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Additional tax policy and administrative adjustments

This annexure should be read with Chapter 4 of the *Budget Review*. It elaborates on some of the proposals contained in the chapter, clarifies certain matters and presents additional technical proposals arising from the annual tax policy process.

Personal income tax

The proposed tax schedule in Table 4.4 in Chapter 4 partially compensates individuals for the effect of inflation. The effects of these proposals are set out in tables C.1, C.2 and C.3.

Table C.1 Annual income tax payable and average tax rates, 2019/20 (taxpayers below 65)

Taxable income (R)	2018/19 rates (R)	Proposed 2019/20 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
85 000	1 233	1 080	-153	-12.41%	1.5%	1.3%
90 000	2 133	1 980	-153	-7.17%	2.4%	2.2%
100 000	3 933	3 780	-153	-3.89%	3.9%	3.8%
120 000	7 533	7 380	-153	-2.03%	6.3%	6.2%
150 000	12 933	12 780	-153	-1.18%	8.6%	8.5%
200 000	22 265	22 112	-153	-0.69%	11.1%	11.1%
250 000	35 265	35 112	-153	-0.43%	14.1%	14.0%
300 000	48 265	48 112	-153	-0.32%	16.1%	16.0%
400 000	78 972	78 819	-153	-0.19%	19.7%	19.7%
500 000	113 807	113 654	-153	-0.13%	22.8%	22.7%
750 000	210 473	210 320	-153	-0.07%	28.1%	28.0%
1 000 000	312 973	312 820	-153	-0.05%	31.3%	31.3%
1 500 000	517 973	517 820	-153	-0.03%	34.5%	34.5%
2 000 000	742 973	742 820	-153	-0.02%	37.1%	37.1%

Source: National Treasury

Table C.2 Annual income tax payable and average tax rates, 2019/20 (taxpayers aged 65 to 74)

Taxable income (R)	2018/19 rates (R)	Proposed 2019/20 rates (R)	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
120 000	–	–	–	–	0.0%	0.0%
150 000	5 220	4 986	-234	-4.48%	3.5%	3.3%
200 000	14 552	14 318	-234	-1.61%	7.3%	7.2%
250 000	27 552	27 318	-234	-0.85%	11.0%	10.9%
300 000	40 552	40 318	-234	-0.58%	13.5%	13.4%
400 000	71 259	71 025	-234	-0.33%	17.8%	17.8%
500 000	106 094	105 860	-234	-0.22%	21.2%	21.2%
750 000	202 760	202 526	-234	-0.12%	27.0%	27.0%
1 000 000	305 260	305 026	-234	-0.08%	30.5%	30.5%
1 500 000	510 260	510 026	-234	-0.05%	34.0%	34.0%
2 000 000	735 260	735 026	-234	-0.03%	36.8%	36.8%

Source: National Treasury

Table C.3 Annual income tax payable and average tax rates, 2019/20 (taxpayers aged 75 and over)

Taxable income (R)	2018/19 rates (R)	Proposed 2019/20 rates	Tax change (R)	% change	Average tax rates	
					Old rates	New rates
150 000	2 646	2 385	-261	-9.86%	1.8%	1.6%
200 000	11 978	11 717	-261	-2.18%	6.0%	5.9%
250 000	24 978	24 717	-261	-1.04%	10.0%	9.9%
300 000	37 978	37 717	-261	-0.69%	12.7%	12.6%
400 000	68 685	68 424	-261	-0.38%	17.2%	17.1%
500 000	103 520	103 259	-261	-0.25%	20.7%	20.7%
750 000	200 186	199 925	-261	-0.13%	26.7%	26.7%
1 000 000	302 686	302 425	-261	-0.09%	30.3%	30.2%
1 500 000	507 686	507 425	-261	-0.05%	33.8%	33.8%
2 000 000	732 686	732 425	-261	-0.04%	36.6%	36.6%

Source: National Treasury

Customs and excise duty

Government proposes that the customs and excise duties in the Customs and Excise Act (1964, section A of part 2 of schedule 1) be amended with effect from 20 February 2019 to the extent shown in Table C.4.

