2020 DRAFT RATES AND MONETARY AMOUNTS AND REVENUE LAWS AMENDMENT BILL, DRAFT TAXATION LAWS AMENDMENT BILL, DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL

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

Presenters: National Treasury and SARS | 19 August 2020

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Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Officials present

- Ismail Momoniat, NT, DDG: Tax and Financial Sector Policy
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- Franz Tomasek, SARS, GE: Legislative R&D

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2020 DRAFT TAX BILLS

Overview of the 2020 tax process

- The 2020 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (draft Rates Bill) was first published on Budget Day (26 February 2020) and published for the second time on 31 July 2020, in order to solicit comments on the tax proposals contained therein.
- The draft Rates Bill contains tax announcements made in the 2020 Budget, dealing with changes in rates and monetary thresholds and increases of the excise duties on alcohol and tobacco.
- The 2020 Draft Taxation Laws Amendment Bill (draft TLAB) and the 2020 Draft Tax Administration Laws Amendment Bill (draft TALAB) were published on 31 July 2020 and contain more complex, technical and administrative tax proposals announced in the 2020 Budget.
- These draft tax bills contain tax proposals made in the 2020 Budget on 26 February 2020 and are separate from the COVID-19 tax bills which were introduced in Parliament by the Minister of Finance on 24 June 2020 and deal with exceptional tax measures required to combat the COVID-19 pandemic.

Overview of 2020 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 2020.
- 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.

2020 DRAFT RATES BILL

2020 Budget tax proposals – before COVID-19

- The 2020 Budget contained no tax policy measures to raise additional tax revenue
  - Estimated R63.3bn shortfall for 2019/20 compared to 2019 Budget
  - Given weak economic growth, tax increases were "unlikely to be effective".
  - Now know that the economy already registered negative growth in Q1 of 2020.

- Chapter 4 of Budget Review deals with main revenue raising tax proposals
- Annexure B deals with tax expenditures (revenue foregone)
- Annexure C deals with other tax proposals, including anti-avoidance measures

- The Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Rates Bill) was published on Budget Day (26 February 2020) and contains the key rate and threshold changes that are mainly contained in Chapter 4

No tax increases announced in the 2020 Budget

The main revenue proposals included the following:

- Providing personal income tax relief through an above-inflation increases in the tax brackets and rebates.
- Increasing the medical tax credit to from R310 per month to R319 for first two beneficiaries and from R209 to R215 for additional beneficiaries
- Increasing the annual contribution limit to tax-free savings accounts by R3 000 to R36 000 from 1 March 2020.
- Increasing excise duties on alcohol and tobacco for inflation
- An inflationary adjustment to transfer duties on the sale of property
- Increasing the general fuel levy (16 c / litre) and the RAF levy (9 c / litre), to adjust for inflation.

Personal income tax relief offset by carbon tax and plastic bag levy revenue

Table 4.3 Impact of tax proposals on 2020/21 revenue[1]

R million		
Gross tax revenue (before tax proposals)		**1 425 418**
Budget 2020/21 proposals		**-**
Direct taxes		**-2 000**
Taxes on individuals and companies		
Personal income tax	**-2 000**	
Increasing brackets by more than inflation	-2 000	
Revenue if no adjustment is made	*12 000*	
Higher-than-inflation increase in brackets and rebates	*-14 000*	
Indirect taxes		**2 000**
Carbon tax	1 750	
Plastic bag levy	250	
Gross tax revenue (after tax proposals)		**1 425 418**

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

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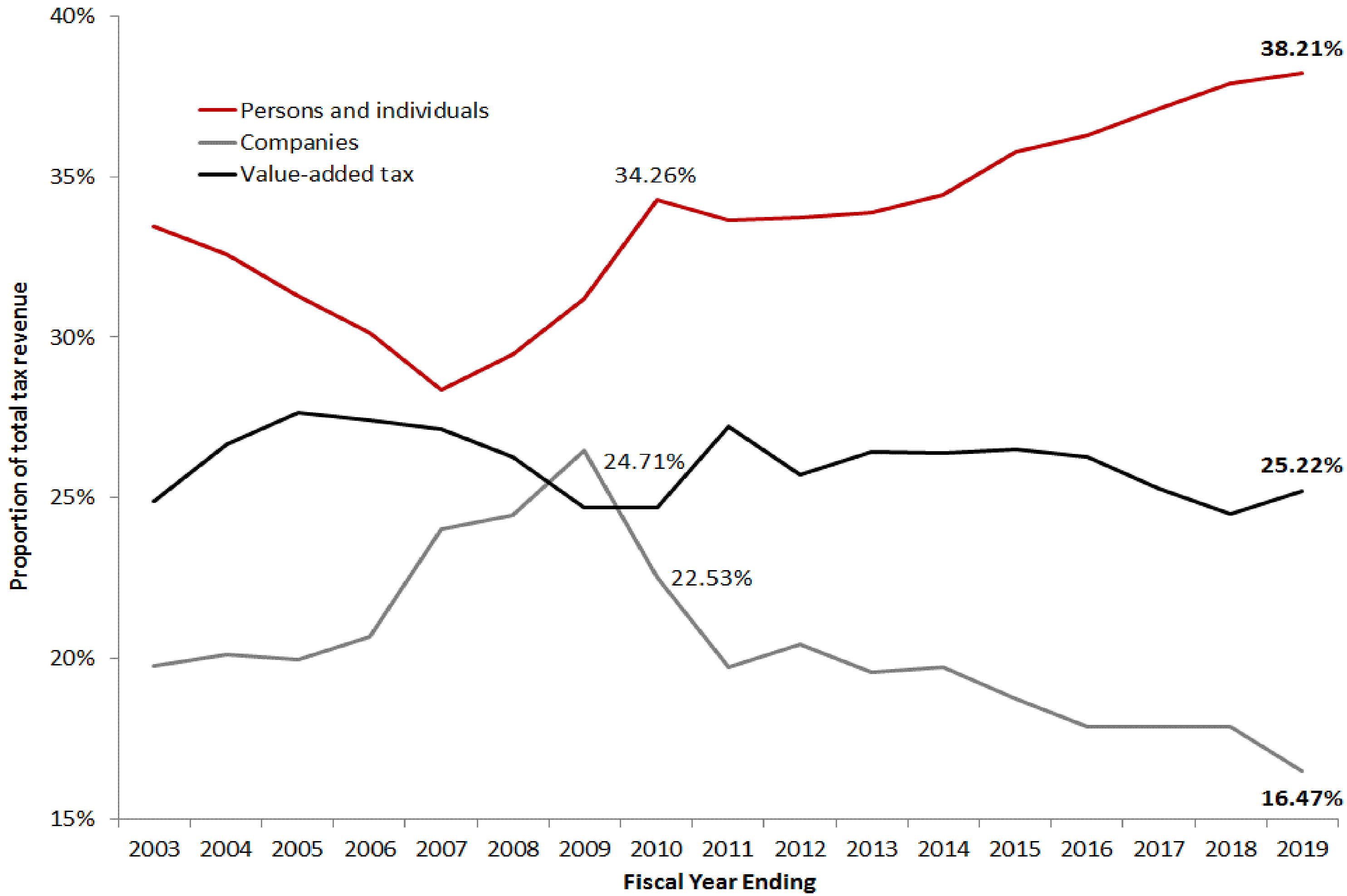
Personal income tax remains the largest component of tax revenue after a number of increases in last 5 years



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Personal income tax brackets adjusted by more than inflation to provide relief of R2 billion

- Budget 2018 provided partial relief to bottom 3 brackets
- Budget 2019 raised PIT revenue by not providing relief for inflation on personal income tax brackets
- Budget 2020 adjusted all brackets and rebates by 5.2 per cent (inflation 4.4 per cent) from 1 March 2020
- If government did not adjust the brackets, it would have expected to raise around R12 billion compared to what is in the previous forecast

Table 4.4 Personal income tax rates and bracket adjustments

2019/20		2020/21	
Taxable income (R)	**Rates of tax**	**Taxable income (R)**	**Rates of tax**
R0 - R195 850	18% of each R1	R0 - R205 900	18% of each R1
R195 851 - R305 850	R35 253 + 26% of the amount above R195 850	R205 901 - R321 600	R37 062 + 26% of the amount above R205 900
R305 851 - R423 300	R63 853 + 31% of the amount above R305 850	R321 601 - R445 100	R67 144 + 31% of the amount above R321 600
R423 301 - R555 600	R100 263 + 36% of the amount above R423 300	R445 101 - R584 200	R105 429 + 36% of the amount above R445 100
R555 601 - R708 310	R147 891 + 39% of the amount above R555 600	R584 201 - R744 800	R155 505 + 39% of the amount above R584 200
R708 311 - R1 500 000	R207 448 + 41% of the amount above R708 310	R744 801 - R1 577 300	R218 139 + 41% of the amount above R744 800
R1 500 001 and above	R532 041 + 45% of the amount above R1 500 000	R1 577 301 and above	R559 464 + 45% of the amount above R1 577 300
Rebates		**Rebates**	
Primary	R14 220	Primary	R14 958
Secondary	R7 794	Secondary	R8 199
Tertiary	R2 601	Tertiary	R2 736
Tax threshold		**Tax threshold**	
Below age 65	R79 000	Below age 65	R83 100
Age 65 and over	R122 300	Age 65 and over	R128 650
Age 75 and over	R136 750	Age 75 and over	R143 850

Source: National Treasury

The distributional impact of the personal income tax changes

- Bulk of the relief goes to middle and lower income earners
- It is expected that 27.4 per cent of personal income tax will be paid by those earning more than R1.5 million

Table 4.5 Estimates of individual taxpayers and taxable income, 2020/21

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]	6 822 326	–	218.8	–	–	–	–	–	–	–
R80 - R150	2 084 683	29.2	235.3	9.3	23.8	4.2	-1.4	10.2	22.4	4.1
R150 - R250	1 771 582	24.8	354.3	14.1	30.9	5.5	-2.1	14.8	28.8	5.3
R250 - R350	1 071 402	15.0	318.3	12.6	47.2	8.4	-2.0	14.0	45.3	8.3
R350 - R500	1 029 509	14.4	424.1	16.8	81.0	14.4	-2.8	20.0	78.2	14.3
R500 - R750	615 177	8.6	368.2	14.6	90.4	16.1	-2.5	17.6	87.9	16.1
R750 - R1 000	266 169	3.7	225.7	9.0	65.9	11.8	-1.3	9.6	64.5	11.8
R1 000 - R1 500	182 883	2.6	217.2	8.6	71.0	12.7	-0.9	6.6	70.1	12.8
R1 500 +	125 029	1.7	376.4	14.9	150.6	26.8	-1.0	7.2	149.6	27.4
Total	**7 146 434**	**100.0**	**2 519.5**	**100.0**	**560.8**	**100.0**	**-14.0**	**100.0**	**546.8**	**100.0**
Grand total	**13 968 760**		**2 738.3**		**560.8**		**-14.0**		**546.8**	

