated by the Agricultural Products Standards Act, to make it 19 graded maize products.
- At issue is that in 2016, when changes were made to the list regulated by the Agricultural Products Standards Act to add super fine maize meal as another grade of maize meal to be regulated in this regard, no consequential amendments were made in Item 2 of Part B of Schedule 2 to the VAT Act to allow for zero rating of super fine maize meal.

***Proposal***

- In order to align the VAT Schedule to the Agricultural Products Standards Act, 1990, Regulations relating to the Grading, Packing and Marking of Maize Products intended for sale in the Republic of South Africa, as gazetted in Government Gazette No. 39613, dated 22 January 2016, and to allow for zero rating of super fine maize meal, it is proposed that Item 2 of Part B of Schedule 2 to the VAT Act should be updated to include super fine maize meal.

# VAT treatment of temporary letting of residential immovable property
## (Clauses 51, 52 & 54 of the Draft TLAB: Sections 9(6), 10(29) and 18D of the VAT Act)

- The VAT Act makes provision for the supply of residential fixed property by a VAT vendor (being a property developer) to be subject to VAT at the standard rate of 15 per cent.
- While the VAT Act recognizes the sale of residential fixed property by a property developer as a taxable supply, the leasing of residential fixed property is an exempt supply which would generally result in the VAT incurred being denied. Property developers are entitled to deduct input tax on the VAT costs incurred to build residential fixed property (dwellings) for sale.
- However, where the property developer is unable to sell the residential fixed property and enters into a lease, until a buyer is found, the property developer is required to make an output tax adjustment based on the open market value of the residential fixed property when the residential fixed property is leased for the first time.
- In 2010, an announcement was made in Chapter 4 of the 2010 Budget Review (Heading titled: VAT and residential property developers on page 79 of the Budget Review) to investigate and determine an equitable value and rate of claw-back for property developers as the current treatment is disproportionate to the temporary rental income.

# VAT treatment of temporary letting of residential immovable property
## (Clauses 51, 52 & 54 of the Draft TLAB: Sections 9(6), 10(29) and 18D of the VAT Act)

- As a result, changes were made in the VAT Act by inserting new section 18B, for a short period, from January 2012 to 1 January 2018. This section ceased to apply on 1 January 2018.
- Concerns have been raised again regarding the application of the VAT provisions in this regard, especially the inequitable value attributed to this change in use adjustment.

***Proposal***

- In order to address these concerns, it is proposed that changes be made in the VAT Act by inserting a new section that will deal with the deemed change in use adjustment when the residential fixed property is leased for the first time, including whether that deemed change in use adjustment results in the residential fixed property exiting the VAT net or not and the subsequent deemed supply where the residential fixed property is sold.
- This approach is considered equitable and will serve as an anti-avoidance measure. It will not prejudice property developers whose intention, with regard to the residential fixed property, was always that the residential fixed property is trading stock, intended for the making of taxable supplies in the course of such property developer's enterprise activities.

# Reviewing the section 72 decision with regard to the VAT treatment of telecommunication services

## (Clause 63 of the Draft TLAB: Section 11(2)(y) of the VAT Act )

- In 2019, changes were made to section 72 of the VAT Act, which provides the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act shall be applied or the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided for in terms of the VAT Act, provided that the Commissioner is satisfied that as a consequence of the manner in which any vendor or class of vendors conducts his, her or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise with regard to the application of the VAT Act.
- These changes had an impact on the arrangements or decisions made in terms of this section before 21 July 2019.
- In the 2020 Budget Review, government undertook to address these concerns by reviewing the impact and the role of these arrangements and decisions to ascertain whether they should be discontinued or extended in accordance with the new provisions of section 72.
- One of the arrangements and decisions made in terms of section 72, which was impacted by these changes is the VAT treatment of telecommunications services.

# Reviewing the section 72 decision with regard to the VAT treatment of telecommunication services

## (Clause 53 of the Draft TLAB: Section 11(2)(y) of the VAT Act )

- South Africa is a signatory to the International Telecommunication Regulations that were concluded at the World Administrative Telegraph and Telephone Conference, Melbourne 1988 (the Melbourne ITR) as well as the International Telecommunication Regulations that were concluded at the World Conference on International Telecommunication held in Dubai in 2012 (effective 2015) (Dubai ITR).
- In terms of these ITRs, the SA vendors may only levy VAT on these charges if the customer has a South African billing address. SA vendors supplying roaming and other services to non-resident telecommunications suppliers are thus obliged, in terms of the Dubai ITR, to zero rate these charges levied to their non-resident counterparts.
- In 2020, changes were made in the VAT Act to introduce a new zero rating provision in order to ensure that the provisions of the Dubai ITR are upheld, in line with the section 72 rulings that were previously given to taxpayers.
- However, in the Response Document to the 2020 TLAB, it was noted that any further proposed amendments regarding the implementation of the Dubai ITR could be considered in the subsequent legislative cycle.