Table C.4 Specific excise duties, 2018/19 – 2019/20¹

Tariff item	Tariff subheading	Article description	2018/19 Rate of excise duty	2019/20 Rate of excise duty
104.00		PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR; TOBACCO		
104.01	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:		
104.01.10	1901.90.20	Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34,7c/kg	34,7c/kg
104.10	22.03	Beer made from malt:		
104.10.10	2203.00.05	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.10.20	2203.00.90	Other	R95.03/li aa	R102.07/li aa
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):		
104.15.01	2204.10	Sparkling wine	R12.43/li	R13.55/li
104.15	2204.21	In containers holding 2 li or less:		
104.15	2204.21.4	Unfortified wine:		
104.15.03	2204.21.41	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol.	R3.91/li	R4.20/li
104.15.04	2204.21.42	Other	R190.08/li aa	R204.15/li aa
104.15	2204.21.5	Fortified wine:		
104.15.05	2204.21.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R6.54/li	R7.03/li
104.15.06	2204.21.52	Other	R190.08/li aa	R204.15/li aa
104.15	2204.22	In containers holding more than 2 li but not more than 10 li:		
104.15	2204.22.4	Unfortified wine:		
104.15.13	2204.22.41	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol.	R3.91/li	R4.20/li
104.15.15	2204.22.42	Other	R190.08/li aa	R204.15/li aa
104.15	2204.22.5	Fortified wine:		
104.15.17	2204.22.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R6.54/li	R7.03/li
104.15.19	2204.22.52	Other	R190.08/li aa	R204.15/li aa
104.15	2204.29	Other:		
104.15	2204.29.4	Unfortified wine:		
104.15.21	2204.29.41	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 16.5 per cent by vol.	R3.91/li	R4.20/li
104.15.23	2204.29.42	Other	R190.08/li aa	R204.15/li aa
104.15	2204.29.5	Fortified wine:		
104.15.25	2204.29.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R6.54/li	R7.03/li
104.15.27	2204.29.52	Other	R190.08/li aa	R204.15/li aa

Table C.4 Specific excise duties, 2018/19 – 2019/20¹ (continued)

Tariff item	Tariff subheading	Article description	2018/19 Rate of excise duty	2019/20 Rate of excise duty
104.16	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:		
104.16	2205.10	In containers holding 2 li or less:		
104.16.01	2205.10.10	Sparkling	R12.43/li	R13.55/li
104.16	2205.10.2	Unfortified:		
104.16.03	2205.10.21	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 15 per cent by vol.	R3.91/li	R4.20/li
104.16.04	2205.10.22	Other	R190.08/li aa	R204.15/li aa
104.16	2205.10.3	Fortified:		
104.16.05	2205.10.31	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R6.54/li	R7.03/li
104.16.06	2205.10.32	Other	R190.08/li aa	R204.15/li aa
104.16	2205.90	Other:		
104.16	2205.90.2	Unfortified:		
104.16.09	2205.90.21	With an alcoholic strength of at least 4.5 per cent by volume but not exceeding 15 per cent by vol.	R3.91/li	R4.20/li
104.16.10	2205.90.22	Other	R190.08/li aa	R204.15/li aa
104.16	2205.90.3	Fortified:		
104.16.11	2205.90.31	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by vol.	R6.54/li	R7.03/li
104.16.12	2205.90.32	Other	R190.08/li aa	R204.15/li aa
104.17	22.06	Other fermented beverages (for example, cider, perry, mead, saké); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
104.17.03	2206.00.05	Sparkling fermented fruit or mead beverages; mixtures of sparkling fermented beverages derived from the fermentation of fruit or honey; mixtures of sparkling fermented fruit or mead beverages and non-alcoholic beverages	R12.43/li	R13.55/li
104.17.05	2206.00.15	Traditional African beer as defined in Additional Note 1 to Chapter 22	7,82c/li	7,82c/li
104.17.07	2206.00.17	Other fermented beverages, unfortified, with an alcoholic strength of less than 2.5 per cent by volume	R95.03/li aa	R102.07/li aa
104.17.09	2206.00.19	Other fermented beverages of non-malted cereal grains, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 9 per cent by vol.	R95.03/li aa	R102.07/li aa
104.17.11	2206.00.21	Other mixtures of fermented beverages of non-malted cereal grains and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 9 per cent by vol.	R95.03/li aa	R102.07/li aa
104.17.15	2206.00.81	Other fermented apple or pear beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol.	R95.03/li aa	R102.07/li aa

Table C.4 Specific excise duties, 2018/19 – 2019/20¹ (continued)