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

Increases in alcohol and tobacco excise duties were generally in line with inflation

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

Table 4.7 Changes in specific excise duties, 2020/21

Product	Current excise duty rate	Proposed excise duty rate	Percentage change Nominal	Percentage change Real
Malt beer	R102.07/ litre of absolute alcohol (173,51c / average 340ml can)	R106.56/ litre of absolute alcohol (181,15c / average 340ml can)	4.4	–
Traditional African beer	7,82c / litre	7,82c / litre	–	-4.4
Traditional African beer powder	34,70c / kg	34,70c / kg	–	-4.4
Unfortified wine	R4.20 / litre	R4.39 / litre	4.4	–
Fortified wine	R7.03 / litre	R7.34 / litre	4.4	–
Sparkling wine	R13.55 / litre	R14.36 / litre	6.0	1.6
Ciders and alcoholic fruit beverages	R102.07/ litre of absolute alcohol (173,51c / average 340ml can)	R106.56/ litre of absolute alcohol (181,15c / average 340ml can)	4.4	–
Spirits	R204.15 / litre of absolute alcohol (R65.84 / 750ml bottle)	R213.13 / litre of absolute alcohol (R68.73 / 750ml bottle)	4.4	–
Cigarettes	R16.66 / 20 cigarettes	R17.40 / 20 cigarettes	4.4	–
Cigarette tobacco	R18.73 / 50g	R19.55 / 50g	4.4	–
Pipe tobacco	R5.39 / 25g	R5.79 / 25g	7.5	3.1
Cigars	R89.72 / 23g	R96.45 / 23g	7.5	3.1

Source: National Treasury

- Most categories were adjusted by inflation (4.4 per cent)
- Above inflation increases for sparkling wine (6 per cent) and pipe tobacco and cigars (7.5 per cent)
- Effective from 26 February 2020
- It is expected that the excise burden will be slightly above the targeted levels

Transfer duty brackets were adjusted for inflation, where the last increase was in 2017

- No property below the value of R1 million will be liable for transfer duty

Table 4.6 Transfer duty rate adjustments

2019/20		2020/21	
Property value (R)	**Rates of tax**	**Property value (R)**	**Rates of tax**
R0 - R900 000	0% of property value	R0 - R1 000 000	0% of property value
R900 001 - R1 250 000	3% of property value above R900 000	R1 000 001 - R1 375 000	3% of property value above R1 000 000
R1 250 001 - R1 750 000	R10 500 + 6% of property value above R1 250 000	R1 375 001 - R1 925 000	R11 250 + 6% of property value above R1 375 000
R1 750 001 - R2 250 000	R40 500 + 8% of property value above R1 750 000	R1 925 001 - R2 475 000	R44 250 + 8% of property value above R1 925 000
R2 250 001 - R10 000 000	R80 500 + 11% of property value above R2 250 000	R2 475 001 - R11 000 000	R88 250 + 11% of property value above R2 475 000
R10 000 001 and above	R933 000 + 13% of property value above R10 000 000	R11 000 001 and above	R1 026 000 + 13% of property value above R11 000 000

Other measures in the draft Rates Bill

- Medical tax credits increased from R310 per month to R319 for first two beneficiaries and from R209 to R215 for additional beneficiaries (increase of 2.8 per cent)
    - Per 2018 Budget announcement to “shave” value of MTC for 3 years to set aside NHI funding
- Increase cap for vehicle allowance from R 595 000 to R 665 000
- Increase annual contribution limit to tax free savings accounts from R 33 000 to R36 000
- Increase in carbon tax rate from R120 per tonne of carbon dioxide equivalent to R127 per tonne of carbon dioxide equivalent - annual inflation rate of 3.6 per cent plus two percentage points in line with the Carbon Tax Act (2019)
- Increase in the foreign remuneration exemption threshold from R 1 million per year to R1.25 million per year
- General fuel levy and Road Accident Fund levy increases are not in the draft Rates Bill

Table 4.8 Total combined fuel taxes on petrol and diesel

Rands/litre	2018/19 93 octane petrol	2018/19 Diesel	2019/20 93 octane petrol	2019/20 Diesel	2020/21 93 octane petrol	2020/21 Diesel
General fuel levy	3.37	3.22	3.54	3.39	3.70	3.55
Road Accident Fund levy	1.93	1.93	1.98	1.98	2.07	2.07
Customs and excise levy	0.04	0.04	0.04	0.04	0.04	0.04
Carbon tax[1]	–	–	0.07	0.08	0.07	0.08
Total	**5.34**	**5.19**	**5.63**	**5.49**	**5.88**	**5.74**
Pump price[2]	15.30	14.20	13.86	13.14	15.71	14.57
Taxes as percentage of pump price	*34.9%*	*36.5%*	*40.6%*	*41.8%*	*37.4%*	*39.4%*

Summary of the draft Rates Bill

- **Clause 1**
  - Increase monetary values of brackets for Transfer Duty
- **Clause 2**
  - Fixing of rates of normal tax, as detailed in Schedule 1
- **Clause 3**
  - Increase in primary, secondary and tertiary rebates
- **Clause 4**
  - Increase values of medical tax credits
- **Clause 5**
  - Increase value of monetary cap of vehicle allowance
- **Clause 6**
  - Increase in threshold for foreign remuneration
- **Clause 7**
  - Increase annual contribution limit for Tax Free Investments
- **Clause 8**
  - Adjustment to align residential accommodation formula with new tax free threshold
- **Clause 9**
  - Amendment of customs and excise Act to include the excise schedule dealing with increase in alcohol and tobacco
- **Clause 10**
  - Increase in carbon tax rate
- **Clause 11**
  - Short title

2020 DRAFT TLAB

CUSTOMS AND EXCISE ACT: INTRODUCTION OF EXPORT TAXES ON SCRAP METALS

Policy Background

- On 10 May 2013, the then Minister of Economic Development issued a Trade Policy Directive (“the Directive”), in terms of section 5 of the International Trade Administration Act, No. 71 of 2002 (“the ITA Act”), for International Trade Administration Commission of South Africa (“ITAC”) to regulate the exportation of scrap metal through the introduction of the Price Preference System (PPS).
- The objective was to improve the availability of better-quality scrap metal at affordable prices for foundries and mills in the domestic market to assist them in becoming more cost competitive as against imports, enhancing investment, jobs and industrialization.
- The PPS provided that ITAC would not authorise the exportation of scrap metal unless it had first been offered for sale to the domestic consuming industry of scrap metal for a period and at a price discount or other formula determined by ITAC.
- The PPS was introduced in September 2013 for an initial period of five years, which period ended on 30 September 2018.
- The PPS has been extended a number of times since then by notices in the Government Gazette.

Policy Background

- The PPS seems not to have provided sufficient support such that the sector can flourish in competition with global counterparts, many of which benefit from an export tax on scrap and lower domestic prices for scrap.
- The Minister of Trade and Industry therefore directed ITAC, in terms of section 18 of the ITA Act, to investigate and advise him whether it would be appropriate to replace the existing PPS regulating the exportation of ferrous and non-ferrous waste and scrap metal with an export duty on scrap metal. ITAC conducted its investigation and based on the findings, recommended that the current PPS be replaced with export duties since it has not effectively provided support to the foundries and mills with availability of affordable, quality scrap metal.
- The DTIC consider an export tax to be superior to the PPS in terms of its easy administration and believe it should be more effective in reducing the domestic price as it will have the effect of reducing the export price achieved by local scrap dealers, unlike the PPS.

Proposed changes

(Clauses 57, 58 and 59 of the draft TLAB: Sections 48, 76 of the Customs and Excise Act and Schedule 1 of the Customs and Excise Act)

- Based on the above, it is proposed that changes be made in the Customs and Excise Act and schedules to the Customs and Excise Act to insert provisions dealing with the introduction of export duties on scrap metals.
- The specific export duties that are proposed on certain categories of scrap metal are as follows:

Scrap metal category crap	Equivalent specific tax (Rand per tonne)
Ferrous metals (including stainless steel)	R1 000.00 per tonne
Aluminium	R3 000.00 per tonne
Red metals	R8 426.00 per tonne
Other (waste and scrap metals)	R1 000.00 per tonne

Proposed changes

(Clauses 57, 58 and 59 of the draft TLAB: Sections 48, 76 of the Customs and Excise Act and Note to Part 6 of Schedule 1 of the Customs and Excise Act)

Challenges with export tax

- The export duties will not apply to exports to countries benefitting from exemptions under trade agreements to which South Africa is a party.
- We are still in the process of receiving comments and we are waiting to see what comments we receive in this regard.

INDIVIDUALS, EMPLOYMENT AND SAVINGS

Reimbursing employees for business travel
(Clause 4 of the Draft TLAB: Section 8(1)(a)(ii) of the Income Tax Act)

- If the employee is obliged to spend a night away from home for business purposes, the Act makes provision for exclusion from taxable income for any advances or reimbursements paid by the employer to the employee for meals and incidental costs, provided that:
  - The expenses are incurred in the furtherance of the employer’s trade; and
  - The amount advanced or reimbursed does not exceed the amount published by the Commissioner for SARS by Notice in the Government Gazette.
- If the employee is obliged to be away from the office on a business day trip, the Act makes provision for exclusion from taxable income for any advances or reimbursements paid by the employer to the employee for meals and incidental costs, provided that
  - The employee can prove that these expenses are incurred on the instruction of the employer, in the furtherance of the employer’s trade.
- An anomaly arises if the employee is obliged to be away from the office on a business day trip, and the employee purchases meals and incurs incidental costs , but the employer has not explicitly instructed the employee to do so.

Reimbursing employees for business travel

(Clause 4 of the Draft TLAB: Section 8(1)(a)(ii) of the Income Tax Act)

- In order to address this anomaly, it is proposed that if the employee is obliged to be away from the office on a business day trip in the furtherance of the employer's trade, reimbursement of expenses incurred by an employee on meals and incidental costs, should be excluded from taxable income provided that:
  - The employer's policy allows and makes provision for such reimbursement; and
  - The amount reimbursed does not exceed the amount published by the Commissioner for SARS by Notice in the Government Gazette.

