TAXATION LAWS AMENDMENT BILL & TAX ADMINISTRATION LAWS AMENDMENT BILL

Select Committee on Finance

Presenters: National Treasury and SARS | 27 November 2015

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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Overview

- The Minister of Finance announced in his 2015 Budget Speech and in the 2015 Budget Review proposed changes to tax rates and the tax base

- The Rates and Monetary Amounts Bill, that has already been approved, contains most of the proposed changes to tax rates and monetary amounts

- The taxation laws amendment bill (TLAB) and the tax administration laws amendment bill (TALAB) contain changes to the tax base, the closing of tax loopholes, changes to tax administrative procedures and other technical and procedural changes to tax laws. These changes normally require much more legal drafting and can be quite technical.

- Some of the proposed tax changes are not included in the draft bills but is contained in changes to the Schedules to the Customs and Excise Act and / or subordinate legislation.

Officials present

- Yanga Mputa, NT
- Cecil Morden, NT
- Franz Tomasek, SARS

PERSONAL INCOME TAX

Ensuring consistent tax treatment on all retirement funds (Section 1 of the definition of 'pension fund')

- Retirement reform amendments included in the Taxation Laws Amendment Act, 2013 provide for a consistent tax treatment for contributions to all retirement funds (e.g. pension funds, provident funds and retirement annuity funds)
- The amendments also harmonised the requirement to purchase an annuity upon retirement
  - For example, provident fund members who are under the age of 55 at 1 March 2016 would be required to purchase an annuity in the same manner as pension funds and retirement annuity funds
  - Full vested rights for amounts already in provident funds at 1 March 2016 and no requirement to purchase an annuity for those over the age of 55
- However, the amendments unintentionally excluded paragraph (a) and paragraph (b) pension funds from the requirement to purchase an annuity
- The 2015 proposal seeks to harmonise the treatment of all retirement funds by including paragraph (a) and paragraph (b) funds in the requirement to purchase an annuity
- The *de minimis* amount of retirement savings below which no annuitization is required is increased from R75 000 (two thirds = R50 000) to R247 500 (two thirds = R165 000)

TLAA 2013 enacted simplified and harmonised tax treatment of retirement contributions

Source	Contribution type – base	% cap	Monetary cap	Retirement fund
Employer taxpayer	Employer contribution = fringe benefit = deemed employee contribution	Unlimited	Unlimited	All retirement funds
All individual taxpayers	The higher of employment or taxable income Rollover of non-deductible contributions & any amount that remains are not taxable upon exit Contributions include amounts paid towards risk benefits & administration costs	27.5%	Maximum of R350 000	All retirement funds

Closing a loophole to avoid estate duty through excessive contributions to retirement funds
(Section 3 of the Estate Duty Act)

- Taxation Laws Amendment Act, 2008 removed a the requirement to purchase an annuity by the age of 70 for retirement annuity funds
- In the same year, retirement funds (accumulated retirement savings) were made exempt from estate duty
- However, these changes allowed some individuals to use retirement annuity (RA) contributions as a way to avoid estate duty
- Contributions to an RA that did not receive a deduction (were above the 15% of non-retirement funding income limit) do not pay tax according to the lump sum tax tables upon death and are not liable for estate duty
- To close down this unintended loophole, which allow for the avoidance of estate duty, it is proposed that contributions to retirement funds that did not qualify as a deduction should be included in the dutiable part of the estate for estate duty purposes

Withdrawal from retirement funds by non residents
(Paragraph (b)(x)(dd) of the definition of “retirement annuity fund” in section 1)

- Currently, South African residents who emigrate from South Africa (as recognised by the South African Reserve Bank) are able to take their RA as a lump sum (after paying tax), however expatriates are not able to take their RA as a lump sum (since it is not recognised as emigration by the South African Reserve Bank)
- Many expatriates who move to South Africa for employment contribute to a retirement annuity fund (RA) to continue saving for retirement. After their employment contract expires they return to their home country and would like to withdraw the value of their retirement interest in the RA as a lump sum
- The proposed amendment would allow expatriates to take a lump sum from their RA when they leave South Africa
- There will henceforth be an alignment in the treatment with regard to RAs between expatriates and South African residents

Removing anomalies for income and disposals to and from deceased estate (New s9HA, s22(8)(b), 25, paragraphs 40, 41 and 67 of the 8th Schedule])

- Section 25 of the Income Tax Act makes provision for income received or accrued and expenses incurred by a deceased estate for the benefit of the beneficiaries
- The deceased estate is treated as a conduit, whereby the beneficiaries tax consequences are determined with reference to the income received or accrued by the estate (including allowable deductions)
- Paragraph 40 of the Eighth Schedule treats a deceased person as having disposed of all their assets on death and capital gains tax is recognised in the hands of the deceased
- The deceased estate is then taxed as a separate legal entity on any income, accruals or disposals
- Section 25 and paragraph 40 of the Eighth Schedule are at odds with one another and create anomalies and interpretational difficulties
- Section 25 also goes against the principle that only expenses borne by the taxpayer can be deducted (since expenses in the estate can be deducted by the beneficiary)
- The proposals seek to align the rules so that all gains will be taxed in the hands of the deceased and income and accrual will be taxed in the hands of the estate (with roll-over relief for transfer from the estate to beneficiaries)