***Proposal***

- Based on the above, in 2021, it is proposed that further amendments be made in the provisions dealing telecommunications services in order to align these provisions with the Dubai ITR, but subject to certain limitations.

# CARBON TAX ACT

# Clarifying renewable energy premium beneficiaries

## ((Clause 63 of the draft TLAB: Section 6(2)(c) of the Carbon Tax Act)

- In terms of Section 6(2)(c) of the Carbon Tax Act, provision is made for electricity generators liable for the carbon tax to offset the cost of their additional renewable energy purchases against their carbon tax liability.
- This provision was intended to address stakeholders' concerns on possible double taxation due to the introduction of the carbon tax in addition to the "renewable IPP tariff" already applied under the Renewable Energy Independent Power Producers Procurement Programme (REIPPPP).
- It came to Government's attention that some taxpayers are of the view that the Carbon Tax Act was ambiguous on the intended beneficiaries of this concession and requested clarity on whether renewable-based self-generation with electricity wheeling arrangements through Eskom would also be eligible to claim the renewable energy premium deduction.

# Clarifying renewable energy premium beneficiaries

## ((Clause 63 of the draft TLAB: Section 6(2)(c) of the Carbon Tax Act)

***Proposal***

- To address this concern, it is proposed that only entities that are liable for the carbon tax, conduct electricity generation activities and purchase additional primary renewable energy directly either under the REIPPPP or from private independent power producers (IPPs) would be eligible to claim the tax deduction for its renewable energy purchases.
- For purchases under the REIPPPP or privately, this would apply where a purchasing power agreement / contract exists.
- It is proposed that Section 6(2)(c) of the Carbon Tax Act is amended to clarify that the Renewable energy premium to be deducted for purchases of additional renewable electricity is the product of the amount of RE purchased (kWh) under a power purchase agreement and the applicable rate for that technology as specified in the Renewable Energy Notice gazetted by the Minister of Finance, as follows: **Deduction (B) =** quantity of renewables purchased (kWh) × rate (Rand) per technology as per the Gazetted notice .
- The proposed amendments will come into operation on 1 January 2021

# Clarifying the definition and scope of carbon sequestration-Limitation on biological sequestration to forest plantations

**((Clause 63 of the draft TLAB: Sections 6(3) and 6(4) of the Carbon Tax Act)**

- In November 2020, a methodological guideline document was published by the Department of Forestry, Fisheries and Environment (DFFE) to provide methodologies for taxpayers to use for quantifying greenhouse gas emissions sequestration in the forestry industry.
- This methodological guideline covers reporting and accounting parameters for sequestration across the forestry, paper and pulp, and manufacturing of harvested wood products (HWPs) industries.
- For forestry plantations, the DFFE provides for emissions sequestered directly by forests to be deducted from fuel combustion emissions as well emissions embedded in harvested wood products (HWPs) in line with the Intergovernmental Panel on Climate Change (IPCC) Guidelines.
- Aligning the definition of sequestration in the Carbon Tax Act with the DFFE methodological guidelines is problematic for the following reasons.

# Clarifying the definition and scope of carbon sequestration-Limitation on biological sequestration to forest plantations

**((Clause 63 of the draft TLAB: Sections 6(3) and 6(4) of the Carbon Tax Act)**

- First, although the IPCC provides guidelines for the decay rate of HWPs, there are concerns about the permanence of emissions sequestered in harvested wood products, as it would be difficult to track how long the products remain in circulation or are burnt to release emissions.
- Second, the emissions reporting boundary is the mill gate with forestry companies not having operational control on processes beyond the mill gate.

***Proposal***

- Due to concerns about the permanence of sequestered emissions in HWPs and lack of control of the production processes by forestry companies beyond the mill gate and the robustness of the available emissions calculation methodologies, it is proposed that only actual forestry plantation sequestered emissions within the mill gate should be eligible for the deduction under the Carbon Tax Act.
- It is proposed that the definition of biological carbon sequestration in section 6(3)/(4) of the Carbon Tax Act is limited only to directly sequestered emissions by forest plantations.