Addressing an anomaly in the tax exemption of employer provided bursaries

(Clauses 10 and 25 of the Draft TLAB: Sections 10(1)(q), 10(1)(qA) and 23(s) of the Income Tax Act)

- The Act contains provisions that provide exemption in respect of *bona fide* scholarship or bursary granted by an employer to an employee or relative of qualifying employees, subject to certain monetary limits and requirements.
- When this exemption was initially introduced in 1992, the applicability for tax exemption was dependent on the fact that the employee's remuneration was **not** subject to an element of salary sacrifice.
- In 2006, changes were made in the Act to remove the requirement that the employees remuneration should not be subject to an element of salary sacrifice.
- Government has noticed that a number of tax schemes have emerged in respect of employer bursaries granted to the relatives of employees, for example:
  - These schemes are developed by an institution other than the employer and marketed to the employer and seek to reclassify ordinary taxable remuneration received by the employee as a tax exempt bursary granted to the relatives of employees.
  - The portion of the salary sacrificed by the employee is paid directly by the employer to the respective school and is treated as a tax-exempt bursary granted to the relatives of the employees.

Addressing an anomaly in the tax exemption of employer provided bursaries

(Clauses 10 and 25 of the Draft TLAB: Sections 10(1)(q), 10(1)(qA) and 23(s) of the Income Tax Act)

- In order to address these concerns, the following changes are proposed with regard to bursaries granted to relatives of employees:
  - The exemption in respect of a *bona fide* bursary or scholarship granted by the employer to the relatives of the employee should only apply if that *bona fide* bursary or scholarship granted by the employer is not restricted only to the relatives of the employees, but is an open bursary or scholarship available and provided to members of the general public;
  - The requirement that the applicability of the exemption is dependent on the fact that the employee's remuneration package is not subject to an element of salary sacrifice, be reinstated; and
  - As a means of further encouraging employers to grant bursaries to relatives of employees without subjecting such bursary to an element of salary sacrifice, that the employer deduction in relation to said bursaries is only afforded if the bursary to the employee's relative is not subject to an element of salary sacrifice.

Clarifying deductions in respect of contributions to retirement funds
(Clauses 40 and 41 of the Draft TLAB: Paragraphs 5(1)(a) and 6(1)(b)(i) of the Second Schedule to the Income Tax Act)

- In calculating the amount of lump sum benefits to be included in the person's gross income, paragraphs 5(1)(*a*) and 6(1)(*a*) of the Second Schedule to the Act make provision for contributions to a pension, provident, or retirement annuity fund that did not qualify for a deduction in terms of section 11F to be allowed as a deduction.
- The current wording of the above-mentioned paragraphs refers to "the person's own contribution", which inadvertently prevents employer retirement fund contributions on behalf of employees (made on or after 1 March 2016) from qualifying for a deduction when calculating the taxable portion of retirement lump sum benefits.
- In order to ensure that both employer and employee contributions qualify for a deduction, it is proposed that changes be made in the above-mentioned paragraphs and reference to "the person's own contributions" is replaced with reference to "contributions".
- It is proposed that the effective dates of these amendments be retrospective and be aligned with the date of introduction of section 11F, (1 March 2016) so as to cater for all employer contributions on behalf of employees.

Withdrawing retirement funds upon emigration

(Clause 2 of the Draft TLAB: Section 1 of the Income Tax Act – definition of pension preservation, provident preservation and retirement annuity fund)

- When a member of a pension preservation, provident preservation or retirement annuity fund withdraws from the fund due to that member emigrating from South Africa and such emigration is recognised by the SARB for exchange control purposes, such member is entitled to receive a lump sum.
- As indicated in Annexure E of the 2020 Budget Review, Government will be modernising the foreign exchange control system and a new capital flow management system will be put in place
- In relation to individuals, one of the changes to be implemented is the phasing out of the concept of "emigration" for exchange control purposes.
- In order to ensure efficient application of the tax legislation, it is proposed that changes be made in the Act to remove the reference to payment of lump sum benefits when a member emigrates from South Africa and such emigration is recognised by the SARB for exchange control purposes.
- A new test should be inserted which will make provision for the payment of lump sum benefits for individuals who are no longer South African tax residents (as defined in the Act), if the individual member has remained non-tax resident for at least 3 consecutive years.

Addressing an anomaly in the rollover of amounts claimable under the employment tax incentive (ETI)

(Clause 69 of the Draft TLAB: Section 9(4) of the Employment Tax Incentive Act)

- The ETI makes provision for employers to reduce the amount of PAYE payable to SARS for the first two years in respect of qualifying employees with a monthly remuneration of less than R6 500 per month, subject to certain limitations.
- As a means of encouraging tax compliance, non-compliant employers are unable to claim the ETI if those employers have failed to submit any tax returns or has an outstanding tax debt in terms of the Tax Administration Act.
- If the non-compliant employer was not allowed to claim the ETI due to the above-mentioned circumstances, the ETI allowable and claimable by the non-compliant employer is rolled over to the following month.
- This roll over will continue until such time the non-compliant employer becomes compliant, and the excess ETI will be allowed as a reduction against their PAYE liability in the first month the employer is compliant.
- On the other hand, with regard to compliant employers, any unclaimed monthly ETI must be claimed by the last month of each PAYE reconciliation period (namely August or February)
- Any unclaimed amounts at the said time are forfeited, on the first day of the month following the end of the PAYE reconciliation period (either 1 September or 1 March) and the excess ETI is deemed to be nil.

Addressing an anomaly in the rollover of amounts claimable under the employment tax incentive (ETI)

(Clause 69 of the Draft TLAB: Section 9(4) of the Employment Tax Incentive Act)

- The current provisions of the ETI Act result in an anomaly as tax compliant employers are placed in a worse off position than non-tax complaint employers.
- To address this anomaly and encourage tax compliance, it is proposed that changes be made in the ETI Act and non tax compliant employers be subject to the above-mentioned forfeiture rule applicable to tax compliant employers, if any excess ETI claims are not utilised by the end of the PAYE reconciliation period.
- As a result, the excess ETI amounts of non-tax compliant employers will not be rolled over at the end of the PAYE reconciliation period.

Addressing the circumvention of anti-avoidance rules of trusts
(Clause 3 of the Draft TLAB: Section 7C of the Income Tax Act)

- In 2016, anti-avoidance measures aimed at curbing the tax-free transfer of wealth to trusts through the use of low interest or interest-free loans, advances or credit that were introduced in the Income Tax Act.
- Taxpayers devised schemes to undermine the 2016 measures, by advancing interest free or low interest loans to companies held by trusts. In order to curb this, further changes were made in 2017.
- Taxpayers are now implementing other variations of the structures in order to avoid the deemed annual donation triggered by these anti-avoidance measures.
- These structures involve natural persons that subscribe for preference shares with no or a low rate of return in a company owned by a trust that is a connected person to those individuals.

Addressing the circumvention of anti-avoidance rules of trusts
(Clause 3 of the Draft TLAB: Section 7C of the Income Tax Act)

- In order to curb this abuse, it is proposed that the following changes be made in the tax legislation:
  - A deeming provision be inserted under which the subscription price of preference shares issued will be deemed to be a loan advanced.
  - In addition, any dividends in respect of those preference shares shall, for purposes of the anti-avoidance measure, be deemed to be interest in respect of such a deemed loan.

GENERAL BUSINESS TAX

Addressing anomalies on the acquisition of assets in exchange for debt issued

(Clause 33 of the Draft TLAB: Section 40CA of the Income Tax Act)

- The Act contains specific rules for the determination of the cost or base cost of an asset (that can be used to reduce a taxpayer's taxable income on disposal of an asset) in instances where assets are acquired in exchange for shares (asset-for-share transactions) or assets acquired in exchange for debt (asset-for-debt transactions).
- It has come to Government's attention that the above-mentioned specific rules that are aimed at determining the cost or base cost in respect of asset-for-share and asset-for-debt transactions create a loophole as these specific rules enable taxpayers to avoid the application of general rules that are aimed at determining an arm's length price of assets in respect of non-arm's length transactions between connected persons.

Addressing anomalies on the acquisition of assets in exchange for debt issued

(Clause 33 of the Draft TLAB: Section 40CA of the Income Tax Act)

- In order to close this loophole, it is proposed that the specific rules that are aimed at determining the cost or base cost of assets in respect of asset-for-debt transactions should be deleted.
- Going forward, the determination of cost or base cost in respect of asset-for-debt transactions will be subject to the general rules that are used in determining an arm's length cost or base cost in respect of non-arm's length transactions between connected persons.

Refining the interaction between the anti-avoidance provisions for intra-group transactions

(Clause 34 of the Draft TLAB: Section 45 of the Income Tax Act)

- The Act contains corporate reorganisation rules (sections 41- 47 of the Act) that allow for the tax neutral transfer of assets between companies that are part of the same group of companies .
- These corporate reorganisation rules also contain provisions dealing specifically with intra-group transactions (section 45). The intra-group transaction rules contain anti-avoidance measures aimed at limiting or discouraging abuse by taxpayers of the tax neutral transfer of assets, namely,
  - (a) de-grouping charge rule applicable to the group of companies that entered into intra-group sale, benefits from tax deferral and then one of the companies ceases to form part of a group of companies shortly after the said transaction, and
  - (b) zero base cost rule applicable to intra-group transactions where assets are transferred in exchange for debt or non-equity shares issued by another company that forms part of the same group of companies as the transferor of those assets

Refining the interaction between the anti-avoidance provisions for intra-group transactions

(Clause 34 of the Draft TLAB: Section 45 of the Income Tax Act)

- The interaction between the above-mentioned anti avoidance rules available in intra-group transactions, namely, the de-grouping rule applicable to the group of companies that entered into intra-group asset sales and the zero base cost rule applicable to transfer of assets in exchange for debt or non-equity shares gives rise to anomalous results.
- In order to address this anomaly, it is proposed that changes be made in the tax legislation to ensure that in instances that a de-grouping charge rule has been triggered in respect of an intra-group transaction under which the zero base cost rule was applied, the taxpayer be put in the same position as if the rollover provisions did not apply and be given base cost for their debt and non-equity shares in terms of the current applicable rules.