Bursary and scholarship exemption for basic education: Grade R to 12 (Section 10(1)(q)(bb))

- The bursary and scholarship exemption was amended from 1 March 2013 to allow a larger exemption for post school studies (by increasing the exemption from R10 000 to R30 000 for qualifications that are NQF 5 – 10)

- In creating the split between the types of bursaries, the R10 000 exemption was defined to apply for bursaries and scholarships for NQF levels 1 – 4

- However, NQF levels 1 – 4 exclude grades R to 8, these qualifications were thus unintentionally excluded from this incentive

- The proposal seeks to align the eligible qualifications with those from before the amendment in 2013 by including grades R to 8

GENERAL BUSINESS TAXES

Addressing the issue of return of capital after a taxpayer has held a share for three years (Section 9C)

- In 2007, section 9C was introduced to allow taxpayers to be subject to capital gains tax (CGT) if they dispose of shares held for period of at least 3 continuous years
- This is attractive to taxpayers because of the lower effective tax rate the capital gains tax regime offers as compared to full normal tax
- However, the current legislation does not address the issue of return of capital, other than cash, received on shares held for at least three years as well as the meaning of the term “disposal” as contemplated in this section
- In order to clarify the original policy intent, the following changes have been made in the legislation:
  - Any return of capital, whether cash or otherwise, will be treated as capital
  - Any expenditure incurred on shares held for at least three years will be deemed to be of a capital nature
  - The term “disposal” for section 9C purposes means “disposal” as defined in the 8th schedule (dealing with CGT) as well as disposal as contemplated in section 9H

Removing anomalies arising from cancellation of contracts
(Paragraphs 3,4,11,20 & 35 of 8th Schedule)

- Currently, the Act treats cancellation of contracts as disposal for CGT purposes
- Cancellation of contracts, especially between connected persons, gives rise to certain anomalies as taxpayers benefit from both a step-up in the base cost of an asset and a capital loss, if the contract is cancelled in a subsequent year of assessment
- In order to address these anomalies, changes have been made in the legislation to deem contracts that have been cancelled in the same year of entering into such contract not to be regarded as a disposal for CGT purposes
- In turn, with regard to contracts that are cancelled in subsequent years, such cancellation will be regarded as a deemed disposal and the base cost of the asset will be limited

STT & CGT implications on collateral arrangements (Sections 1 & 8 of STT Act and sections 1, 9C, 22 and para 11 of the 8th Schedule)

- Most debt arrangements involve the usage of collateral as the demand for liquid assets is increasing due to the higher capital and liquidity requirements
- The provision of collateral on debt arrangements can take two forms, namely, (i) pledge (no transfer of beneficial ownership with no tax implications) and (ii) outright transfer (out and out cession of beneficial ownership with tax implications)
- In 1996, a specific tax dispensation was made in the Income Tax Act and Stamp Duties Act (subsequently incorporated in the STT Act) to allow securities lending arrangements not to be subject to income tax and STT
- This specific tax dispensation for securities lending arrangements is limited and effectively allows for the deferral of both CGT and STT for a limited period of 12 months
- It is proposed that a similar tax dispensation as applies to securities lending arrangements be introduced for the outright transfer of collateral and that no CGT and STT tax implications arise for collateral arrangements for a duration of up to 12 months
- Similar to securities lending arrangements, listed securities will not be allowed to be provided as collateral for longer than 12 months

Debt-financed acquisitions of controlling shares interests
(Section 24O)

- Interest bearing debt is often used to fund business acquisitions, either through a share purchase or by purchasing the business assets of a target company
- Interest expenses incurred by a purchaser when using debt to finance the acquisition of business can only be deducted from income to the extent that such interest expense is incurred in the production of income
- The "in the production of income" test renders interest incurred in respect of debt used to fund share acquisitions, as opposed to income producing business assets, not deductible. This is because shares produce dividend income which is exempt from normal tax
- To overcome this preclusion taxpayers often entered into multiple step transactions to obtain interest deductions by using debt-push-down structures
- In order to limit these structures, in 2012, a special interest deduction was introduced in the Act to provide for a limited interest deduction in respect of debt used to acquire controlling share interests only in operating companies

Debt-financed acquisitions of controlling shares interests (Section 24O)

(continued…)

- It has come to our attention that the policy intention is not clearly expressed in the legislation and this opens the legislation to potential abuse, which may lead to base erosion and profit shifting as a result of excessive and unintended interest deductions
- It is proposed that legislation be clarified to ensure that interest deductions are only allowed in respect of debt used to acquire controlling interest, at least 70 per cent of shares ,in an operating company that is an income producing company
- In order to monitor the controlling interest for purposes of special interest deductions, it is proposed that the controlling interest must be determined at the date of acquisition and again at any other future date where a corporate reorganisation transaction of the group of companies of any income producing operating company is undertaken