Tariff item	Tariff subheading	Article description	2018/19 Rate of excise duty	2019/20 Rate of excise duty
104.17.16	2206.00.82	Other fermented fruit beverages and mead beverages, including mixtures of fermented beverages derived from the fermentation of fruit or honey, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol.	R95.03/li aa	R102.07/li aa
104.17.17	2206.00.83	Other fermented apple or pear beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol.	R76.08/li aa	R81.71/li aa
104.17.21	2206.00.84	Other fermented fruit beverages and mead beverages including mixtures of fermented beverages derived from the fermentation of fruit or honey, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol.	R76.08/li aa	R81.71/li aa
104.17.22	2206.00.85	Other mixtures of fermented fruit or mead beverages and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by vol.	R95.03/li aa	R102.07/li aa
104.17.25	2206.00.87	Other mixtures of fermented fruit or mead beverages and non-alcoholic beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by vol.	R76.08/li aa	R81.71/li aa
104.17.90	2206.00.90	Other	R190.08/li aa	R204.15/li aa
104.21	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength:		
104.21.01	2207.10	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol. or higher	R190.08/li aa	R204.15/li aa
104.21.03	2207.20	Ethyl alcohol and other spirits, denatured, of any strength	R190.08/li aa	R204.15/li aa
104.23	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol.; spirits, liqueurs and other spirituous beverages:		
104.23	2208.20	Spirits obtained by distilling grape wine or grape marc:		
104.23	2208.20.1	In containers holding 2 li or less:		
104.23.01	2208.20.11	Brandy as defined in Additional Note 7 to Chapter 22	R171.07/li aa	R183.73/li aa
104.23.02	2208.20.19	Other	R190.08/li aa	R204.15/li aa
104.23	2208.20.9	Other:		
104.23.03	2208.20.91	Brandy as defined in Additional Note 7 to Chapter 22	R171.07/li aa	R183.73/li aa
104.23.04	2208.20.99	Other	R190.08/li aa	R204.15/li aa
104.23	2208.30	Whiskies:		
104.23.05	2208.30.10	In containers holding 2 li or less	R190.08/li aa	R204.15/li aa
104.23.07	2208.30.90	Other	R190.08/li aa	R204.15/li aa
104.23	2208.40	Rum and other spirits obtained by distilling fermented sugarcane products:		
104.23.09	2208.40.10	In containers holding 2 li or less	R190.08/li aa	R204.15/li aa
104.23.11	2208.40.90	Other	R190.08/li aa	R204.15/li aa
104.23	2208.50	Gin and Geneva:		
104.23.13	2208.50.10	In containers holding 2 li or less	R190.08/li aa	R204.15/li aa
104.23.15	2208.50.90	Other	R190.08/li aa	R204.15/li aa
104.23	2208.60	Vodka:		
104.23.17	2208.60.10	In containers holding 2 li or less	R190.08/li aa	R204.15/li aa
104.23.19	2208.60.90	Other	R190.08/li aa	R204.15/li aa
104.23	2208.70	Liqueurs and cordials:		
104.23	2208.70.2	In containers holding 2 li or less:		

Table C.4 Specific excise duties, 2018/19 – 2019/20¹ (continued)