Clarifying rollover relief for unbundling transactions
(Clause 35 of the Draft TLAB: Section 46 of the Income Tax Act)

- The Act contains corporate reorganisation rules (sections 41- 47 of the Act) that allow for the tax neutral transfer of assets between companies that are part of the same group of companies .
- The corporate reorganisation rules contain a provision in section 46 that provides for roll over relief 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 transactions are also subject to an anti-avoidance measure aimed at limiting or discouraging tax avoidance by taxpayers from distributing shares on a tax neutral basis.
- This anti-avoidance measure makes provision for roll-over relief not to be granted if immediately after the distribution of shares in terms of an unbundling transaction, 20 per cent or more of the shares in the unbundled company are held by a disqualified person (such as a non-resident or a tax exempt entity) either alone or together with any connected persons (who is also a disqualified person) in relation to that disqualified person.

Clarifying rollover relief for unbundling transactions
(Clause 35 of the Draft TLAB: Section 46 of the Income Tax Act)

- In order to close this loophole, it is proposed that changes be made in the tax legislation and that the reference to "connected persons" should be removed and that the anti-avoidance rule should provide that deferral in terms of an unbundling transaction should not be allowed if, immediately after any distribution of shares in terms of an unbundling transaction, an aggregate of 20 per cent or more of the shares in the unbundled company are held by disqualified persons.
- It is proposed that these changes should apply in respect of unbundling transactions entered into on or after the date on which the draft TLAB was published for public comment (i.e. 31 July 2020).

TAXATION OF FINANCIAL INSTITUTIONS AND PRODUCTS

Clarifying the meaning of "market value" for the taxation of long-term insurers

(Clause 30 of the Draft TLAB: Section 29A of the Income Tax Act)

- The Act contains special rules in section 29A for the tax treatment of long-term insurance companies based on a five-funds approach, namely, the untaxed policyholder fund, the individual policyholder fund, the company policyholder fund, the risk policy fund and the corporate fund.
- The application of this five-fund approach requires long-term insurers to allocate their assets to the above-mentioned five different funds based on the business conducted by the long term-insurer in the fund and the excess of assets (profits) to be taxed when annual transfers are made to the corporate fund.
- The transfer amounts are calculated by deducting the adjusted IFRS value of liabilities relating to the fund from the market value of assets allocated to that fund.
- At issue is that it is not clear what should happen with assets that do not have a "market value" as defined, for example, assets such as prepayments or intangible assets that are treated as assets for financial reporting purposes.
- In order to clarify the current rules regarding assets that do not have a "market value" as defined, it is proposed that the definition of "market value" in section 29A be amended to make provision for the value of assets that can only be disposed of as part of a going concern to be the amount as disclosed in the financial statements at the end of the year of assessment.

Reviewing the interaction between rules for the taxation of benefits received by short-term insurance policyholders and the tax treatment of related expenses

(Clause 25 of the Draft TLAB: Section 23(c) of the Income Tax Act)

- Section 23L of Act makes provision for limitation of deductions by disallowing the deduction of any premiums incurred by a taxpayer on short-term insurance policies, unless that taxpayer is recognising the insurance premiums as an expense for the purposes of financial reporting pursuant to IFRS in either the current or future year of assessment.
- As a result, policyholders may not deduct premium payments in respect of short-term policy contracts that are not viewed as an expense.
- In contrast, section 23(c) of the Act makes provision for expenditure and losses that would otherwise qualify as a deduction in terms of section 11(a) of the Act not to qualify for a deduction to the extent that such expenses and losses are recoverable under any contract of insurance, guarantee, security or indemnity.
- The interaction between sections 23(c) and 23L of the Act is not clear where on one hand, insurance benefits are being taxed in full and on the other hand, any expenditure recovered is disallowed as a deduction.
- In order to clarify the interaction of the above-mentioned rules, it is proposed that changes be made in the Act to clarify that the rules in section 23L of the Act override the limitation provision available in section 23(c) of the Act.

Clarifying the tax treatment of doubtful debt for taxpayers with security

(Clause 13 of the Draft TLAB: Section 11(j) of the Income Tax Act)

- In 2018, changes were made in section 11(j) of the Act to provide specific criteria for determining the doubtful debt allowance for non-bank taxpayers applying IFRS 9 for financial reporting purposes and for taxpayers not applying IFRS 9 for financial reporting purposes.
- Non-bank taxpayers that apply IFRS 9 are allowed the following as a deduction:
  - (i) 40 per cent of the loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit loss and
  - (ii) 25 per cent of the difference between the IFRS 9 loss allowances relating to impairment and the IFRS 9 loss allowance in respect of which 40 per cent is determined.
- Non-bank taxpayers not applying IFRS 9, an age analysis of debt is used to determine the doubtful debt allowance and the following deduction is allowed:
  - (i) 40 per cent of the face value of doubtful debts that are at least 120 days past due date be allowed as a deduction, and
  - (ii) 25 per cent of the face value of doubtful debts that are at least 60 days past due date, but excluding doubtful debts that are at least 120 days past due date, be allowed as a deduction.

Clarifying the tax treatment of doubtful debt for non-bank taxpayers with security

(Clause 13 of the Draft TLAB: Section 11(j) of the Income Tax Act)

- At issue is the fact that the tax legislation does not provide parity between taxpayers that apply IFRS 9 and those that do not apply IFRS 9 when determining the doubtful debt allowance as the age analysis applicable to taxpayers not applying IFRS 9 does not take cognisance of security given in respect of the debt.
- In order to address this anomaly, it is proposed that changes be made in the Act to make provision for the amount of debt to be reduced by the security that is available in respect of that debt before the 25 per cent and 40 per cent are applied by taxpayers that do not apply IFRS 9 for financial reporting purposes.

Clarifying the tax treatment of doubtful debt in respect of certain impairments for banking regulated taxpayers

(Clause 13 of the Draft TLAB: Section 11(jA) of the Income Tax Act)

- In 2017, section 11(*j*A) was introduced in the Act to provide specific criteria for determining the doubtful debt allowance for defined bank taxpayers that are subject to South African Reserve Bank prudential regulation.
- This section 11(*j*A) doubtful debt allowance was formulated using impairment requirements in IFRS 9 and contains terminology that is derived directly from IFRS 9.
- In turn, the general rules in section 11(*j*) dealing with doubtful debt allowance for taxpayers not subject to prudential regulation make provision for a doubtful debt allowance to be claimed if:
  - there is an amount of a debt due to a taxpayer and had that debt become bad, it would have been allowed as a deduction under Part 1 of the Act (section 11(*a*) or 11(*i*))
  - such amount must be included in the taxpayer's income in the current year of assessment or must have been included in the previous years of assessment.

Clarifying the tax treatment of doubtful debt in respect of certain impairments for banking regulated taxpayers
(Clause 13 of the Draft TLAB: Section 11(jA) of the Income Tax Act)

- It has come to Government's attention that certain impairments that would not be deductible in terms of the general provisions applicable to taxpayers dealing with bad debt allowance in section 11(*j*) are now deductible in terms of the specific criteria for determining the doubtful debt allowance in section 11(*j*A) for defined bank taxpayers that are subject to South African Reserve Bank prudential regulation.
- In order to address this anomaly, it is proposed that changes be made in the Act so that the impairments that would not have been allowed as a deduction because they do not meet the requirements provided in the general provisions in the tax legislation dealing with bad debts should not qualify for a doubtful debt allowance in terms of the specific criteria for determining the doubtful debt allowance for defined banking regulated taxpayers.

Clarifying the tax treatment of doubtful debt in respect of taxpayers conducting leasing business and applying IFRS 9 for financial reporting
(Clause 13 of the Draft TLAB: Sections 11(j) & 11(jA) of the Income Tax Act)

- Currently, all taxpayers conducting leasing operations and applying IFRS 9 for financial reporting purposes cannot claim a doubtful debt allowance in respect of lease receivables as lease receivable are specifically excluded.
- One of the reasons for excluding lease receivables from doubtful debt allowance is that IFRS 9 lease receivables also include lease receivables that have not yet been received or accrued to the lessor (future lease receivables), and it would be inappropriate to grant a doubtful debt allowance in respect of future lease receivables.
- At issue is the arrear lease receivables i.e. lease payments that have accrued to the lessor but remain outstanding and are in arrears if the lessee has defaulted on its obligation to pay these amounts.
- In order to address these concerns, it is proposed that changes be made in the tax legislation so that taxpayers applying IFRS 9 for financial reporting purposes can claim doubtful debt allowances in respect of arrear lease receivables but not in respect of future lease receivables.

Curbing potential tax avoidance caused by dividend deductions
(Clause 27 of the Draft TLAB: Section 24JB of the Income Tax Act)

- The Act contains specific rules in section 24JB dealing with the tax treatment of "covered persons" (banks and brokers) and requires these covered persons to include in or deduct from their income all amounts in respect of qualifying financial assets and financial liabilities that are recognised as profits or losses in the statement of profit or loss and other comprehensive income, subject to certain exclusion.
- One of the exclusions from the application of section 24JB is a dividend or foreign dividend received by or accrued to a "covered person".
- Some "covered persons" are devising schemes with the aim of providing investment opportunities to investors by forming a special purpose vehicle that is part of a banking group and interpose this special purpose vehicle between a bank and an investor.
- This special purpose vehicle issues shares (financial instruments) to the investors that yield dividends while it receives interest on or other income on its financial assets.

Curbing potential tax avoidance caused by dividend deductions
(Clause 27 of the Draft TLAB: Section 24JB of the Income Tax Act)

- This structure of interposing a special purpose vehicle between an investor and a bank yield an undesirable mismatch in that the underlying income is distributed as a dividend, and that is against the policy rationale of this provision.
- In order to close this loophole, it is proposed that changes be made in section 24JB so that the exclusions from the rules for the taxation of "covered persons" be extended to cover dividends declared.

Clarifying the meaning of a share in the definition of REITs
(Clause 2 of the Draft TLAB: Section 1 of the Income Tax Act – definition of a REIT)

- When the REITs special tax dispensation was introduced in 2013, the policy rationale was for it to apply to both the company and trust REITs that comply with the Johannesburg Stock Exchange Limited (JSE) Listings Requirements and are listed and publicly traded on the JSE.
- These requirements were based on the premise that the shares in a company or a trust which is deemed to be a company for tax purposes must be listed as shares in a REIT as defined in paragraph 13.1(x) of the JSE Listings Requirements and the company or trust will then qualify as a REIT for income tax (including capital gains tax) purposes.
- With the introduction of other recognised exchanges in South Africa, the requirement that shares in a REIT should be listed on such recognised exchange and the listing requirements of such recognised exchange should be approved as stipulated in the Act still remains.
- In general, the definition of a share which must be listed in the case of a REIT means in relation to a company, any unit into which the proprietary interest in that company is divided.