TAXATION OF FINANCIAL INSTITUTIONS AND PRODUCTS

Transitional tax issues resulting from the regulation of hedge funds (Sections 41(1), 42(1),42 (3A) and 44(14)(bB)

- The Minister of Finance declared the business of hedge funds to be Collective Investment Schemes (CIS) with effect from 1 April 2015
- In terms of Government Gazette No. 38503 of 25 February 2015, the managers of all hedge funds must within 6 months from 1 April 2015 lodge with FSB Registrar of CIS an application to register as a manager to operate hedge fund in accordance with the Collective Investment Schemes Control Act
- The proposed regulation of hedge funds has unintended transitional tax consequences arising on the disposal by a holder of a interest in a hedge fund to a trading vehicle which is approved and regulated by the FSB Registrar of CIS
- In order to allow for effective regulation of a CIS that is approved by the FSB, it is proposed that the current corporate restructuring provisions in the Act be amended to allow for tax deferral on the disposal of assets by the hedge funds to trading vehicles of CIS approved by the FSB

Limitation of unwarranted relief from taxation in respect of foreign reinsurance for long term insurers
(Section 29A(11)(g)

- In 2014, section 29A(11)(g) of the Income Tax Act was amended to limit the unwarranted relief from taxation in respect of foreign reinsurance
- As a result, a proviso was added to section 29A(11)(g) to provide for the inclusion in gross income of reinsurance claims received by or accrued to an insurer in terms of reinsurance between the insurer and the non-resident with effect from 1 December 2014
- The reference to reinsurance claims in the 2014 wording in section 29A(11)(g) created further loopholes
- As a result changes were proposed in the 2015 TLAB to replace the concept of reinsurance with insurance

Allowing REITS to deduct tax deductible donations and foreign tax credits (Section 25BB(2A))

- In 2012, a special tax dispensation for listed REITS was introduced
- Some listed RIETS make donations to charitable organisations in order to promote local communities. However, these donations are not deductible under tax deductible donations provisions in section 18A, due to the current wording of the special tax dispensation for REITS
- Similar to the above, listed REITS are not entitled to claim foreign tax credits in terms of section 6*quat,* due to the current wording of the special tax dispensation for REITS
- In order to remove these anomalies, it is proposed that changes be made in the legislation to enable listed REITS to claim tax deductible donations and foreign tax credits

TAX INCENTIVES

Accelerated capital allowances for manufacturing assets governed by supply agreements

(Section 12C)

- Currently, an accelerated depreciation allowance is available for machinery used in the process of manufacture in cases where the taxpayer owns the machinery and directly uses that machinery to manufacture goods and where the taxpayer leases the machinery to another person who then uses such machinery to manufacture goods
- Manufacturers sometimes enter into agreements to outsource parts of their manufacturing operations together with the machinery for no consideration. This is to secure the supply of components used in the assembly process of manufactured products
- Given that no rental is received by the manufacturer under these arrangements, the supplier cannot claim the depreciation allowance because the supplier is using the machinery for business requirements of the manufacturer. In addition, the manufacturer cannot claim the depreciation allowance because the manufacturer has outsourced both the machinery and the manufacturing operations to the supplier and does not directly used the machinery for process of manufacture
- In order to align the depreciation allowances with the new business models, changes have been made to allow a full depreciation allowance where machinery that is owned by a taxpayer is made available to a components supplier for no consideration for the benefit of the manufacturer's processes in terms of the supply agreement

SEZ: anti-profit shifting measure
(Section 12R)

- In 2013, a special tax incentive regime for the special economic zones (SEZ's) was introduced in the Act
- As a result, a qualifying company benefits from an accelerated depreciation allowance on capital structures (buildings) and also qualifies for a reduced corporate tax rate of 15 per cent
- There is a risk that profits may be artificially shifted from fully taxable connected persons to qualifying companies in the SEZ regime to take advantage of the lower tax 15% corporate tax rate
- In order to limit the risk of potential shift of profits, it is proposed that a company should be disqualified from benefitting from the 15 per cent tax rate in the SEZ regime if more than 20 per cent of that company's deductible expenditure incurred or gross income arises from transactions with connected persons

Further alignment of the tax treatment of government grants (Sections 10(1)(*zI*) & 12P)

- In 2013, a unified system for tax treatment of government grants was introduced
- Under this unified system, an expanded list of government grants and any other government grants that are identified by the Minister of Finance by notice in the Gazette are exempt from normal tax
- In turn, anti-double-dipping rules that deny a deduction of any expenditure that is funded by the government grant recipient using an exempt government grant were introduced. The policy rationale is that exempt government grants should not be used to fund expenditure in respect of which a deduction can be claimed against other income of the government grant recipient
- The tax treatment of government grants provided for Public Private Partnerships (PPP) is not aligned with the above-mentioned system of government grants
- It is proposed that PPP grants should also be subject to the similar anti-double-dipping rules available in the unified system for tax treatment of government grants

Demarcation of additional UDZs (Section 13*quat*)

