2021 TAX BILLS

Presentation to the Select Committee on Finance (SECoF)

PRESENTED BY:

National Treasury & SARS

Date: 30 November 2021

national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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CONSULTATION PROCESS

- The 2021 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Draft Rates Bill) was first published on the same day as the Budget: 24 February 2021.
- The 2021 Draft Rates Bill gives effect to changes in rates and monetary thresholds to the personal income tax tables and increases of the excise duties on alcohol and tobacco.
- The 2021 Draft Rates Bill was published again for the second time for public comment on 28 July 2021, together with the 2021 Draft Taxation Laws Amendment Bill (Draft TLAB) and the 2021 Draft Tax Administration Laws Amendment Bill (Draft TALAB).
- The 2021 Draft TLAB and 2021 Draft TALAB contain the remainder of the tax announcements made in Chapter 4 and Annexure C of the 2021 Budget Review, which are more complex, technical and administrative in nature. Due to the complex nature of these draft bills, greater consultation with the public is required on their contents.
- This year, a separate Second Batch of the 2021 Draft TLAB and 2021 Draft TALAB was published on 12 August 2021, which contains emergency tax measures in response to the continuing COVID-19 pandemic and recent unrest in the country. These measures are over and above the tax proposals made in the 2021 Budget on 24 February 2021.
- The closing date for public comments on all the 2021 Draft Tax Bills was 28 August 2021.
- National Treasury and SARS received written comments from 76 contributors on the 2021 Draft Tax Bills by deadline of 28 August 2021.

CONSULTATION PROCESS

- National Treasury and SARS briefed the SCoF on the 2021 Draft Tax Bills on 17 August 2021.
- Oral presentations by taxpayers and tax advisors on the 2021 Draft Tax Bills were made at hearings by the SCoF on 31 August 2021.
- Workshops with stakeholders to discuss their comments on the 2021 Draft Tax Bills were held on 7, 8 & 9 September 2021.
- On 10 November 2021, National Treasury and SARS presented to the SCoF a draft response document containing a summary of draft responses to public comments received on the 2021 Tax Bills.
- Changes relating to emergency tax measures contained in the Second Batch of the 2021 Draft TLAB and 2021 Draft TALAB are incorporated into the Draft TLAB and Draft TALAB. As a result, the Second Batch of the 2021 Draft TLAB and 2021 Draft TALAB, falls away.
- The 2021 Tax Bills were introduced by the Minister in the National Assembly on 11 November 2021.
- The SCoF voted on the 2021 tax bills on 24 November 2021.
- Today, 30 November 2021, National Treasury and SARS are briefing the SECoF on the key issues in the 2021 Tax Bills.

KEY ISSUES RAISED IN THE 2021 TAX BILLS

Key amendments in the 2021 Tax Bills that received the most comments are the following:

2021 Rates Bill

- Increase on excise duty on alcohol and tobacco

2021 TLAB

➢ **Employment, Individuals and Savings**

- Applying tax on withdrawals of retirement interest when an individual ceases to be a tax resident
- Curbing abuse of Employment Tax Incentive
- Strengthening anti -avoidance rules in respect of loans between trusts

➢ **Business Tax (General)**

- Strengthening the rules dealing with limitation of interest deductions in respect of debts owed to certain persons not subject to tax
- Restricting the set-off of the balance of assessed losses in determining taxable income
- Clarifying rehypothecation of collateral within collateral arrangement provisions
- Clarifying the definition of “Contributed Tax Capital”

KEY ISSUES RAISED IN THE 2021 TAX BILLS

2021 TLAB

➢ **Carbon Tax Act**

- Clarifying renewable energy premium beneficiaries
- Clarifying the definition and scope of carbon sequestration-Limitation on biological sequestration to forest plantations
- Aligning schedule 2 emissions activities and thresholds with the greenhouse gas emission reporting regulations of the DFFE

2021 TALAB

➢ **Income Tax Act**

- Information required in receipts issued for tax deductible donations

➢ **Customs and Excise Act**

- Increasing the minimum thresholds for underpayments of duty by taxpayers and payment of refunds by SARS to ease administrative burden

➢ **Tax Administration Act**

- Extension of period within which taxpayer can request revision of an assessment based on an estimate
- Extension of prescription in certain instances