Clarifying the meaning of a share in the definition of REITs

(Clause 2 of the Draft TLAB: Section 1 of the Income Tax Act – definition of a REIT)

- It has come to Government's attention that some REITs are considering issuing and listing preference shares on a recognised exchange.
- This is against the policy rationale of REITs tax dispensation as holders of preference shares were never intended to benefit from the REITs tax dispensation because preference shares are mainly used for financing, and not to provide full equity exposure to investors.
- In order to address this aspect, it is proposed that clarification be made in the Act and that preference shares be specifically excluded from the shares that must be listed on a recognised exchange for purposes of the REITs special tax dispensation.

Amending the anti-avoidance provisions regarding taxation of foreign dividends and foreign gains received by REITs
(Clauses 11 & 29 of the Draft TLAB: Sections 10B & 25BB of the Income Tax Act)

- The main feature of the REITs special tax dispensation is that it is a flow-through principle and that income and capital gains are taxed solely in the hands of the investor and not in the hands of a REIT.
- In turn, a REIT may claim distributions to its investors as a deduction against its income.
- This deduction may only be claimed if a distribution is a "qualifying distribution" (i.e. at least 75 per cent of the gross income of the REIT consists of rental income or other amounts received or accrued from property companies, as defined).
- On the other hand, the Act contains a participation exemption which exempts from income tax any foreign dividends declared by non-resident companies to a South African tax resident holding at least 10 per cent of the equity shares in such companies and exempts from capital gains tax any disposal of equity shares held by a South African tax resident holding a least 10 per cent of the equity shares in a non-resident company.

Amending the anti-avoidance provisions regarding taxation of foreign dividends and foreign gains received by REITs
(Clauses 11 & 29 of the Draft TLAB: Sections 10B & 25BB of the Income Tax Act)

- This implies that a REIT or a controlled company holding at least 10 per cent of the equity shares in a non-resident company qualifies for a participation exemption in respect of foreign dividends received from that non-resident company and also qualifies for participation exemption in respect of capital gains on any disposal of equity shares in a non-resident company.
- At issue is the mismatch in the application of the rules dealing with REITs special tax dispensation and participation exemption for foreign dividends and capital gains.
- This mismatch results in REITs qualifying for foreign dividends and capital gains tax participation exemption qualifies for a full deduction when it on-distributes profits from those foreign dividends or capital gains thereby shielding other taxable income from tax.
- In order to address this mismatch, it is proposed that changes be made in the Act so that a REITs should not qualify for participation exemption in respect of foreign dividends and foreign gains in terms of the Income Tax Act.

Addressing tax avoidance involving lending and collateral arrangement provisions
(Clause 37 of the Draft TLAB : Section 64EB of the Income Tax Act)

- In 2015, rules were introduced in the tax legislation that provide relief in respect of an outright transfer of collateral.
- As a result, if a listed share is transferred as a part of a security arrangement, there are no tax implications, subject to certain limitations.
- Despite the anti-avoidance measures introduced in relation to these rules in 2018, Government has identified certain schemes that are aimed at circumventing these anti-avoidance measures.
- The scheme is essentially structured to avoid dividends tax by entering into several transactions between different parties during the period when a dividend is announced and the dividend is paid.
- This has the effect that the party paying a manufactured dividend to the party avoiding dividends tax is no longer holding a share in the company declaring the dividend and falls outside the ambit of the anti-avoidance measures
- In order to close this loophole, it is proposed that changes be made in section 64EB(2) to delete the holding of a share requirement in the company declaring a dividend and that the rules apply to a person paying a manufactured dividend to the person avoiding dividends tax and that person be subject to dividends tax.

TAX INCENTIVES

Reviewing the sunset date of the Special Economic Zone tax incentive regime

(Clauses 18 &19 of the Draft TLAB : Sections 12R and 12S of the Income Tax Act)

- In 2013, the SEZ tax regime was introduced in sections 12R and 12S of the Act.
- Currently there is a misalignment in the sunset dates available in the two provisions dealing with the SEZ tax regime.
  - The sunset date contained in section 12R of the Act dealing with the criteria for the determination of what constitutes a qualifying company that qualifies to be taxed at 15 per cent currently states that the provision applicable to qualifying companies under the SEZ regime will cease to apply in respect of any year of assessment commencing on or after 1 January 2024 or, if later, 10 years after the commencement of the carrying on of a trade in a special economic zone.
  - The sunset date contained in section 12S of the Act dealing with the claiming of accelerated allowance in respect of buildings provides that section 12S will cease to apply in respect of any year of assessment commencing on or after 1 January 2024.

Reviewing the sunset date of the Special Economic Zone tax incentive regime

(Clauses 18 &19 of the Draft TLAB : Sections 12R and 12S of the Income Tax Act)

- In order to provide clarity and certainty, it is proposed that the sunset dates of the two provisions encompassing the SEZ tax regime should be aligned and the two provisions of the SEZ tax regime should cease to apply in respect of any year of assessment commencing on or after 1 January 2028.
- The rationale for deciding on 1 January 2028 is that it allows for the incentive to apply for a ten-year period from 2018, which is the date of approval by the Minister of Finance of designated SEZs that are subject to a corporate tax at a rate of 15 per cent.

Clarifying anomalous provisions within the venture capital company (VCC) tax incentive regime
(Clause 17 of the Draft TLAB : Section 12J of the Income Tax Act)

- The VCC tax incentive regime makes provision for taxpayers investing in a VCC to deduct an upfront amount equivalent to the expenses incurred by a taxpayer in acquiring shares issued to that taxpayer by a VCC from their taxable income.
- In 2018, changes were made to the VCC tax incentive regime to prevent abusive tax structures using the VCC regime. One of the anti-avoidance measures inserted in 2018 provides that no shareholder may hold, directly or indirectly, more than 20 per cent of the shares of any class in a VCC.
- It has come to Government's attention that the above-mentioned anti-avoidance measure have unintended consequences as VCC shareholders could unintentionally breach the more that 20% ownership of any class of share measure within a VCC structure, especially upon the legitimate unwinding of the underlying investment into a qualifying company related to that class of share.
- In order to address this, it is proposed that the legislation be amended to allow for an exclusion of the application of the 20% ownership provisions, if that VCC in writing, notifies SARS of the intent to terminate a class of shares within that VCC within a specified period.

Changing the Minister of Finance's discretion in lifting ring-fencing of capital expenditure per mine

(Clause 32 of the Draft TLAB : Section 36(7F) of the Income Tax Act)

- Section 36(7F) makes provision for the tax deductible capital expenditure incurred in relation to a mine not to be used to reduce taxable income of another mine, unless the Minister of Finance, in consultation with the Minister of Mineral Resources and Energy and having regard to the relevant fiscal, financial and technical implications, otherwise directs.
- This limitation of tax deductible capital expenditure is referred to as "capex per mine ring-fence".
- This capex per mine ring-fence was introduced to prevent the reduction of taxable income from mature and profitable mines, given that those mines enjoyed an accelerated capital expenditure deduction during the earlier years.
- It is proposed that legislation be amended to move the discretion in respect of capex per mine ring-fence from the Minister of Finance to the Commissioner for SARS and specific criteria for lifting the capex per mine ring-fence be introduced.

Addressing the tax treatment of allowable mining capital expenditure

(Clauses 22 & 32 of the Draft TLAB : Sections 15 and 36 of the Income Tax Act)

- The Act contains rules in sections 15 and 36 that entitle taxpayers that are engaged in mining operations to an accelerated deduction of any capital expenditure in respect of mining operations.
- The change in mining business models has led to the increase of “contract mining”, which comprises the services of an independent contractor (contract miner) to excavate minerals from the soil on behalf of the mining rights holder for a fee.
- The current provisions of the tax legislation do not adequately address the tax treatment of capital expenditure incurred by taxpayers carrying on activities of “contract mining”.
- At issue is whether both a contract miner that excavates minerals on behalf of a mineral rights holder for a fee for and a mineral rights holder should qualify for a full upfront deduction of their capital expenditure in respect of mining operations.
- It is proposed that clarification be made in the tax legislation and that only the taxpayer that holds a mineral right as defined in section 1 of the MPRDA be allowed an accelerated deduction of any capital expenditure in respect of mining operations under sections 15 and 36.

Refining tax treatment of foreign donor-funded projects
(Clause 10 of the Draft TLAB : Section 10(1)(yA) of the Income Tax Act)

- In 2006, changes were made in the Act to make provision for exemption in respect of amounts received by or accrued in terms of an Official Development Assistance Agreement (ODAA) which is binding under section 231(3) of the Constitution provided that:
  - the amount is received or accrued in relation to projects that are approved by the Minister; and
  - the agreement provides that those receipts and accruals of that person must be exempt.
- Some ODAAs were entered into long time ago and the wording in those ODAAs does not specifically make provision for the outright exemption. As a result those ODAAs may not qualify for exemption as they do not meet the requirement under this provision.
- In view of the fact that at the time when South Africa entered into these ODAAs, there was a clear intention that foreign donors offering this support often seek to ensure that their support packages remain free from South African tax as a precondition for funding, it is proposed that changes be made in the tax legislation to align the Act with the intention of tax exemption that existed when South Africa was entering into those international agreements.

Aligning immunity from taxation of international organisations
(Clauses 67 & 68 of the Draft TLAB : Sections 8 & 10 of the Securities Transfer Tax Act)

- South Africa is a member of many internationally recognised organisations.
- The international agreements underpinning these memberships make provision for these international organisations to be immune from taxation in South Africa.
- It has come to Governments attention that even though the Income Tax Act contains provision for immunity from taxation, however, other tax acts, for example, the Securities Transfer Tax Act do not specifically contain this immunity from taxation.
- In order to ensure that South Africa upholds the intention of these international agreements, it is proposed that changes be made to make provision for this immunity from taxation.