# Clarifying the definition and scope of carbon sequestration- Sequestration deduction for fuel combustion emissions

**((Clause 63 of the draft TLAB: Sections 6(3) and 6(4) of the Carbon Tax Act)**

- In terms of the Carbon Tax Act, Section 4(1) and 4(2a) defines the carbon tax base that is, fuel combustion, fugitive and industrial process emissions that are determined using the Tier 3 company based emissions methodologies or the Tier 1 and 2 emission factors as per Schedule 1 of the Act, respectively.
- The Carbon Tax Act allows taxpayers to deduct sequestered emissions as verified and certified by the DFFE from their fuel combustion related greenhouse gas emissions for a tax period as determined in section 4.
- This covers carbon capture and storage in geological reservoirs and biological sequestration. Government has clarified that for combustion activities where carbon capture and storage (CCS) technologies are used, the nett greenhouse gas emissions (already excludes stored emissions) should be reported to the DFFE.
- To reduce the potential for double benefits to taxpayers for the same sequestered emissions, changes to the scope and definition of sequestered emissions allowed as a deduction for fuel combustion emissions determined in terms of Section 4 of the Carbon Tax Act are necessary,

# Clarifying the definition and scope of carbon sequestration- Sequestration deduction for fuel combustion emissions

**((Clause 63 of the draft TLAB: Sections 6(3) and 6(4) of the Carbon Tax Act)**

***Proposal***

- It is proposed that sequestration in forestry plantations are deductible for fuel combustion emissions (E), and the deduction for sequestration in geological reservoirs is limited to emissions determined in terms of Section 4(2)(a).
- For Section 4(1), only sequestration of greenhouse gases in forestry plantations would be deductible; and for Section 4(2)(a), sequestration of greenhouse gases in geological / carbon reservoirs and forestry plantations would be deductible.
- The proposed amendments will come into operation on 1 January 2021
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# Clarifying the carbon budget allowance
## ((Clause 64 of the draft TLAB: Section12 of the Carbon Tax Act)

- The DFFE has gazetted the extension of the voluntary carbon budget system, which became effective from 1 January 2021 and ends on 31 December 2022, and the piloting of new methodologies for determining company-level carbon budgets.
- Section 12(1) of the Carbon Tax Act permits a taxpayer to claim a carbon budget allowance of 5 per cent if they participate in the carbon budget system during or before the tax period.

***Proposal***

- To address any ambiguity due to the new voluntary carbon budget system, it is proposed that reference to “before the tax period” be replaced with the specific timeframe for the carbon budget as outlined in the new departmental legislation. To address any ambiguity due to the new voluntary carbon budget system, it is proposed that reference to “before the tax period” be replaced with the specific timeframe for the carbon budget as outlined in the new departmental legislation.
- The proposed amendments will come into operation on 1 January 2021.

# Aligning schedule 2 emissions activities and thresholds with the greenhouse gas emission reporting regulations of the DFFE

## ((Clause 65 of the draft TLAB: Schedule 2 of the Carbon Tax Act) CHED

- The Carbon Tax Act came into effect on 1 of June 2019. The tax base for the carbon tax are the greenhouse gas emissions that are reported annually by taxpayers to the Department of Forestry, Fisheries and Environment (DFFE) as required under the National Greenhouse Gas Emission Reporting Regulations. Schedule 2 of the Carbon Tax Act outlines the activities that are subject to the carbon tax and is based on Annexure 1 of the National Greenhouse Gas Emission Reporting Regulations as reported emissions are subject to the carbon tax.
- On 11 September 2020 the DFFE published the amendments to the National Greenhouse Gas Emission Reporting Regulations. Annexure 1 of the GHG emissions reporting regulations was amended to include changes to the activities required to report their emissions and thresholds, and the inclusion of new activities now reportable to DFFE.
- Amendments to Schedule 2 of the carbon tax act are required to ensure alignment with the amended GHG Emissions reporting regulations

# Aligning schedule 2 emissions activities and thresholds with the greenhouse gas emission reporting regulations of the DFFE