CHANGES TO THE 2021 TAX BILLS AFTER THE INTRODUCTION BY THE MINISTER IN THE NATIONAL ASSEMBLY

- After the introduction of the Tax Bills by the Minister of Finance in the National Assembly, the following two changes relating to the extension of the following effective dates were made to the 2021 TLAB in terms of section 11 of the Monetary Bills Amendment Procedure and Related Matters Act,2009:

2021 TLAB

- ***Clause 56 of the 2021 TLAB dealing with clarifying rehypothecation of collateral within collateral lending arrangements***
  - The proposed amendment seeks to address tax avoidance concerns and clarify that the use of collateral for purposes other than subsequent collateral arrangements and/ or proposed limited regulated transactions 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. In the 2021 TLAB, the effective date for the proposed amendment was 1 January 2022. It is proposed that the effective date should be a year later, i.e., 1 January 2023, to give both National Treasury and affected stakeholders more time to take account of the impact of the proposed amendment.
- ***Clause 4(1) (c) of the 2021 TLAB dealing with clarifying the definition of "contributed tax capital"***
  - The proposed amendment seeks to address tax avoidance concerns and make clarification to the definition of contributed tax capital and/or propose to exclude general repurchase of listed shares (share buy backs) by companies listed on the JSE or other South African Exchanges from the proposed anti-avoidance measure. In the 2021 TLAB, the effective date for the proposed amendment was 1 January 2022. It is proposed that the effective date should be a year later, to 1 January 2023, to give both National Treasury and affected stakeholders more time to take account of the impact of the proposed amendment.

2021 Rates Bill: Increase in excise duties on alcohol & tobacco

General increase in the excise duty on alcohol & tobacco by 8 per cent
(Schedule No 1 to the Customs and Excise Act, 1964: clause 5 of the Rates Bill)

- In the 2021 Rates Bill, a proposal was made to increase the excise duty on alcohol and tobacco by 8 per cent, with effect from 24 February 2021.
- The policy guideline for excise burden is set at 40% for tobacco, 11% for wine, 23% for beer and 36% for spirits
- Given that the incidence has remained above the policy guideline in recent years, the 2021 Budget Review announced a review on the excise policy framework for alcohol and tobacco and inputs from all stakeholders will be considered once the review has been concluded.

Excise duty on Heated Tobacco Products (HTPs)

- In the 2020 Budget, an excise duty for heated tobacco was introduced.
- The rates remained from the 2020 Budget. However, to more appropriately tax these products, proposal are is made in the Rates Bill to differentiate excise duties by product type.
- Products comparable to cigarettes that are normally sold in packs of 10 or 20 sticks will be taxed accordingly, while other products will be taxed by weight.
- The national Treasury will soon publish a discussion paper on proposals to tax to tax electronic nicotine and non nicotine delivery systems.

2021 TLAB: Employment, Individuals and Savings

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

(Clauses 11 of the Draft TLAB: New section 9HC of the Income Tax Act)

- When an individual ceases to be a South African tax resident before he/she retires and becomes a tax resident of another country, that individual's retirement fund interest may be subject to tax in the other country, due to the application of the tax treaty between South Africa and the other country.
- The provisions of the tax treaty between South Africa and the other country will regard the individual to be a tax resident in that other country, thereby in some instances resulting in South Africa forfeiting its taxing rights , while the taxpayer benefited from tax deductions in respect of contributions to the retirement fund.
- To address this, the following proposed changes were included in the 2021 Draft TLAB:
  - When an individual ceases to be a South African tax resident, the retirement fund interest will form part of the assets that are subject to retirement withdrawal tax. The individual will be deemed to have withdrawn from the fund on the day before he/she ceases to be a South African tax resident
  - When an individual ceases to be a South Africa tax resident but leaves his/her investment in a South African retirement fund and only withdraws from the retirement fund when he/she dies or retires from employment, then the retirement withdrawal tax including associated interest will be deferred until payments are received from the retirement fund or as a result of retirement. When the individual eventually receives payment from the fund, the tax will be calculated based on the prevailing lump sum tables or in the form of annuity. A tax credit will be provided for the deemed retirement withdrawal tax as calculated when the individual ceases to be a South African tax resident.

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

(Clauses 11 of the Draft TLAB: New section 9HC of the Income Tax Act))

- After the public consultation process, the proposed amendments dealing with applying tax on withdrawals of retirement interest when an individual ceases to be a tax resident contained in new section 9HC were withdrawn from the 2021 TLAB that was tabled by the Minister. In order to address the complexities that were raised through public comment process, further amendments will be considered in the next legislative cycle.