Tariff item	Tariff subheading	Article description	2018/19 Rate of excise duty	2019/20 Rate of excise duty
104.23.21	2208.70.21	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R76.08/li aa	R81.71/li aa
104.23.22	2208.70.22	Other	R190.08/li aa	R204.15/li aa
104.23	2208.70.9	Other:		
104.23.23	2208.70.91	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R76.08/li aa	R81.71/li aa
104.23.24	2208.70.92	Other	R190.08/li aa	R204.15/li aa
104.23	2208.90	Other:		
104.23	2208.90.2	In containers holding 2 li or less:		
104.23.25	2208.90.21	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R76.08/li aa	R81.71/li aa
104.23.26	2208.90.22	Other	R190.08/li aa	R204.15/li aa
104.23	2208.90.9	Other:		
104.23.27	2208.90.91	With an alcoholic strength by volume exceeding 15 per cent by vol. but not exceeding 23 per cent by vol.	R76.08/li aa	R81.71/li aa
104.23.28	2208.90.92	Other	R190.08/li aa	R204.15/li aa
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:		
104.30	2402.10	Cigars, cheroots and cigarillos containing tobacco:		
104.30.01	2402.10.10	Imported from Switzerland	R3578.94/kg net	R3901.04/kg net
104.30.03	2402.10.90	Other	R3578.94/kg net	R3901.04/kg net
104.30	2402.20	Cigarettes containing tobacco:		
104.30.05	2402.20.10	Imported from Switzerland	R7.76/10 cigarettes	R8.33/10 cigarettes
104.30.07	2402.20.90	Other	R7.76/10 cigarettes	R8.33/10 cigarettes
104.30	2402.90.1	Cigars, cheroots and cigarillos of tobacco substitutes:		
104.30.09	2402.90.12	Imported from Switzerland	R3578.94/kg net	R3901.04/kg net
104.30.11	2402.90.14	Other	R3578.94/kg net	R3901.04/kg net
104.30	2402.90.2	Cigarettes of tobacco substitutes:		
104.30.13	2402.90.22	Imported from Switzerland	R7.76/10 cigarettes	R8.33/10 cigarettes
104.30.15	2402.90.24	Other	R7.76/10 cigarettes	R8.33/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:		
104.35	2403.1	Smoking tobacco, whether or not containing tobacco substitutes in any proportions:		
104.35.01	2403.11	Water pipe tobacco specified in Subheading Note 1 to Chapter 24	R197.73/kg net	R215.52/kg net
104.35	2403.19	Other:		
104.35.02	2403.19.10	Pipe tobacco in immediate packings of a content of less than 5 kg	R197.73/kg net	R215.52/kg net
104.35.03	2403.19.20	Other pipe tobacco	R197.73/kg net	R215.52/kg net
104.35.05	2403.19.30	Cigarette tobacco	R348.77/kg	R374.58/kg
104.35	2403.99	Other:		
104.35.07	2403.99.30	Other cigarette tobacco substitutes	R348.77/kg	R374.58/kg
104.35.09	2403.99.40	Other pipe tobacco substitutes	R197.73/kg net	R215.52/kg net

1. The chapter references in this table refer to chapters of the schedule to the Customs and Excise Act (1964)

Source: National Treasury

Comparative summary of foreign asset regularisation programmes

South Africa has implemented two major foreign asset regularisation programmes, namely, the exchange control and accompanying tax measures amnesty in 2003, and the special voluntary disclosure programme in 2016. Both these programmes provided an opportunity for non-compliant South African tax residents to disclose assets held and income earned offshore, thereby growing the tax base. Table C.5 provides a summary of the outcomes of the two programmes.

Table C.5 Comparative summary of foreign asset regularisation programmes

	2003 Combined SARB and SARS figures	2016 SARB figures	2016 SARS figures
Total number of applications/R billion			
Total number of applications received	43 681	4 522	2 031
Value of unauthorised foreign assets regularised	45.0	51.0	26.9
Total levies and tax collected	2.9	2.4	4.0

Source: Reserve Bank and SARS

Additional tax amendments

Additional tax amendments proposed for the upcoming legislative cycle are set out below.

Individuals, employment and savings

Refining the foreign employment income tax exemption for South African residents

From 1 March 2020, South African residents who spend more than 183 days in employment outside the country will be subject to South African taxation on any foreign employment income that exceeds R1 million. To prevent monthly withholding of income tax both in South Africa and the host country, it is proposed that South African employers be allowed to reduce their monthly local pay-as-you-earn (PAYE) withholding by the amount of foreign taxes withheld on the employment income. Before implementation, a workshop will be held to consult taxpayers on their administrative concerns. Any resulting amendments will be processed during the 2019 legislative cycle.

Extending the scope of amounts constituting variable remuneration

In 2013, section 7B was introduced in the Income Tax Act (1962) to match the timing between the accrual and payment dates of some forms of variable cash remuneration. Section 7B deems certain amounts to accrue when they are actually paid. However, because the scope of this section is limited, it is proposed that it be extended to include certain qualifying payments.

Retirement reforms

Exemption relating to annuities from a provident or provident preservation fund:

Once a member of a retirement fund retires and receives an annuity as a retirement benefit, any contributions to the retirement fund that did not qualify for a deduction when determining the member's taxable income are tax-exempt. This exemption does not apply to annuities received from a provident or provident preservation fund. To encourage annuitisation (regular payments in retirement), it is proposed that this exemption be extended to provident and provident preservation fund members who receive annuities. The exemption would apply for contributions made after 1 March 2016.