INTERNATIONAL TAXATION

Amending the anti-avoidance provision regarding change of residence (Clauses 7, 11 & 50 of the Draft TLAB: Sections 9H & 10B and paragraph 64B of the Eighth Schedule to the Act)

- South Africa levies capital gains tax when a South African tax resident company re-domiciles abroad and ceases to be tax resident for South African income tax purposes and changes the tax residency to another tax jurisdiction (regardless of whether the assets of such company are still located in South Africa or whether the company still continues to do business in South Africa or not).
- This implies that the South African resident tax shareholders are required to recognise a capital gain on the deemed disposal of the equity shares in the company that is re-domiciling.
- The Act also contains participation exemption rules that exempts from income tax any foreign dividends declared by non-resident companies to a South African tax resident holding at least 10 per cent of the equity shares in such companies and exempts from capital gains tax any disposal of equity shares held by a South African tax resident holding a least 10 per cent of the equity shares in a non-resident company.
- The interaction between the current rules aimed at taxing capital gains in the hands of the South African tax resident shareholders on the deemed disposal of the equity shares in the company that is re-domiciling and the current rules aimed at providing participation exemption from capital gains tax on any disposal of equity shares held by a South African tax resident holding a least 10 per cent of the equity shares in a non-resident company represents creates a loophole.

Amending the anti-avoidance provision regarding change of residence (Clauses 7, 11 & 50 of the Draft TLAB: Sections 9H & 10B and paragraph 64B of the Eighth Schedule to the Act)

- Government has noticed an increased use of participation exemption by South African tax resident shareholders to erode the South African tax base in instances of a change in the tax residence of a South African tax resident company and subsequent sale of the shares in that company by residents that qualifies for participation exemption.
  - In order to close this loophole, it is proposed that changes be made in the Act by triggering unrealised gains and losses in the value of the shares in the company.This implies that the South African resident tax shareholders who hold shares in a South African tax resident company that changes its tax residence to another jurisdiction will be deemed to have disposed of the shares in the company at market value on the day prior to redomiciling and ceasing to be tax resident and have reacquired the shares at market value on the day of the exit.

Introducing an anti-avoidance provision regarding taxation of foreign dividends received by residents
(Clause 11 of the Draft TLAB : Section 10B(6A) of the Income Tax Act)

- Section 10(1)(k)(*i*) of the Act makes provision for dividends received or accrued from resident companies to be exempt from normal tax, subject to certain exceptions.
- Exceptions which are aimed at limiting tax avoidance, include a rule that denies the exemption for dividends if the amount of a deductible expense is determined with reference to the dividends.
- On the other hand, section 10B of the Act makes provision for participation exemption in respect of foreign dividends if those foreign dividends are received by or accrued from listed shares to a South African resident holding at least 10 per cent of the equity shares and voting rights in the foreign company.
- At issue is the fact that section 10B of the Act dealing with participation exemption does not have an anti-avoidance rule similar to section 10(1)(k)(i) of the Act, that denies the exemptions for foreign dividends if the amount of a deductible expense is determined with reference to the foreign dividends.
- In order to address this anomaly, it is proposed that changes be in section 10B dealing with participation exemption and that foreign dividends received by or accrued to a person on a share in a non-resident company be denied participation exemption and be subject to tax if that person incurs deductible expenditure that is determined directly or indirectly with reference to a foreign dividend in respect of an identical share in relation to the share in that foreign company.

Refining the scope of the transfer pricing rules applicable to Controlled Foreign Companies

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

- The Act contains transfer pricing rules aimed at preventing the reduction in South African taxable income as a result of mispricing or incorrect characterisation of transactions. Section 31 of the Act makes provision for a controlled foreign company in relation to a resident to adjust its taxable income to reflect an arms-length price in respect of a cross border transaction with a non–resident ring connected person that is not at arms-length.
- Government has identified certain instances, where the current scope of transfer pricing rules presents a limitation in its application. For example, in the case of a transaction between a controlled foreign company in relation to a resident and a non-resident connected person, a tax benefit may not be derived by the foreign company, but may be derived by a South African resident shareholder as a result of a lower inclusion of controlled foreign company net income for the resident.
- In order to address this anomaly, it is proposed that changes be made to section 31(2) of the Act to refer to a tax benefit that may be derived by a person, in relation to a controlled foreign company, that is a resident.

Limiting the application of dividend and capital gain exemption in loop structures
(Clauses 6 & 50 of the Draft TLAB : Section 9D & paragraph 64B of the Eighth Schedule to the Income Tax Act)

- Regulation 10(1)(*c*) of the Exchange Control Act of 1961 provides that no person shall, except with permission granted by the National Treasury and in accordance with such conditions as the National Treasury may impose, enter into any transaction whereby capital or any right to capital is directly or indirectly exported from the Republic.
- Currently it is a limitation of the Exchange Control Regulations for a resident to invest in a Loop Structure, i.e. to set up an offshore structure that re-invests into the Common Monetary Area (CMA) by acquiring shares or other interest in a CMA company or CMA asset.
- However, an exception exists in certain instances where private individuals and South African companies are permitted to acquire up to 40 per cent equity or voting rights in a Loop Structure.
- If 40 per cent shareholding is exceeded, such loop structures will require approval from the SARB with due consideration to transparency, tax, equivalent audit standards and governance.

Limiting the application of dividend and capital gain exemption in loop structures
(Clauses 6 & 50 of the Draft TLAB : Section 9D & paragraph 64B of the Eighth Schedule to the Income Tax Act)

- As indicated in Annexure E of the 2020 Budget Review, Government proposes to review the current exchange control rules to implement a new capital flow management framework.
- One of the changes to the current exchange control rules is the relaxation of the approval that is required for loop structures where the 40 per cent shareholding is exceeded.
- Although the Act contains some rules that may reduce the risk of loop structures, however, increased tax planning opportunities may arise as a result of the relaxation of the exchange control approval in this regard.
- In order to reduce tax planning opportunities the following changes are proposed in relation to a CFC:
  - A CFC must include in its net income a portion of a dividend that is received or accrued from a resident company.
  - Participation exemption in respect of capital gains should 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.

Taxation of the transfer of listed securities to an offshore exchange (Clause 9 of the Draft TLAB : Section 9K of the Income Tax Act)

- Under the current exchange control rules, a resident individual or company that owns a listed domestic security is not permitted to export that listed security abroad to an exchange outside South Africa without prior approval from the SARB.
- As indicated in Annexure E of the 2020 Budget Review, Government proposes to review the current exchange control rules to implement a new capital flow management framework.
- One of the changes to the current exchange control rules is the phasing out of the approval requirement by SARB when a resident individual or company that owns a listed domestic security is exporting that listed domestic security abroad.
- In order to ensure efficient application of the law, it is proposed that changes be made in the tax legislation by introducing a new rule that triggers a deemed disposal and a reacquisition of a security when a domestic listed security is removed from JSE register and is listed in an exchange that is outside South Africa.
- In addition, if the person holding the security remains a South African tax resident, such person will be liable for income tax on further gains when the security is subsequently sold.

Value added tax (VAT)

Reviewing the VAT accounting basis option available for an intermediary
(Clause 64 of the Draft TLAB: Section 15(2)(a)(vii) of the VAT Act)

- The VAT Act permits vendors that are foreign electronic service suppliers to apply to SARS to account for VAT on a payments basis.
- In terms of the payments basis of accounting for output and input tax credits, the vendor will account for output tax only when payments are actually received (as opposed to when an invoice is issued).
- The fact that the VAT Act permits the foreign electronic service supplier to apply to SARS to register for VAT on the payments basis and not the intermediary that is deemed to be the supplier in certain instances creates an inconsistency in the VAT Act.
- In order to remedy this, it is proposed that changes be made in the VAT Act to permit vendors that are deemed as suppliers for the purposes of supplying foreign electronic services to apply to SARS to register for VAT on the payments basis.

Changing the VAT treatment of transactions under corporate reorganisation rules
(Clause 61 of the Draft TLAB: Section 8(25) of the VAT Act)

- Section 8(25) of the VAT Act makes provision for VAT relief during corporate reorganisation transactions between companies that form part of the same group of companies and treats the supplier and the recipient of the goods or services as the same person provided that :
  - the relevant rollover relief provisions of the Income Tax Act are met; and
  - if the transfer relates to the transfer of an enterprise, or part of an enterprise capable of separate operation, as a going concern.
- In turn, section 11(1)(*e*) of the VAT Act dealing with zero rating of certain supplies makes provision for the supply of an enterprise or part of an enterprise capable of separate operation to be subject to VAT at the zero rate, provided that certain requirements as clarified by SARS Interpretation Note 57 (dated 31 March 2010) are met.
- At issue is that the relevant Income Tax roll over relief provisions may not apply to the transfer of certain assets in the VAT Act.
- This implies that the transfer will also not qualify for the VAT relief, even though the assets form part of the entire transaction.

Changing the VAT treatment of transactions under corporate reorganisation rules

(Clause 61 of the Draft TLAB: Section 8(25) of the VAT Act)

- This limitation of relief in section 8(25) creates unintended consequences for VAT.
- The entire transaction could qualify for VAT relief under the going concern provisions of section 11(1)(*e*) of the VAT Act but are excluded because the transaction falls within the ambit of the corporate reorganization rules, which automatically require that the provisions of section 8(25) of the VAT Act apply.
- In order to address these limitations, it is proposed that amendments be made to section 8(25) of the VAT Act so that vendors contemplating to enter into corporate reorganisation transactions between companies that form part of the same group of companies should agree in writing that the provisions of section 8(25) of the VAT Act will not apply to the transfers contemplated in the Income Tax Act, and instead the provisions of section 11(1)(*e*) of the VAT Act should apply in this regard.

Reviewing the section 72 decisions

- 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 in regard to the application of the VAT Act.
- These changes have an impact on the decisions made in terms of this section before 21 July 2019.
- To address these concerns, government agreed to review 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.

Reviewing the section 72 decisions with regard to the VAT treatment international telecommunications services
(Clause 63 of the Draft TLAB: Section 11 of the VAT Act)

- South Africa is a signatory to the International Telecommunications 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 2012 (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.
- The Commissioner has, before 21 July 2019, issued rulings in terms of section 72 of the VAT Act to vendors in the telecommunications industry to zero-rate the charges levied to their non-resident counterparts so as to give effect to the Dubai ITR, in respect of transactions between resident telecommunications service suppliers and non-resident telecommunications services suppliers.
- In order to ensure that the provisions of the Dubai ITR Agreement are upheld, it is proposed that changes be made in the VAT Act to make provision for zero rating of supplies between resident telecommunications services suppliers and non-resident telecommunications services suppliers in terms of the Dubai ITR Agreement.