Curbing abuse in the Employment Tax Incentive

(Clauses 58 & 59 of the Draft TLAB: Definition of "employee" and section 6 of the ETI Act)

- The Employment Tax Incentive (ETI) programme was introduced in January 2014 to provide for employment of young workers and make provision for 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 that R6 500, subject to certain limitations.
- It has come to Government's attention that some taxpayers have devised certain schemes to claim the incentive in respect of individuals who do not work for them, but are rather engaged in training programmes using training institutions, with no employment characteristics (therefore failing to meet the definition of 'employee' as defined in section 1(1) of the ETI Act).
- To counter this abuse, the following proposed changes were included in the 2021 Draft TLAB :
  - '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.
  - In view of the fact that the proposed changes to the legislation are aimed at curbing abusive schemes, it was further proposed that these amendments should apply retrospectively and be deemed to have come into operation on 1 March 2021

Curbing abuse in the employment tax incentive

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

- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
    - Given the uncertainty around specific issues pertaining to the draft legislation and in the interest of ensuring that claims that would have otherwise been legitimate are not deemed unlawful, changes were made in the 2021 Draft TLAB to postpone the effective date from 1 March 2021 to 1 March 2022.
    - Technical changes were made in the 2021 TLAB to ensure that paragraph (c) of the definition of employee in the ETI Act is not intended as an alternative to paragraph (a) as the intention is for both paragraphs to apply simultaneously.
    - Technical changes were made in the 2021 TLAB to ensure that the employee's remuneration package is not solely allocated to costs associated with any required training or studying, qualification for the incentive shall further be based on the employee receiving a cash payment in lieu of services rendered.

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 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.
- Government is concerned about further tax avoidance schemes 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.
- To address this, the following proposed changes were included in the 2021 Draft TLAB
  - The anti-avoidance rules will 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 changes are aimed at curbing tax avoidance schemes, it was further proposed that these amendments should apply retrospectively and be deemed to have come into operation on the date of the publication of the 2021 draft TLAB for public comment, i.e., 28 July 2021.

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

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

- After the public consultation process, the proposed amendments dealing with strengthening anti-avoidance rules in respect of loan transfers between trusts in section 7C were withdrawn from the 2021 TLAB that was tabled by the Minister. In order to address the complexities that were raised through public comment process, specific amendments will be considered in the future.

2021 TLAB: Business (General)

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

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

- In 2013, rules that limit interest deductions in respect of debts owed to persons not subject to tax were introduced in the Act (apply in respect of amounts of interest incurred on or after 1 January 2015).
- 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.
- 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 in comparison to the OECD/G20 BEPS Action 4 recommendations.
- To strengthen the rules in line with the recommendations, the following proposed changes were included in the 2021 Draft TLAB (as part of a corporate tax package):
  - Expanding the meaning of the term "*interest*" for purposes of these rules
  - Moving to a fixed ratio (30% of earnings) restriction rather than one based on a formula
  - Reducing opportunities to avoid the rules with back-to-back loans
  - Amending the definition of "*adjusted taxable income*" as it applies to REITs
  - Interaction between the level of tax on interest and the current rules

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

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

- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
  - Changes were made in the 2021 TLAB to postpone the effective date and the proposed changes will come into operation on the date on which the rate of tax in respect of the taxable income of a company is first reduced after announcement by the Minister of Finance in the Annual National Budget, and will apply in respect of years of assessment commencing on or after that date.
  - Changes were made to the definition of “controlling relationship” in the 2021 TLAB to cover companies that are directly or indirectly under a common controlling relationship.
  - To recognise that the tax base for corporate income tax and withholding taxes is different, changes were made in the 2021 TLAB to replace the reference to the current corporate income tax rate of 28 per cent with the standard dividends tax rate of 15 per cent.

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

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

- In determining taxable income, taxpayers can set off their balance of assessed losses carried forward from the preceding tax year against their income. An unutilised balance of assessed losses may be carried forward to future years of assessment to be set off against future income (provided that the company 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 to restrict the use of assessed losses and reduce the corporate income tax rate. 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.
- In the 2021 Draft TLAB (as part of the corporate tax package), Government proposed broadening 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 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. While the overall tax liability will not change, a portion of the tax liability will be brought forward.