- In 2003 the Urban Development Zone (UDZ) tax incentive was introduced to encourage property investment in derelict CBDs and promote investment in urban renewal
- The incentive provides for an accelerated depreciation allowance on the value of new buildings and improvements to existing buildings
- Currently, legislation only allows municipalities with a population greater than 2 million people to demarcate two areas as UDZs
- The amalgamation of various municipalities highlighted the need to extend the demarcation of more UDZ areas per municipality
- To make the incentive more accessible, changes have been made in the legislation to allow municipalities with a population of at least 1 million or more to be allowed to demarcate more than UDZ area
- With regard to municipalities with less than 1 million population, the Finance Minister will have discretion by notice in the Government Gazette to approve a municipality to demarcate more than one UDZ area

Extending the window period and introducing a Compliance Period for the IPP tax incentive regime (Section 12I)

- In 2008, the Industrial Policy Project (IPP) tax incentive was introduced to support investment in manufacturing assets to improve the productivity of the manufacturing sector. The IPP offers support for both capital investment and training
- Compliance with the incentive is based on regulatory criteria reviewed by an adjudication committee. Approved IPPs must report annually to the adjudication committee regarding progress in meeting the qualifying criteria. They should also report on training expenditure as a share of its total wage bill over a 6-year period
- It has come to our attention that there is uncertainty regarding timeframes with respect to compliance with all the qualifying criteria, the end date for annual progress report and additional training allowance benefit period
- In order to address the above-mentioned issues, it is proposed that a “compliance period” be introduced to allow projects to easily comply with the requirements stipulated in section 12I
- Given the impact of the incentive since its inception, it is proposed that the window period for IPP will be extended from 31 December 2015 to 31 December 2017

Depreciation allowance in respect of transmission lines or cables used for electronic communications outside South Africa (section 11(f))

- In 2009, changes were made in the Act following international standards of how international submarine telecommunication cables are treated for tax depreciation purposes
- These cable systems are often prohibitively expensive for single buyers, hence owners may grant 3rd parties the right of use to this system through an 'Indefeasible Right of Use' (IRU).The IRU provides the grantee the right to use the capacity of the submarine cable without ownership
- Improvement in technology and shorter economic life of the assets have necessitated a review of the period over which the right of use of submarine lines or cables are depreciated.
- International industry practice indicates a shorter period of 15 years as compared to 20 years regarding the write–off period of submarine lines or cables
- In order to align the tax treatment of depreciating IRUs for submarine lines or cables with international practice it is proposed that the write-off period should be reduced from 20 years to 15 years

Accelerated depreciation allowance Solar PV - rooftops
(Section 12B (1)(h)(ii))

- An additional initiative to encourage investment in cleaner energy, reduce GHGs, broaden energy sources and ease the pressure on the national electricity grid
- Current legislation does allow for accelerated depreciation allowances for renewable energy in the forms of solar, wind, biomass and hydro of less than 30 MW
- Solar is however classified as a single concept without delineating it into its different forms e.g. solar photovoltaic (solar PV) or concentrated solar power (solar CSP)
- It is proposed to further enhance the depreciation allowance for embedded solar PV (with a generation capacity of up to 1 000 kW or 1MW or less)
- Solar PV is favoured due to its low environmental and water consumption impact, economies of scale, efficiencies of learning and speed of implementation
- It is proposed to enhance the accelerated depreciation incentive for embedded solar PV for self-consumption from current 3 year 50:30:20 to a 1 year 100% allowance

Adjustment of energy savings tax incentive (Section 12L)

- The energy efficiency savings tax incentive implemented in November 2013 to encourage the uptake of energy efficiency measures that result in improvements in energy use and contributes towards reductions in GHGs
- The monetary value of the allowance is currently set at 45 cents per kilowatt hour or kilowatt hour equivalent of energy efficiency savings
- The current rate of 45 c / kWh was set in 2009 (when the proposal was originally mooted) is deemed to insufficient to incentivise a sufficient large number of energy efficiency savings projects
- It is proposed that the amount of the allowance to be claimed by taxpayers in respect of energy efficiency savings be increased from 45 cents per kilowatt hour to 95 cents per kilowatt hour or kilowatt hour equivalent of energy efficiency savings

Film Incentives
(Section 12O & section 23(f))

- In 2012, a film incentive was introduced to encourage the development of film industry in South Africa
- The incentive entails the exemption from tax of income derived from exploitation rights of a film and a deduction in respect of losses two years after completion of a film
- The application of both exemption and deduction provided under the film incentive created anomalies as generally for income tax purposes, a deduction is not allowed in respect of expenditure that gives rise to exempt income
- Changes have been made to allow both an exemption and a deduction with respect to film incentive

INTERNATIONAL TAXATION

Relaxing CGT rules on cross issue of shares and introducing measures to counter tax-free corporate migrations
(Section 9H, paragraphs 11(2)(*b*) and 64B of the 8th Schedule)