Reviewing the section 72 decisions with regard to the VAT treatment of the cross border leases of foreign-owned ships, aircraft and other equipment for use in RSA
(Clause 60 of the Draft TLAB: Definition of "enterprise" in section 1 of the VAT Act)

- The VAT Act defines an "enterprise" in the case of any vendor, to generally mean any enterprise or activity which is carried on continuously or regularly by any person in or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit.
- In turn, a "vendor" is defined in the VAT Act to mean any person who is or is required to be registered for VAT in the Republic. In instances where foreign owned ships, aircraft or other equipment are leased for use in the Republic, and the lessor of such goods has no physical and business presence in the Republic (other than the leased goods), and the lessee is obliged in terms of the lease agreement to import the goods into the Republic, uncertainty exists regarding whether the foreign lessor is conducting an enterprise in the Republic.
- The Commissioner has, before 21 July 2019, issued rulings in terms of section 72 of the VAT Act to lessors stating that the foreign lessors are not required to register as vendors and requiring the lessee in the Republic to declare and pay the VAT on the importation of the goods over the term of the lease agreement in order to ensure that the lessors do not import these goods into the Republic and have no commercial intention to operate in the Republic.

Reviewing the section 72 decisions with regard to the VAT treatment of the cross border leases of foreign-owned ships, aircraft and other equipment for use in RSA
(Clause 60 of the Draft TLAB: Definition of "enterprise" in section 1 of the VAT Act)

- In order to address this, it is proposed that changes be made in the definition of an "enterprise" in the VAT Act so as to exclude the foreign lessor from the requirement to register for VAT in the Republic in instances where the lessee imports the goods for use in the Republic and the lessor of such goods has no physical and business presence in the Republic (other than the leased goods).
- That said, further changes should be made to compel the lessee to declare the VAT on the importation of the goods over the period of the lease agreement / renewal thereof.

Reviewing the section 72 decisions with regard to the VAT treatment of the management of superannuation schemes

(Clause 62 of the Draft TLAB: Section 10(22A) of the VAT Act)

- Suppliers of long-term insurance policies, including superannuation schemes generally levy a consolidated charge for both the insurance cover and the fees or commissions charged.
- In order to assist such vendors to determine the value on which to declare the VAT on the fees / commission portion of the supplies, amendments to the VAT Act were introduced in 1996 outlining a valuation rule in order to assist the above-mentioned vendors to determine the value on which to declare the VAT on the fees / commission portion of the supplies. In terms of these provisions, such vendors are required to use the higher of the cost of making such supply or any consideration for such supply.
- The application of this valuation rule has been challenging, especially to the suppliers of long-term insurance policies, including superannuation schemes that generally levy a consolidated charge for both the insurance cover and the fees or commissions.
- The Commissioner has, before 21 July 2019, issued a Binding General Ruling (BGR 34) to the industry in terms of section 72 of the VAT Act prescribing a method for the calculation of the cost of making such supplies.
- In order to ensure that such vendors do not encounter difficulty in determining the cost of making such supplies, it is proposed that the valuation rules introduced in 1996 be deleted and such vendors should use normal valuation rules available in the VAT Act.

Clarifying the VAT treatment of irrecoverable debts
(Clause 65 of the Draft TLAB: Section 22 of the VAT Act)

- Vendors that account for VAT on the invoice basis generally claim input tax credits in the tax period in which a valid tax invoice was received, irrespective of whether payment was actually made or not.
- Paragraph (ii) of the proviso to section 22(3) of the VAT Act provides that where such a vendor is sequestrated, declared insolvent, enters into a compromise in terms of section 155 of the Companies Act, 2008 (typically business rescue scenarios) or ceases to be a vendor and has not paid the full amount of the consideration due within the period of 12 months from the date on which the input tax credit was claimed, the vendor is required to declare output tax on the unpaid amount.
- There is uncertainty regarding the application of the value of supply rule in the above-mentioned circumstances as it seems to indicate that the value of the output tax payable is equal to the unpaid amount.
- This is against the intention of the legislation as the intention was that the output tax be calculated by applying the tax fraction to the unpaid amount.
- In order to remedy the anomaly, it is proposed that the provisions of the VAT Act be amended to state clearly that the output tax due must be calculated by applying the tax fraction (at the rate applicable when the input tax deduction was made) to the unpaid amount.

CARBON TAX ACT

Aligning the carbon fuel levy adjustment with the carbon tax act
(Notes to Part 5A of Schedule 1 of the Customs and Excise Act)

- Non-stationary greenhouse gas emissions from petrol and diesel used for road transport are for purposes of the administration of the carbon tax incorporated in the current fuel levy as the carbon fuel levy in terms of the Customs and Excise Act.
- To allow for the automatic adjustment to the carbon fuel levy under the Customs and Excise Act when the carbon tax rate changes annually as provided for in Section 5 of the Carbon Tax Act, there is a need to link the Carbon Tax Act and the Customs and Excise Act by amending the Notes to Part 5A of Schedule No. 1 of the Customs and Excise Act.
- This link would enable SARS to implement automatic adjustments in the Customs and Excise Schedules to enable the carbon fuel levy adjustment from January each year in line with the principal carbon tax rates changes.
- Given that the implementation of the carbon tax on fuel and its collection will be done through the fuel levy mechanism, several administration procedures have been implemented to indicate that the carbon tax will be administered as a separate line item. In terms of Note 6 to Part 5A of Schedule No. 1 of the Customs and Excise Act, the fuel levy consists of the GFL and the carbon fuel levy. The current cents per litre rates of the general fuel levy and carbon fuel levy are specified in Note 7 to the said Part.
- In order to create the necessary explicit link between the carbon fuel levy rate and the carbon tax rate, it is proposed that these Notes be amended to include the formulas to calculate the carbon fuel levy rates.

Allowing a carbon tax "pass through" for the regulated liquid fuels sector (Clause 77 of the draft TLAB: Section 6 of the Carbon Tax Act)

- The 2013 Carbon Tax Policy Paper recommended a limited, transparent and equitable "pass-through" mechanism for carbon tax costs.
- In principle, the design of the pass-through mechanism should provide for some of the cost of the carbon tax to be recovered, but a full cost pass-through would not be appropriate as it does not incentivise behaviour change by refineries.
- The Carbon Tax Act provides for all direct non-stationary and stationary greenhouse gas (GHG) emissions from diesel and petrol use, implemented through the fuel levy mechanism, to be deducted from the combustion related emissions of a taxpayer.
- Currently, greenhouse gas emissions from crude oil and synthetic coal-to-liquid and gas-to-liquid refining processes qualify for tax-free allowances up to a maximum of 90 per cent and 95 per cent respectively.
- Due to the regulated nature of petrol and diesel fuel prices, refineries are unable to recover these carbon tax costs.
- Taking into account the maximum tax-free allowances for fuel combustion and fugitive emissions, amendments are proposed to allow a limited recovery of the carbon tax costs for regulated fuels.
- It is proposed that the cost recovery mechanism applies as a deduction against the carbon tax liability of petroleum refineries and a new sub-section be inserted in Section 6 of the Carbon Tax Act to allow for the deduction of the carbon tax cost offset against the payable tax for refineries for petrol produced in terms of the formula.

2020 DRAFT TALAB

Contents: Main amendments

- **Income Tax Act, 1962; Value-Added Tax Act, 1991 & Tax Administration Act, 2011**
  - Removal of requirement to prove intent for lesser tax offences
- **Income Tax Act, 1962**
  - Failure by public benefit organisations (PBOs) approved to receive tax deductible donations to submit audit certificates
  - Refunds of withholding tax on royalties where the royalty becomes irrecoverable
  - Amendment of reverse onus provision relating to offences in the Fourth Schedule
- **Customs and Excise Act, 1964**
  - Sharing of information regarding purchases of certain goods free of duty or value-added tax at licensed special customs and excise warehouses
  - Publication of information in relation to tariff determinations
  - Liability for duty of the master of a ship, pilot of an aircraft or other carrier of goods
  - Commencement of liability for export duty
  - Definition of “free on board” in relation to goods exported or to be exported
  - Limitation of period for application for refunds of export duty
  - Widening of provision relating to production of permits or certificates to exported goods

Contents: Main amendments (cont.)

- **Skills Development Levies Act, 1999, and Unemployment Insurance Contributions Act, 2002**
  - Refusal to authorise a refund where returns are outstanding under these Acts
- **Tax Administration Act, 2011**
  - Estimated assessments for non-compliance
  - Grace period for refund of amounts erroneously paid in excess of assessment
  - Withholding of a refund pending a criminal investigation
  - Payment of interest on mineral and petroleum resources royalties

Income Tax Act, Value-Added Tax Act & Tax Administration Act (1)

- **Removal of requirement to prove intent for lesser tax offences** (Clauses 8, 21 & 34 of Draft TALAB: Paragraph 30 of Fourth Schedule to Income Tax Act, section 58 of Value-Added Tax Act & section 234 of Tax Administration Act)
  - For a person to be guilty of an offence, the person needs to have committed an unlawful act and the person's conduct must be culpable.
  - In South African law such culpability is normally referred to as *mens rea* and may be present in one of two forms i.e. intent (*dolus*) or negligence (*culpa*)
  - Intent and negligence are mutually exclusive; any reference to wilful conduct must necessarily exclude negligent conduct.
  - The current "wilfully and without just cause" requirement included in the opening words in respect of certain lesser tax offences listed in the Income Tax Act, VAT Act and Tax Administration Act, means:
    - The NPA must prove intent as the only basis of *mens rea* in respect of the relevant tax offences, e.g. failure to withhold or pay over employees' tax.
    - Negligent, even grossly negligent, conduct is excluded, e.g. a vendor who negligently overcharges VAT cannot be prosecuted.

Income Tax Act, Value-Added Tax Act & Tax Administration Act (2)

- **Removal of requirement to prove intent for lesser tax offences (cont.)**
  - The test for intention is subjective, while the test for negligence is objective (i.e. the person's conduct is measured against the reasonable person standard).
  - The "wilfully" requirement is purely subjective and there can be no reference to what a reasonable person would have done in the circumstances.
  - The requirement of intent is generally applicable to common law offences and serious statutory offences in South Africa, while the requirement of negligence, whether explicitly stated or not, is more typical of lesser statutory offences.
  - The requirement of "wilfully and without just cause" was not a general requirement for lesser tax offences before the promulgation of the Tax Administration Act, it does not appear in any other South African legislation and, as the NPA has pointed out to SARS, its proposal and adoption through the Tax Administration Act appears to have been an error.
  - **Propose** that "willfully and" be deleted from the opening words.