Tax treatment of bulk payments to former members of closed funds:

Retirement funds are permitted to make certain extraordinary payments to their members tax free, provided that these payments are approved by the Minister of Finance in a Government Gazette notice.

In 2009, the Minister of Finance issued a notice in Government Gazette No. 32005 approving retirement funds to make tax-free payments of “secret profits”, “surplus calculations” and “unclaimed benefits”. When the notice was issued, some deregistered retirement funds had already paid fund administrators, but the amounts were not yet paid to the affected members and/or beneficiaries. It is proposed that these payments currently held by fund administrators on behalf of deregistered retirement funds qualify as tax-free payments, provided they meet the relevant criteria.

Reviewing the tax treatment of surviving spouse pensions:

Members of a pension fund can deduct contributions to their retirement funds from their taxable income when determining their monthly employees’ tax and annual income tax payable. Upon the death of a member, the surviving spouse may be entitled to receive a monthly spousal pension from the retirement fund. These spousal pension payments are subject to PAYE by the retirement fund.

If the surviving spouse also receives a salary or other income, it is added to the spousal pension to determine his or her correct tax liability on assessment. The result of the assessment is often that the surviving spouse has a tax liability that exceeds the employees’ tax withheld by the employer and retirement funds during the year of assessment, since the aggregation of income pushes them into a higher tax bracket. In most cases, the surviving spouse does not foresee the additional tax liability and does not save money to settle the liability. This creates a cash flow burden and a tax debt for the surviving spouse. It is proposed that:

- Surviving spouses are provided with effective communication relating to tax and financial issues
- The monthly spousal pension be subject to PAYE withholding at a specified flat rate
- Tax rebates should not be taken into account in the calculation of spousal pensions.

Any PAYE excessively withheld as a result of this proposal will be refunded upon assessment.

Reviewing the non-resident employer registration requirement:

Every employer who pays remuneration (as defined in the fourth schedule to the Income Tax Act) is required to register with the South African Revenue Service (SARS) and submit monthly and bi-annual tax returns for employees’ tax to SARS. If the employer is not a resident of South Africa, this requirement applies irrespective of whether the employer is obliged to withhold PAYE. It is proposed that this requirement be reviewed to determine whether an exclusion from registration is warranted for this type of employer.

Updating the Employment Tax Incentive Act to align with National Minimum Wage Act

The wage-regulating measures in the Employment Tax Incentive Act (2013) will be revised in line with the recently promulgated National Minimum Wage Act (2018).

Business (general)

Addressing abusive arrangements aimed at avoiding the anti-dividend stripping provisions

In 2017, the rules governing share buy-backs and dividend stripping were changed to prevent taxpayers from avoiding taxation of share disposals by companies. In 2018, these rules were again adjusted to prevent harm to legitimate corporate reorganisations. However, some taxpayers are now undermining the adjusted rules. These arrangements involve the target company distributing a substantial dividend to its current company shareholder and subsequently issuing shares to a third party. As a result, the value of the current company shareholder’s holding in the shares of the target company is diluted and these shares are not immediately disposed of. This differs from the previous avoidance arrangements that involved disposing of the same shares in return for a tax-exempt dividend. To curb this new form of abuse, it is proposed that the rules governing share buy-backs and dividend stripping be amended. These amendments will take effect on 20 February 2019.

Correcting anomalies arising from applying value-shifting rules

Clarifying the effect of deferred tax liability on the market value of issued shares:

Current anti-avoidance provisions target value shifting through asset-for-share transactions that apply when the market value of the assets acquired differs from the market value of the shares issued in exchange. However, the current provisions do not include the effect of a deferred tax liability (related to the acquired asset) on the market value of the shares. It is proposed that the Income Tax Act be amended to clarify that any difference in value due to the deferred tax liability should not be subject to the relevant provisions.

Clarifying the effect of a capital gain from the operation of the anti-avoidance rules on the base cost of shares acquired in exchange for assets:

In 2012, rules were introduced to prevent the transfer of high-value assets to a company in return for shares issued by the company with a different value. These rules trigger a capital gain or a deemed *in specie* dividend event for one of the parties. Other rules state that a company issuing shares in exchange for assets is deemed to have acquired the assets for expenditure equal to the market value of the shares. However, this deemed acquisition value does not include any capital gains previously triggered by the anti-value shifting rules, thereby resulting in possible double taxation when the company disposes of the assets later. It is proposed that the rules be amended to prevent this.