## ((Clause 65 of the draft TLAB: Schedule 2 of the Carbon Tax Act) CHED

***Proposal***

- It is proposed that Schedule 2 of the Carbon Tax Act be amended to reflect the changes set out in the Amended National Greenhouse Gas Emission Reporting Regulations.
- This includes changes to the thresholds and the inclusion of a new activity which has been added to the emissions reporting regulations.
- The proposed amendments will be deemed to have come into operation on 11 September 2020. This is aligned with the date of gazetting of the Amended National GHG Emissions Regulations

# 2021 DRAFT TALAB

# Information required by law in receipts issued for tax-deductible donations
## (Clause 2 of the draft TALAB; section 18A of the Income Tax Act)

- The information required by law in the receipts issued for tax-deductible donations is limited and entities issuing the receipts are not required to provide third-party data on the donations to SARS on a systematic basis.
- SARS has detected that receipts are being issued by entities that are not approved to do so.
- To ensure that only valid donations are claimed and to enhance SARS' ability to pre-populate individuals' returns, it is proposed that the information required in the receipts be extended to allow such information as the Commissioner may prescribe by public notice from time to time.
- Third-party reporting will be extended in future to cover the receipts issued.

# Administrative non-compliance penalties based on estimates for non-submission of six-monthly employees' tax returns
## (Clause 6 of the draft TALAB; para 14 of Fourth Schedule to Income Tax Act)

- SARS may impose a penalty for the non-submission of the six-monthly employees' tax returns by employers.
- The penalty is calculated as a percentage of the employees' tax for the period covered by the return.
- Where the employees' tax for the period is not known to SARS, due to the non-submission of monthly or six-monthly returns, the penalty can only be imposed retrospectively.
- This undermines the purpose and deterrent effect of the non-compliance penalty.
- The proposed amendment enables SARS to raise the penalty on an alternative basis in such cases, through an estimate of the employees' tax with an adjustment once the actual employees' tax is known.

# Removal of double-penalty for the same incidence of non-compliance relating to employees' tax
## (Clause 9 of the Draft TALAB: Para 17 of Seventh Schedule to Income Tax Act)

- Under paragraph 13 of the Fourth Schedule to the Income Tax Act, employers have an obligation to issue employees' tax certificates (IRP5/IT3(a)) to their employees.
- The certificates must reflect the total remuneration, including any fringe benefit and allowance, and the sum of employees' tax (PAYE) deducted during that period.
- If the employer under deducts PAYE and underpays SARS as a result of understating taxable fringe benefits SARS must impose a penalty of 10% on the underpayment.
- The employer has an obligation to determine the cash equivalent of the value of the taxable benefit granted to its employees.
- Paragraph 17 of the Seventh Schedule provides that the nature of the taxable benefit and the cash equivalent of the value thereof must be reflected on the employees' tax certificate or a separate certificate.
- If an employer fails to comply with this requirement, SARS may impose a penalty equal to 10% of the amount by which the cash equivalent is understated.
- Two separate penalties may thus be imposed for the same fringe benefit understatement.
- The proposed amendment removes this double penalty.

# Expanding the purposes for which air cargo may be removed to degrouping depots
## (Clause 11 of the Draft TALAB: Section 6 of the C&E Act)

- Section 6(1)(*h*C) of the Customs and Excise Act, 1964, contemplates *inter alia* the unpacking or deconsolidation of imported air cargo at degrouping depots.
- Current practice has however shown that there is also a need to regulate the consolidation of air cargo at degrouping depots for export and the removal thereof to transit sheds.
- The proposed amendment is intended to expand the purposes for which air cargo may be removed to degrouping depots to include consolidation and removal to transit sheds for export.

# Amendments related to changes in the accreditation system
## (Clauses 12 and 14 of the Draft TALAB: Section 38A and 64E of the C&E Act, 1964)

- Amendments to sections 38A and 64E are required as a result of the announcement in Budget 2021 that SARS is changing its accreditation system to more closely reflect the requirements of the SAFE Framework of Standards issued by the World Customs Organisation.
- The changes to the accreditation system have been introduced by rule in terms of section 64E(2) and these amendments remove outdated provisions.

# Increasing the caps for refunds and underpayments of duties (Clauses 13 and 16 of the Draft TALAB: Sections 47 and 76 of the C&E Act)

- Section 47(1) provides for the minimum thresholds in respect of underpayments of customs duties by taxpayers which the Commissioner may condone. These values are currently very low and Clause 13 provides for increasing the values to R100.
- A similar amendment is proposed in respect of section 76(5) in relation to minimum thresholds for refunds of duty to taxpayers. Clause 16 provides for the increase of these values to R100.

# THANK YOU