- In 2013, changes were made in the Act to prevent erosion of the South African tax base through tax-free corporate migration facilitated through cross-border cross-issues of shares
- If a South African resident company issues shares as a consideration for its acquisition of shares in a foreign company, a capital gain is triggered for the South African resident company
- It has come to our attention that the 2013 changes to the legislation affected bona-fide commercial transactions even in instances where there is no element of corporate migration and profit shifting
- In order to reverse the unintended consequences of the 2013 changes without losing sight of the initial policy intent to counter untaxed corporate migration out of South Africa, the following changes are proposed:
  - The 2013 changes should be reversed and the reversal be applied retrospectively to the date of the introduction of the 2013 amendment

Relaxing CGT rules on cross issue of shares and introducing measures to counter tax-free corporate migrations
(Section 9H, paragraphs 11(2)(*b*) and 64B of the 8th Schedule)

(continued…)

- In order to counter tax free corporate migrations, a two-pronged approach is now proposed to prevent the identified base erosion schemes using participation exemptions to strip resident companies of their foreign operations with or without the intention to subsequently migrate out of South Africa.
- The two pronged approach comprise –
  - A denial of the participation exemption where a South African resident disposes of its shares in a foreign company to a foreign related party in relation to that South African resident; and
  - A claw back of the participation exemption that a South African resident company may have had 3 years before the South African company migrates out of the of South Africa tax net.

Withdrawal of the special foreign tax credit
(Section 6 *quin)*

- In 2011, a special foreign tax credit was introduced to deal with foreign withholding taxes imposed in respect of fees from a South African source
- The special foreign tax credit was intended to operate as some form of a relief from double taxation on cross-boarder services for South African Multinational companies that renders services to their foreign subsidiaries
- The concern was that some treaty country partners that have withholding tax on services fees in their domestic law ignored treaty provisions and charged withholding tax on services fees paid to South African residents
- The special tax credit regime is a departure from international tax rules and tax treaty principles and indirectly subsidies countries that do not comply with tax treaties. Also, it has resulted in significant compliance burden for SARS
- The special foreign tax credit for services is withdrawn and will be replaced with a tax deduction instead.
- Ideally tax treaty disputes should be resolved by competent authorities of the respective countries through mutual agreement procedures

Reinstatement of the CFC diversionary income rules (Section 9D)

- Prior to 2011, Controlled Foreign Company (CFC) provisions contained three sets of diversionary rules, namely, (i) CFC inbound sales; (ii) CFC outbound sales; and (iii) CFC connected services rules
- In 2011, the diversionary rules in respect of CFC outbound sales were completely abolished. In addition, the 2011 amendments narrowed the diversionary rules in respect of CFC inbound sales of goods. However, the diversionary rules in respect of CFC connected services rules were retained
- The removal of the diversionary rules in respect of outbound sales of goods resulted in the CFC rules being less effective in addressing profit shifting by South African resident companies. In addition, the narrowing of the CFC inbound sale of goods rules limited the scope of effective application of this rules
- In order to address these anomalies, it is proposed that the diversionary rules in respect of CFC outbound sale of goods and CFC inbound sale of goods be reinstated

Withholding tax on interest
(Sections 50A &50D)

- With effect from 1 March 2015, interest from a South African source is subject to withholding tax at a rate of 15%
- Currently, section 50A dealing with withholding tax on interest does not contain a specific definition of the term “interest”. The only definition of the term “interest” is found in section 24J
- The lack of a specific definition of the term “interest” for withholding tax purposes creates uncertainty. In order to remedy this uncertainty, it is proposed that for the purposes of withholding tax on interest, the term “interest” should be limited to interest as defined in section 24J(1)
- In addition, it is proposed that the provision for exemption for withholding tax on interest should be amended to clarify that an exemption will apply if the interest is not from a South African source, i.e. in respect of interest paid to a non resident for debt owed by another non-resident, unless the other non-resident was present in South Africa for 183 days or the debt claimed is effectively connected to a PE in South Africa

Sale of immovable property by non-residents
(Section 35A & paragraph 2(2) of the 8th Schedule)

- Section 35A makes provision for withholding tax in respect of sale of immovable property by non-residents. Currently, the purchaser does not need to withhold tax in respect of any deposit paid, until the sale agreement has been entered into
- This has created uncertainty as to when the withholding of tax must take place. In order to remedy this uncertainty, it is proposed that the legislation be amended to clarify the time of withholding
- In addition, the current definition of the term “immovable property” for CGT purposes is not aligned with the definition of the term “immovable property” contained in the OECD model tax treaty as far as natural resources is concerned. South Africa has over 73 tax treaties in force and it is important for the definition of the term “immovable property” to be aligned with the tax treaty definition
- As a result, it is proposed that the term “immovable property” as far as natural resources is concerned should be aligned with the OECD model tax treaty

Value added tax (VAT)

VAT Accounting Method
(Section 15(2)(a))