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

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

- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
  - Changes were made in the 2021 TLAB to postpone the effective date and the proposed changes will come into operation on the date on which the rate of tax in respect of the taxable income of a company is first reduced after announcement by the Minister of Finance in the Annual National Budget, and will apply in respect of years of assessment commencing on or after that date.
  - Changes were made in the 2021 TLAB to introduce a *de minimis* threshold beyond which the proposal takes effect. The aim of doing so is to cater for a variety of companies that may experience cash flow challenges at different times. To the extent that the balance of assessed loss exceeds 80 per cent of current year taxable income, companies will be able to set off the higher of R1 million or 80 per cent of taxable income when calculating their tax liability.

Clarifying rehypothecation of collateral within collateral lending arrangements

(Clause 56 of the TLAB: Section 1 of the Securities Transfer Tax Act)

- The Act contains tax relief rules that allow for the tax neutral transfer of collateral (listed shares or local and foreign government bonds) between the parties to a collateral arrangement, provided that certain requirements are met.
- At issue is the rehypothecation of collateral, where the bank, broker dealer or collateral taker (transferee) intends to use that 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.
- To address this, the following proposed changes were included in the 2021 Draft TLAB:
    - 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.
    - The transferee enters into a contractual arrangement and agrees that the listed share or listed bond transferred in terms of the collateral arrangement will either be held by that transferee for the duration of the arrangement or be used for purposes of providing security in respect of an amount owed by that transferee
    - In view of the fact that the proposed amendments are aimed at curbing abuse, it was 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.

Clarifying rehypothecation of collateral within collateral lending arrangements

(Clause 56 of the TLAB: Section 1 of the Securities Transfer Tax Act)

- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
  - Changes were made in the 2021 TLAB to remove the contractual requirement.

    Changes were made in the 2021 TLAB to accommodate the following regulated transactions and current market and regulatory developments:
    - A repurchase agreement entered into with the South African Reserve Banks in terms of section 10(1)(j) of the South African Reserve Bank Act.
    - Complying with Regulation 28 of the Pension Funds Act.
    - Securing overnight cash placement in order to comply with the Basel III Supervisory Framework for measuring and controlling large exposures.
  - Changes were made in the 2021 TLAB to postpone the effective date to 1 January 2023.

Clarifying the definition of "contributed tax capital"

(Clause 4(1)(c) of the TLAB: Section 1 of the Income Tax Act)

- The concept of contributed tax capital (CTC) was introduced in the Act in 2008. The 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. No shareholder within a particular class of shares may receive CTC in excess of an amount per share that is derived by dividing the total CTC by the number of shares in that class immediately before the capital distribution.
- It has come to Government's attention that some companies are exploiting the current provisions of 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.
- To address this, proposed changes were made to the definition of CTC in the 2021 Draft TLAB 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.

Clarifying the definition of "contributed tax capital"

(Clause 4(1)(c) of the Draft TLAB: Section 1 of the Income Tax Act)

- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
  - Changes were made in the 2021 TLAB to exclude a general repurchase of listed shares (share buy backs) by companies listed on the JSE or other South African Exchanges
  - Changes were made in the 2021 TLAB to postpone the effective date to 1 January 2023.

2021 TLAB: Carbon Tax

Clarifying renewable energy premium beneficiaries

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

- Section 6(2)(c) of the Carbon Tax Act makes provision 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 has come 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.
- To address this, the following proposed changes were included in the 2021 Draft TLAB:
  - 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 would be eligible to claim the tax deduction for its renewable energy purchases, provided the power purchasing 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 .
- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
  - Changes were made in the 2021 EM to the 2021 TLAB to include examples of eligible renewable energy purchases under the different types of PPAs

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

(Clause 63 of the TLAB: Sections 6(3) & 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.
- 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, changes were made in the 2021 Draft TLAB that only actual forestry plantation sequestered emissions within the mill gate should be eligible for the deduction under the Carbon Tax Act. Also, changes were made to the definition of biological carbon sequestration in section 6(3)/(4) of the Carbon Tax Act to limit it only to directly sequestered emissions by forest plantations

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

(Clause 63 of the TLAB: Sections 6(3) & 6(4) of the Carbon Tax Act)

- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
  - Changes were made in the 2021 TLAB to expand the scope of the sequestration deduction to also include harvested wood products for the pulp, paper and print activity. The sequestered emissions will be determined using the mass flow approach combined with the landfill approach to account for sequestered emissions as per the DFFE Carbon Sequestration Guideline, in the short term. From an emissions accounting perspective, for forestry management and HWP pools it will be important to account for gains and losses occurring from within the mill's operational boundaries. For future carbon tax periods, as recommended in the Carbon Sequestration Guidelines, the 100-year accounting approach should be developed once industry specific studies are completed on suitable half-life (product decay rates) and product use period assumptions.