Income Tax Act, Value-Added Tax Act & Tax Administration Act (3)

- **Removal of requirement to prove intent for lesser tax offences (cont.)**
  - Some commentators have suggested that the proposed deletion will lead to the punishment of innocent mistakes, which is not the case for two reasons:
    - The reference to “without just cause” is retained with the intention of explicitly excluding cases where negligence was not present.
    - The Law of South Africa notes that “The legislature may exclude *mens rea* as an element of an offence, thus creating strict liability by rendering innocent violations punishable. This may be done by <u>expressly</u> excluding *mens rea* as an ingredient of the offence in question”. (Underlining added.) This is not something that the proposal seeks to do.

Income Tax Act (1)

- **Failure by public benefit organisations (PBOs) approved to receive tax deductible donations to submit audit certificates** (Clause 4 of Draft TALAB: Section 18A of the Act)
  - If a PBO fails to comply with specified requirements (e.g. use of donations for section 18A qualifying activities) for receiving tax-deductible donations, SARS may direct that specified donations be regarded as taxable income and, if the failure is not addressed within a reasonable period, receipts issued by the PBO will no longer be valid for claiming tax deductions.
  - These sanctions do not apply to a PBO conducting mixed activities (i.e. section 18A and non-section 18A qualifying activities), which are obliged to obtain an audit certificate in respect of the use of the funds for which section 18A receipts have been issued.
  - **Propose** that failure to meet audit certificate requirements by such a PBO may similarly give rise to taxation of donations and, if not addressed, the invalidity of section 18A receipts.

Income Tax Act (2)

- **Refunds of withholding tax on royalties where the royalty becomes irrecoverable** (Clause 5 of Draft TALAB: Section 49G of the Act)
  - A refund of excess withholding tax on interest is withheld is possible if –
    - a) a declaration entitling the recipient to a lower rate is not submitted before payment is made; or
    - b) the interest payable to the recipient subsequently proves to be irrecoverable.
  - Withholding tax on royalties only provides for a refund in situation a) above.
  - **Propose** that, in alignment with withholding tax on interest, withholding tax on royalties be refundable if royalties subsequently become irrecoverable.

Income Tax Act (3)

- **Removal of reverse onus provision relating to offence listed in the Fourth Schedule to the Income Tax Act** (Clause 8 of Draft TALAB: Paragraph 30 of Fourth Schedule to the Act)
  - Paragraph 30(2) contains a reverse onus provision under which a person who deducted or withheld PAYE but fails to pay it to SARS within prescribed period, is deemed to have used or applied the amounts for purposes other than the payment thereof to SARS.
  - The reverse onus means a burden is placed on the person to disprove a key element of the offence under paragraph 30(1)(b) on a balance of probabilities, which has been held to be unconstitutional by our courts.
  - **Propose** that provision be amended to replace the reverse onus with an evidentiary burden upon the taxpayer in these circumstances, in alignment with the views expressed by our courts and wording of section 235(2) of the Tax Administration Act, 2011.

Customs and Excise Act (1)

- **Sharing of information regarding purchases of goods free of duty or value-added tax at licensed special customs and excise warehouses** (Clauses 11*(b)* & *(c)* of the Draft TALAB: Section 4 of the Act)
  - Tax evasion of duty and value-added tax through purchases of goods at diplomatic duty and tax free shops has become an increasing problem.
  - As diplomats must be dealt with through diplomatic channels, the Department of International Relations and Co-operation (DIRCO) must be involved in managing the abuse of privileges granted under the Diplomatic Immunities and Privileges Act, 2001.
  - **Propose** amendment that authorises the Commissioner to share information regarding purchases by diplomats of goods at duty and tax free shops with the Director-General of DIRCO. Provision is also made for the protection of this information.

Customs and Excise Act (2)

- **Publication of information in relation to tariff determinations** (Clause 11*(d)* of TALAB: Section 4 of the Act)
  - The World Customs Organisation advocates capacity building, skills development and knowledge sharing by customs authorities to enhance compliance with legislation.
  - Publishing tariff determinations would assist in this regard and would contribute to consistency and transparency in respect of the classification of goods.
  - **Propose** amendment to provide for the publication of information relating to tariff determinations in terms of rules prescribed by the Commissioner.

Customs and Excise Act (3)

- **Liability for duty of master of ship, pilot of aircraft or other carrier of goods** (Clauses 14*(b)* & *(c)* of the Draft TALAB: Section 44 of the Act)
  – Difficulties arise due to the prolonged liability for duty of the master of a ship, pilot of an aircraft or other carrier of goods, which include high shipping line charges for landside operations and the transport of goods for scanning, the favouring of shipping line transport, etc.
  – **Propose** amendment that the liability of these carriers will cease when goods are delivered to a licensed remover of goods in bond for transport for purposes of examination, which is intended to encourage competition by affording a choice in respect of transporters.
  – Associated amendments include provision for assumption of liability by the licensed remover of goods in bond when accepting goods for delivery, as well as for cessation of such liability.

Customs and Excise Act (3)
Amendments enabling envisaged introduction of export tax

- **Commencement of liability for export duty** (Clause 14*(a)* of Draft TALAB: Section 44 of the Act)
  - **Propose**, similarly to imports, that liability commence when the export bill of entry in respect of goods is submitted before export or, if no export bill of entry is submitted before export, when the goods are deemed to have been exported.
- **Definition of "free on board" in relation to goods exported or to be exported** (Clause 15 of Draft TALAB: Section 72 of the Act)
  - Section 72 determines that the value of goods exported shall be the price of those goods free on board at the place of dispatch from South Africa.
  - **Propose** amendment to clarify the meaning of the term "free on board", i.e. that the price of goods "free on board" includes:
    - All profits, costs, charges and expenses incidental to placing goods on board a vessel, aircraft, train or vehicle in which the goods are to be transported across the border; or
    - If the goods consist of a vessel, aircraft, train or vehicle moving under its own power or on its own wheels, all profits, costs, charges and expenses up to the place where the goods leave South Africa.

Customs and Excise Act (4)
Amendments enabling envisaged introduction of export tax

- **Limitation of period for application for refunds of export duty** (Clause 16 of Draft TALAB: Section 76B of the Act)
  - **Propose**, similarly to imports, that the period be limited to two years from date of entry for export of the relevant goods.
- **Widening of provision relating to production of permits or certificates to exported goods** (Clause 17 of the Draft TALAB: Section 113 of the Act)
  - **Propose** amendment to widen the provision requiring the production of a permit or certificate to the Controller in respect of goods which purport to have been imported under such a permit or certificate, in terms of the provisions of the Act or any other law, to also include goods exported.

Skills Development Levies Act and the Unemployment Insurance Contributions Act

- **Refusal to authorise a refund where returns are outstanding under these Acts** (Clauses 22 and 23 of the Draft TALAB: Section 6 of the Skills Development Levy Act and section 8 of the Unemployment Insurance Contributions Act)
  - In terms of the Income Tax Act, 1962, SARS may refuse to authorise a refund until a taxpayer furnishes any returns that are outstanding under the Act and a similar but broader provision exists in the Employment Tax Incentive Act, 2013.
  - **Propose** that this power also apply to the Skills Development Levy Act and Unemployment Insurance Contributions Act in view of the tight integration between the PAYE, skills development levy, unemployment insurance contributions and employment tax incentive systems.

Tax Administration Act (1)

- **Estimated assessments** (Clauses 27, 28 & 29 of the Draft TALAB: Sections 91, 93 & 95 of the Act)
  - SARS may currently issue an estimated assessment if–
    - a taxpayer does not file a return;
    - no return is required but a taxpayer fails to pay the tax required; or
    - a return or information supplied is inadequate.
  - In the first case the assessment may not be disputed until the required return is filed and SARS has failed to revise the assessment in the light thereof.
  - This approach ensures that all the facts are available when the assessment is revisited and that the dispute resolution timelines that would otherwise apply may be relaxed.

Tax Administration Act (2)

- **Estimated assessments (cont.)**
  - **Propose:**
    - Estimated assessments also be permitted where no tax is due or a refund is due, to assist taxpayers and personal income tax administration reform.
    - Cases where specific relevant material was requested from a taxpayer on more than one occasion, without an adequate response, also be subject to the limitation on disputes for the reasons set out above.
    - Time-period within which taxpayer may request SARS to revise the assessment by providing outstanding return or relevant material be lengthened from 30 to 40 business days.
    - Maximum extension of time-period by senior SARS official be aligned with the prescription period for the assessment, i.e. three/five years from date of original assessment.

Tax Administration Act (3)

- **Grace period for refund of amounts erroneously paid in excess of assessment** (Clause 30 of the Draft TALAB: Section 187 of the Act)
  - Payments that are not properly allocated to a specific tax type by a taxpayer are administratively difficult to allocate correctly.
  - If the payment had to be allocated to a specific tax type but is refunded as an erroneous payment, the taxpayer will be charged interest on an unpaid debt.
  - SARS requires a period to determine if the payment was erroneous.
  - **Propose** amendment to insert a specific effective date for erroneous payments referred to in the Act, which will provide SARS a period of up to 60 business days to determine the erroneous nature of the payment prior such payment being refunded to the taxpayer.
- **Withholding of a refund pending a criminal investigation** (Clause 33 of the Draft TALAB: Section 190 of the Act)
  - SARS may withhold a refund until such time that a verification, inspection or audit of the refund is finalised, unless security is provided by the taxpayer.
  - **Propose** that this provision be extended to include criminal investigations, since the risks with regard to inappropriate refunds are even higher in such cases.

Tax Administration Act (4)

- **Payment of interest on mineral and petroleum resources royalties** (Clauses 31 & 32 of the Draft TALAB: Sections 188 & 189 of the Act)
  - Chapter 12 of the Act created a framework to support the modernisation of SARS' accounting system regarding interest.
  - **Propose** that Chapter 12 of the Act be amended to achieve uniformity with the provisions of the Mineral and Petroleum Resource Royalty (Administration) Act, 2008, due to similarities in relation to interaction between provisional and income tax on the one hand and the estimation and final payment of royalties for mineral and petroleum resources on the other.
  - The proposed amendments include:
    - Alignment of interest payable for unpaid royalties, in respect of the first and second payments, with provisional tax interest (section 188).
    - Alignment of the interest rate on overpayments with that payable on the overpayment of provisional tax (section 189).

THANK YOU