- In terms of the Broadcasting Act No. 4 of 1999, anyone who acquires a TV set or possesses or uses a TV set must have a valid TV licence and pay their annual TV licence fee. SABC issues notices of renewal 2 months prior to the expiry of the TV licence, however, there is a high level of non-payment of TV licence fees by TV owners
- The invoice basis requirement to account for output tax on revenue SABC might not be able to collect from TV licence places a significant financial constraint on SABC
- Changes have been made in the legislation to allow SABC an option to request the Commissioner to account for VAT output on a payment basis. However, in exercising this option, SABC will have to operate its entire business on a payment basis, not only on TV licence fees

Repealing the zero rating for the National Housing Programme
(Sections 8(23) and 11(2)(s))

- VAT Act makes provision for the zero-rating of services supplied to a public authority or municipality in terms of a national housing programme
- It has been administratively difficult to implement the VAT provision effectively on some of the schemes provided through the national housing programme due to the variations in the programmes and the legislative interpretation by various role-players involved in the implementation of the housing programme
- Due to administrative difficulties as well as the past decisions on related court cases, it is proposed that the zero-rating provisions for the national housing programme be abolished with effect from 1 April 2017 and concession be funded through on-budget allocations

Enterprise Supplying Commercial Accommodation: Monetary Threshold Adjustments (Section 1)

- Currently, the monetary threshold for enterprises supplying commercial accommodation is R60 000
- This monetary threshold was last adjusted in 2003 from R48 000 to R60 0000
- It is proposed that the monetary threshold for enterprises supplying commercial accommodation be adjusted from R60 000 to R120 000

Zero Rating of Services: Vocational Training
(Section 11(2)(r))

- VAT makes provision for zero rating of vocational training of employees in South Africa if for example, the training is provided to an employee of a non-resident employer
- The words *"for an employer who is not resident"* implies that for zero rating to apply, a contractual relationship must exist between the person supplying the vocational training services and the employer
- As a result, this section does not cater for a situation where the vocational training is subcontracted by a non-resident supplier to a third party vendor in South Africa
- It is proposed that the section be amended to ensure that vocational training is zero rated to include instances where the training is provided through a third party vendor *for the benefit* of an employer who is not resident in South Africa

Time of Supply: Connected Persons(undetermined amounts)
(Sections 9(2)(a) & 10(4)(a))

- VAT provides that where goods are supplied and consideration of such goods is not determined when goods are appropriated, the supply is deemed to take place at the time when payment is due or is received, or an invoice is issued, whichever is the earlier
- With regard to connected persons, a special time of supply rule contained in section s9(2)(a) applies. In this regard, VAT is payable when the goods are removed or are made available or when the services are performed, whichever is the earlier
- The rules applicable to the supply of goods to connected persons trigger output tax, however, the amount of the output tax payable cannot be calculated. This leads to an impractical situation of making the provisions of the VAT Act difficult to implement
- It is proposed that a new rule be inserted that renders the provisions of s9(2)(a) not to apply to connected persons who are fully taxable. In addition, changes should be made to deem the consideration to be open market value in instances where recipient vendor is partially taxable

Tax Administration Laws Amendment Bill (TALAB)

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Self-assessment system for income tax

[Clauses 1, 7 of TALAB, section 3(4) and para 5 of 4th Sched. to ITA]; [Clauses 3,8,16-21,30,33,34,37,38,41,42,43,44,47,49,51, 58, 76-82,85,90-92,94-96,98,100,110,119,120 of TLAB, section 1,8(5)(b) & (bA),10(1)*(j)* &*(l),*10A(8),11(e),(f),(g),(gA)&(j), 12B(6);12C(1);12E(1),13,15,18A(5C),22(1),23H;24, 24C;24D;24I(7),24P,25A,27,38;1st Sched. para 7,9,11,13,14,19,20, 2ndSched. para 4; 6th Sched. para 10,11,13; 7th Sched. para 2,6,7,11,12A; 8th Sched. para 31,65 & 66 ITA]

- Income Tax Act still contains aspects of historical model of taxpayer return, review by an assessor – who may apply various discretions to arrive at taxable income – and administrative assessment
- International trend away from administrative assessment towards self-assessment, followed by review or audit by tax administration, if necessary
- Majority of developed countries, as well as a number of developing and African countries (e.g. Kenya, Malawi, Nigeria and Zambia), have adopted self-assessment
- Current legislation and administration is close to self-assessment but further progress requires change to underlying legislative framework to formalise the switch to complete self assessment
- Benefits
  - Underpins faster turnaround times and improved revenue performance, through more efficient administration and better compliance
  - Removal of remaining discretions in assessment will simplify law & ease compliance

Medical scheme fees and PAYE

[Clause 8, paragraph 9 of 4th Schedule to ITA]

- Up to 28 February 2014 individuals aged 65 years and older were permitted to deduct the full amount of medical scheme fees, which employers took into account for PAYE purposes
- From 1 March 2014 they are permitted the same medical scheme fees tax credit as other individuals, which employers take into account for PAYE purposes
- They are also permitted an additional medical expenses tax credit of 33.3% of the excess of fees paid over three times the medical scheme tax credit, which employers do not take account for PAYE purposes
- Although a refund is made by SARS on assessment, their take home pay during the year is reduced
- Proposed amendment provides for employers to take additional medical expenses tax credit in this regard into account for PAYE purposes