Refining provisions around the special interest deduction for debt-funded share acquisitions

Special interest deduction following company reorganisations after an acquisition:

Current provisions allow a special interest deduction relating to debt-financed acquisitions of controlling shares in an operating company, but require that the acquirer of those shares assess whether they still qualify for the deduction under certain circumstances. It is proposed that this requirement be reconsidered if the acquirer remains a (direct or indirect) controlling shareholder of the specific entity after certain reorganisation transactions.

Anti-avoidance rules targeting shareholders claiming the special interest deduction for start-up companies:

Some taxpayers are claiming the special interest deduction for debt-funded capitalisation of newly established companies. This deduction is intended for debt-funded acquisitions of a controlling interest in companies that already generate income. It is proposed that changes be made to ensure that taxpayers do not claim the deduction for unintended purposes.

Clarifying the interaction between corporate reorganisation rules and other provisions of the Income Tax Act

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

The current corporate reorganisation rules allow the tax-neutral transfer of assets between companies that are part of the same group. However, the provisions do not specify how exchange items and interest-bearing assets should be treated during corporate restructuring. It is proposed that the legislation clarify that the transfer of these items and assets is excluded from the rules. This is because unrealised values on the date of transfer should be triggered in the transferor companies.

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

The corporate rollover provisions regarding intra-group transactions contain multiple anti-avoidance measures. However, it is not always clear how these measures interact with each other. In particular, separate measures often cause punitive tax consequences that are not taken into account should another measure subsequently apply, which results in potential double taxation. It is proposed that these provisions be refined by clarifying how the measures interact.

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

If a company leaves a group but retains an asset acquired within the last six years through the relief provided in the corporate reorganisation rules, a degrouping charge applies. This charge is intended to revoke the tax-neutral status of the original transaction and is designed to deem a capital gain to arise in the year of assessment in which the degrouping takes place. However, provisions relating to controlled foreign companies in sections 9D and 9H of the Income Tax Act determine that the year of assessment in which the degrouping takes place starts and ends on the same day. It is proposed that changes be made to harmonise these provisions across the corporate reorganisation and controlled foreign company rules.

Amending rules to allow company deregistration by operation of law

In some corporate reorganisation rules, to qualify for the tax-neutral transfer of assets, one or more of the companies involved should cease to exist after the transaction. The legislation lists steps that show a taxpayer meeting this requirement. However, the steps do not take into account deregistration by operation of law. It is proposed that the rules be amended to include this option.

Business (financial sector)

Study on the tax treatment of amounts received by portfolios of collective investment schemes

In 2018, amendments were proposed in the Taxation Laws Amendment Bill to tax the profits of some collective investment schemes as revenue instead of capital. After reviewing the public comments on this draft, government decided that more time is needed for it to work with industry to find solutions that will not negatively affect the relevant groups. This study is proposed for the 2019 legislative cycle.

Reviewing the Real Estate Investment Trust (REIT) tax regime

Tax treatment of unlisted REITs:

The implementation of the Financial Sector Regulation Act (2017) and the establishment of the Financial Sector Conduct Authority allows regulation of unlisted REITs. It is proposed that government consider the regulation and tax treatment of unlisted REITs that are widely held or held by institutional investors, in line with the announcement in the 2013 *Budget Review*.

Clarifying inconsistencies in the current REIT tax regime:

The current REIT tax regime contains various inconsistencies, including the definition of rental income as applied to foreign exchange differences and the interaction between the REIT tax regime and corporate reorganisation rules. It is proposed that the legislation be amended to clarify these inconsistencies. Government undertakes to review the efficacy of the current REIT regime.

Refining taxation of risk policy funds

From 2016, risk policy funds were introduced to tax long-term insurers. However, if a policy allocated to a risk policy fund is paying benefits in the form of an annuity, then the transfer of assets between that fund and the untaxed policyholder fund of the insurer creates an administrative burden. It is proposed that the legislation be amended to address this.

Aligning income tax provisions with the Insurance Act

The Insurance Act (2017), which came into effect during 2018, replaced provisions of the Long-Term Insurance Act (1998) and the Short-Term Insurance Act (1998). It is proposed that definitions in the Income Tax Act be revised in line with the new Insurance Act.