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

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

- 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.
- After the public consultation process, the following changes were made in the 2021 TLAB that was tabled by the Minister, in order to take into account comments received:
  - Changes were made in the 2021 TLAB to change the effective date for the Schedule 2 amendments from 11 September 2020 to 1 January 2021.
  - Changes were made in the 2021 TLAB to Schedule 2 of the carbon tax act to ensure alignment with the amended GHG Emissions reporting regulations

2021 TALAB

2021 TALAB: Income Tax

Information required in receipts issued for tax deductible donations

(Clause 2 of the 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 ensure that receipts and third party data provided to SARS match, 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.
- The aim of third party reporting is to make it easier for those receiving the receipts (donors), as well as those issuing the receipts (PBOs), to comply with their obligations. SARS will be able to auto populate returns thereby making it easier for donors to claim their valid donations. It will encourage donations to PBOs by donors and lessen the burden on PBOs where taxpayers approach them for additional documentation requested by SARS during the verification process. PBOs will also be protected from fraudulent claims using their details and the reputational impact such claims have.
- SARS is cognizant of the impact third party reporting may have on smaller PBOs and is therefore considering a differentiated approach, for example by providing a simpler mechanism for third party reporting by smaller PBOs.

2021 TALAB: Customs and Excise

Increasing the minimum thresholds for underpayments of duty by taxpayers and of refunds by SARS to ease administrative burden

(Clauses 13 and 16 of the TALAB: Sections 47(1) and 76(5) of the Customs and Excise Act)

- The proposed amendments to section 47(1) aims to ease the administrative burden on taxpayers and on SARS by increasing the minimum thresholds for underpayments of duties by taxpayers, which the Commissioner may condone. A similar amendment is proposed in respect of section 76(5) in relation to minimum thresholds for refunds of duty to taxpayers.

- After the public consultation process, the proposal was withdrawn from the 2021 TALAB that was tabled by the Minister, in order to consider whether this approach could be extended to the Value-Added Tax Act, 1991, with respect to VAT on importation.

2021 TALAB: Tax Administration

Extension of period within which taxpayer can request revision of an assessment based on an estimate

(Clause 18 of the TALAB: Section 95 of the Tax Administration Act)

- SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer does not submit a response to a request for relevant material after delivery of more than one request for such material. The taxpayer may, within 40 business days from the assessment, request SARS to issue a reduced or additional assessment by submitting the relevant material. A senior SARS official may extend the 40 business day period for a period not exceeding the relevant prescription periods under section 99 of the Act.
- It may happen that SARS issues an additional estimated assessment close to the end of the relevant prescription period. The 40 business day period may thus end after the prescription date or very close to it, which means that the taxpayer is unable to request a reduced or additional assessment or an extension. The proposed amendment aims to address these unusual circumstances.

- After the public consultation process, the following changes were made in the 2021 TALAB that was tabled by the Minister, in order to take into account comments received:
  - The proposed wording of section 95(7) was revised to make it clear that SARS may grant an extension if reasonable grounds for an extension are submitted by the taxpayer.

Extension of period within which taxpayer can request revision of an assessment based on an estimate (cont.)

(Clause 18 of the TALAB: Section 95 of the Tax Administration Act)

- The proposed wording of section 95(5) and (6) was revised to make it clear that, once a taxpayer submits the relevant material as required in terms of section 95(6), SARS has one of the following three options and the taxpayer may respond accordingly:
  - Option 1: After review SARS accepts the relevant material and makes a reduced or additional assessment as requested by the taxpayer
  - Option 2: After review SARS does not accept some of the relevant material and makes a reduced or additional assessment accordingly. In this instance, the reduced or additional assessment will be subject to objection and appeal in the ordinary course, since it replaces the assessment contemplated in section 95(1)*(a)* or *(c)*
  - Option 3: After review SARS does not accept any of the relevant material, does not make a reduced or additional assessment and relies on the assessment based on an estimate. In this regard the proposed new section 95(8) clarifies that, should SARS decide not to make a reduced or additional assessment, the taxpayer may object and appeal within the normal timeframes from the date of the decision.
- The proposed amendment to section 99 was revised to permit SARS to issue a reduced or additional assessment to give effect to a timely taxpayer request, despite prescription.

THANK YOU