Implementing automatic exchange of information
[Clauses 33, 34, 37 and 38, sections 1, 3, 22 and 26 of TAA]

- Greater transparency and automatic exchange of information (AEOI) between tax administrations is an important step in countering cross border tax evasion and aggressive tax avoidance
- New international standard for exchange of information for tax purposes is AEOI and amendments to Tax Administration Act were effected in 2014 to improve the framework for AEOI
- South Africa is an early adopter of the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, so reporting on tax years from 1 March 2016 will begin in 2017
- To ease compliance burden on reporting financial institutions, amendments are proposed to enable collection and reporting of information to SARS under the Standard even in respect of taxpayers resident in jurisdictions that have not yet adopted the Standard and concluded an international tax agreement with South Africa
- Proposed definition of “international tax standard” also caters for country-by-country reporting flowing from OECD/G20 BEPS Project

Legal professional privilege assertion requirements
[Clause 41, new section 42A of TAA]

- Effective and timely information gathering critical to finalising audits with accurate outcomes
- Assertions of legal professional privilege (LPP) increasingly used to prevent or delay SARS access to information when taxpayers are audited
- No legislative framework currently exists for evaluating and resolving information entitlement disputes that then arise in this context
- Proposed amendment codifies information that must be provided to enable evaluation of an assertion of LPP, based on prevailing case law, and provides for procedure to resolve disputes that may arise
  - Information sealed and referred to an independent lawyer, drawn from the panel appointed to chair hearings of the tax board, who makes determination
  - Party dissatisfied by determination may apply to High Court for ruling

Foreign information requests
[Clause 42, section 46 of TAA]

- During audit of South African member of a multinational group , particularly a transfer pricing audit, it may be necessary to obtain information held by other members of the group outside South Africa
- SARS has held the position, since 1999, that it is reasonable to expect that this information be obtained in the light of the relationship between the members of group
- Some SA member companies co-operate, but some assert that they cannot obtain the foreign information
- Amendment seeks to ensure that taxpayers do not assert that they are unable to provide the requested information, only to provide it at a later stage, for tactical reasons
  - Minimum period of 90 days for obtaining the information prescribed
  - Subsequent use of information by taxpayer prohibited if not produced when requested, unless due to circumstances outside the control of the group and the courts rule otherwise

Request for reduced assessment
[Clause 49, section 93 of TAA]

- Section 93 was intended to allow taxpayers a less formal mechanism to request corrections to returns and obtain reduced assessments
- Requests for correction are being abused by taxpayers and unregistered tax practitioners to:
  - raise substantive issues and bypass timeframes and procedures for objection
  - obtain fraudulent refunds for multiple tax periods
- Amendment proposed to address substantive issue problem by ensuring that correction must be in respect of a readily apparent undisputed error
- SARS will endeavour to address fraudulent refund problem through its risk management systems
- Further amendment proposed to correct technical problem that an error that comes to SARS' attention before expiry period for a reduced assessment cannot be corrected after expiry period

Withdrawal of assessment
[Clause 50, section 98 of TAA]

- Insertion of new section 98(1)*(d)* in 2013 was intended to address problems with erroneous assessments in specified, narrow circumstances, where:
  - discovered after all prescription periods and remedies expired
  - it is apparent that it would be inequitable to recover the tax due
- Example: Retiree who was assessed in error based on incorrect information supplied by an employer or a retirement fund & only traced years later
- Some taxpayers immediately sought to use the provision to address their "old mistakes" in final assessments or reverse unfavourable outcomes in dispute process, including appeals to the tax and higher courts
- Proposed amendment seeks to give effect to the essential purpose of section 98(1)*(d)*, which was to come to the assistance of taxpayers whose assessments were incorrect as a result of factors outside of their control

Extension of expiry period for additional assessments (1)
[Clause 51, section 99 of TAA]

- SARS faces the difficulty of:
  - protracted information entitlement disputes being used as a delaying tactic to force audits closer to end of prescription period
  - finalising certain audits within prescription period due to their sheer complexity
- Information disputes consume time that should be used for auditing, obtaining **all** relevant information and ensuring **correct** assessment within prescription period
- Since 2012 various amendments have been effected to clarify audit provisions in attempt to reduce the disputes but they still continue
- Draft TALAB 2013 proposal was to extend expiry period for information refused “without just cause” – however, it was decided that:
  - factual determination of period and “just cause” would cause further delays
  - proposal did not deal with complex audits
  - a better solution would be sought in subsequent legislative cycle

Extension of expiry period for additional assessments (2)
[Clause 51, section 99 of TAA]

- In the context of complex audits, experience has shown it is often extremely difficult – if not impossible – to obtain all the relevant information, evaluate it, obtain legal advice, follow procedural requirements and issue assessments within current expiry period
- The amendment proposes discretion to extend expiry period, if:
  - taxpayer fails to provide information within reasonable period
  - there is an information entitlement dispute that takes time to resolve
  - the audit relates to four listed complex matters: application of substance over form doctrine, application of general anti-avoidance rule, hybrid entities/instruments and transfer pricing (extension up to three years)
- Proposal assigns discretion to Commissioner (i.e. highest level of SARS), does not require potentially contentious counting of days and provides that extension must take place prior to end of period to alleviate concerns with proposal in 2013