Business (incentives)

Refining the special economic zone regime

Reviewing anomalous provisions:

As taxation provisions relating to special economic zones preceded implementation of the programme, there is now some misalignment between the provisions and the stated objectives of the programme. Government proposes to review these provisions to clarify the policy intent and address unintended misalignment with the Special Economic Zone Act (2016).

Reviewing the anti-avoidance measures relating to transactions between a company and connected persons:

Qualifying companies deriving taxable income from within the special economic zone regime can benefit from a reduced corporate tax rate of 15 per cent. To counter potential profit-shifting, a qualifying company cannot claim this benefit if more than 20 per cent of its deductible expenditure or its income arises from transactions with connected persons. This anti-avoidance measure may harm legitimate business transactions as some business models in special economic zones were accepted before the anti-avoidance measure was introduced. It is proposed that the measure be reviewed and clarified to meet its original intent.

Reviewing the venture capital company tax regime

In 2018, changes were made to the venture capital company tax regime to prevent abuse of various aspects of the system. It has come to government's attention that some taxpayers are attempting to undermine other aspects of the regime to benefit from excessive tax deductions. It is proposed that these rules be reviewed to prevent this abuse.

International

Reviewing controlled foreign company rules

Reviewing the comparable tax exemption:

As noted in the 2018 Budget, the global trend towards reducing corporate tax rates affects the current controlled foreign company comparable tax exemption. It is proposed that the exemption threshold be reduced from the current percentage, taking into account the sustainability of the tax base.

Addressing circumvention of anti-diversionary rules:

The rules for controlled foreign companies aim to prevent South African taxpayers from shifting income that should be taxed in South Africa to an offshore jurisdiction with a beneficial taxation regime. These rules are inadequate for multi-layered transactions. Government has identified schemes where controlled foreign companies (that are part of a group) are interposed in the supply chain between South African connected parties and independent non-resident customers or suppliers. It is proposed that additional measures be introduced to prevent this circumvention.

Reviewing the definition of permanent establishment

The current definition of permanent establishment in the Income Tax Act is based on the definition developed by the Organisation for Economic Co-operation and Development (OECD). In November 2017, the OECD expanded this definition. When South Africa signed the OECD multilateral convention, it did not expand the permanent establishment definition. As a result, South African tax treaties use the narrow definition of permanent establishment. However, the definition in the Income Tax Act uses the expanded OECD definition. It is proposed that the permanent establishment definition in the Income Tax Act be reviewed to determine whether a limitation is warranted.

Revising tax relief for blocked foreign funds

The Income Tax Act provides tax relief for a South African tax resident when funds are blocked in a foreign country due to currency restrictions or foreign legal limitations. The resident can claim foreign tax credits for foreign taxes paid on foreign income. These credits are lost if the blocked funds are released more than seven years from the tax year in which the foreign income accrued. It is proposed that this seven-year limitation be reconsidered.

Amendments to the definition of “domestic treasury management company”

The domestic treasury management company regime allows qualifying companies to expand into other African countries. Within this regime, a company is so defined if it is incorporated in South Africa, deemed to be incorporated in South Africa, or effectively managed from South Africa and is not subject to exchange control restrictions. In 2017, the Income Tax Act was amended to remove the incorporation requirement. However, the Reserve Bank definition in Circular 5/2013 still includes this requirement. As a result, the 2017 changes are not aligned with the Reserve Bank requirements. It is proposed that the definition of “domestic treasury management company” is changed in the Income Tax Act to reintroduce the incorporation requirement.

Revising the Income Tax Act criteria for recognised exchanges

The Income Tax Act defines a recognised exchange as a stock exchange licensed under the Financial Markets Act (2012) or a similar exchange in another country that has been recognised by the Minister of Finance in the Government Gazette. Since 2001, the criteria used to recognise foreign exchanges have not been revised. It is proposed that a review of these criteria be considered.

Reviewing the “affected transaction” definition in the arm’s length transfer pricing rules

The “affected transaction” definition relating to arm’s length transfer pricing rules in the Income Tax Act applies to transactions between connected persons as defined in the act. However, in the OECD Model Tax Convention, the transfer pricing rules apply to transactions between associated enterprises. Government proposes to review the scope of these rules to determine whether the definition in the act should be changed in line with the OECD definition.