Extending voluntary disclosure programme (VDP)
[Clauses 65, 66 and 67, sections 226, 227 and 229 of TAA]

Qualifying persons for voluntary disclosure

- Proposed amendment provides that an audit, unrelated to the default being disclosed by an applicant, will not disqualify applicant from full VDP relief

Requirements for voluntary disclosure

- Current situation is that a “default” that has previously been disclosed may not be the subject of a VDP application; proposed amendment limits disqualification to disclosure of similar default by applicant in previous five years

Ambit of voluntary disclosure relief

- Amendment broadens VDP to include 100% relief in respect of administrative non-compliance penalties imposed under Chapter 15 of TAA or other tax Act for late payment of tax

Proposed amendments to customs & excise legislation (1)

[Clauses 21 and 106 – section 4 of C&E Act and section 368 of CCCA]

Section 4 of Customs & Excise Act, 2014

- Non-intrusive inspection methods currently provided for in section 4
- Proposed amendment explicitly provides for the use of sniffer dogs and mechanical, electrical, imaging or electronic equipment as search aids
- It also provides that such search aids may only be used by officers trained in the use of that particular aid and authorises the Commissioner to prescribe other search aids by means of rule

Section 368 Customs Control Act, 2014

- In terms of section 368 goods cleared for export must be delivered to depots and terminals within certain timeframes to ensure that there is enough time for customs inspections of the goods
- Proposed amendment aims to provide more flexibility with respect to timeframe for delivery of goods cleared for export to depots and terminals and clarifies that inspections of goods would take place at either the depot or terminal, preventing double inspections that could cause delays

Proposed amendments to customs & excise legislation (2)

[Clause 77 – section 25 of CDA]

Section 25 of Customs Duty Act, 2014

- Section 25 deals with the grounds and procedure for suspension and withdrawal of duty deferment benefits
- Proposed amendments provide for compulsory suspension of a duty deferment benefit in the event of non-payment of deferred duty or other tax or amount payable to protect the fiscus against any further imminent risk
- Provision is however made for *ex post facto* consideration of representations regarding the reasons for the failure to pay
- Compulsory suspension constitutes a ground for subsequent withdrawal of the benefit, which would be informed by the representations made

Budget 2015 proposal: Common dispute resolution procedures for customs, excise and other taxes

- Proposal is complex in nature, requires numerous amendments to legislation and drafting of dispute resolution rules, so will only be finalised next year

Other – not in these Bills

Diesel refund system (A)

- The administrative system of diesel refund system, that allows for a refund of all or part of the fuel levies to producers in the agriculture, forestry, fishing and mining sectors, that has been in place since 2000 faces significant technical problems and legal challenges.
- Some eligible firms are unable to benefit from the system, while others appear to be making disproportionate refund claims.
- To address these concerns, government proposes to delink diesel refunds from the VAT system from 1 April 2016. The National Treasury and SARS will explore alternative, more equitable rules and administrative procedures after consultation with the affected industries.
- Government also proposes to reduce diesel fuel levy refunds to 20 per cent and 50 per cent of the general fuel levy respectively for land mining activities and generation of electricity by Eskom's open-cycle gas turbines. The current full exemption provides a perverse incentive to use diesel excessively. This change will become effective from 1 April 2016. In the interim, government proposes several technical amendments to this system.

Diesel refund system (B)

- While the administration of the diesel refund system is being reviewed interim measures will be considered to deal with some of the immediate challenges.
- These challenges includes, among others, disputes over refunds for subcontracting in the mining sector through cession mining licences in terms of the Mineral and Petroleum Resources Development Act (2002).
- In the farming sector, attention will be given to rules for sugarcane contract farming and issues related to small-scale sugarcane growers.
- The review also aims to clarify the record-keeping requirements that apply to diesel deliveries to claimants' premises and the approval of diesel tanks on these premises.

Other tax proposals not in these Bills

- Tax treatment of bus rapid transit payments to affected taxi operators
  - This will be resolved through the SARS ruling process
- Solvency Assessment & Management (SAM) basis regulating long term insurers
  - The Insurance Bill enabling SAM still requires to be considered by Parliament. If the Insurance Bill becomes Law, it is envisaged that SAM will only be introduced in 2017. Therefore, SAM proposals relating to long term insurers will be considered in the following year.
- Unlisted property owning companies
  - FSB to amend its legislation so that it can be able to regulate unlisted REITS. However, changes have been made in Act to postpone the effective dates of sections 8F(3)(b)(ii) & 8F(3)(c)(ii) from 1 January 2016 to 1 January 2017 to delay the application of these provisions to unlisted REITS
- Third party backed shares
  - In 2014, significant changes were made in the legislation regarding third party backed shares. Any further clarification of the provisions of the section will be dealt with through interpretation by SARS