Clarifying the interaction of capital gains tax and foreign exchange transaction rules

Assets disposed of or acquired in foreign currency are subject to taxation under both the foreign exchange transaction rules and capital gains tax rules. To prevent double taxation of assets, foreign debt is currently excluded from the specific capital gains tax rules. However, it is unclear how the general rules apply if foreign bonds are disposed at a capital gain or loss. It is proposed that these rules be reviewed to prevent potential double taxation.

Value-added tax

Reviewing the definition of “group of companies” for electronic services regulations

From 1 April 2019, regulations prescribing electronic services will expand the scope of electronic services required to pay value-added tax (VAT) in South Africa. These regulations exclude electronic services supplied between companies in a “group of companies”, if a non-resident company supplies such services to a domestic company within the same group. The regulations define “group of companies” to include two or more companies that hold shares in at least one other company such that 100 per cent of equity shares in each controlled company are directly held by the controlling company in the group. However, this 100 per cent shareholding requirement may exclude companies because of employee incentives or other empowerment programmes. It is proposed that the definition be changed to reflect this understanding. The change will come into effect on 1 April 2019.

Clarifying financial services to include the transfer of long-term reinsurance policy

The VAT Act (1991) makes provision for the activities of providing or transferring ownership of a long-term insurance policy, or providing reinsurance relating to any such policy, to be deemed to be financial services. However, the act does not specify how to treat the transfer of a long-term reinsurance policy. It is proposed that the act be amended to clarify this treatment.

Aligning provisions of the VAT Act with the Insurance Act

It is proposed that certain definitions referenced in the VAT Act are revised to align with the Insurance Act.

Refining the VAT corporate reorganisation rules

In line with the Income Tax Act, the VAT Act provides relief for companies in the same group by treating the supplier and the recipient of goods or services as the same person during corporate reorganisation transactions. If these transactions take place in terms of sections 42 or 45 of the Income Tax Act, VAT relief is only permitted if the transfer relates to a going concern. However, transfers of fixed property under these sections may not always involve a going concern, especially in sale and lease-back situations. It is proposed that the VAT Act be amended to clarify treatment in these instances.

VAT treatment of rental stock paid in terms of the National Housing Programme

In the VAT Act, a vendor (such as a municipality) is deemed to supply services to any public authority (for example, the Department of Human Settlements) if the vendor is paid or makes a payment in line with the National Housing Programme outlined in the Housing Act (1997). However, it is difficult to interpret the VAT treatment of payments relating to rental stock. It is proposed that the VAT Act be amended to clarify the treatment of rental stock in these instances.

Reviewing section 72 of the VAT Act

Section 72 of the VAT Act gives SARS discretionary powers to apply provisions relating to the calculation or payment of tax or the application of any provision, exemption or zero rate, in cases where “difficulties, anomalies or incongruities have arisen” due to the business conduct of a particular vendor or vendors. It is proposed that a constitutional review of section 72 of the VAT Act be conducted given the challenges that arose as to its application in respect of mandatory wording of the VAT Act.

Refining the VAT treatment of foreign donor-funded projects

The VAT Act provides relief for foreign donor-funded projects if they meet specified criteria. However, the criteria and the type of projects that qualify are unclear, especially if the project is sub-contracted to different contractors. It is proposed that these provisions be amended to clarify the policy intention.

Customs and excise*SARS publication of the excise rewrite discussion document*

SARS has compiled an excise rewrite discussion document that will be published for public comment as part of redrafting the excise duty legislative framework. The paper outlines the internationally recognised requirements of an excise duty administration. The current duty-at-source system is reviewed to identify possible reforms. A selected country comparison outlines reform options and the conclusion reflects the proposals that SARS supports. After comments are received, SARS will engage representative industry bodies and responsible government departments on reform proposals that require refinement.

Reviewing the tax treatment of duty-free shops

Concerns regarding duty-free shops operating within the country have been noted. The legislative framework governing duty-free shops will be reviewed to minimise any abuse and risks that may be occurring. SARS will investigate any alleged abuse and take action if required.

Excluding bulk wine movements from the compulsory tariff determination requirement

Manufacturers and importers of alcoholic beverages must obtain compulsory tariff determinations before these beverages can be removed from the excise manufacturing warehouse or cleared for home consumption upon the first importation. Bulk wine that is removed from one excise manufacturing warehouse to another is used as an input for further manufacturing and is not the final alcoholic beverage that should be subject to the tariff determination requirement. These bulk wine removals between warehouses will therefore be exempted from the obligation.

Extending the fiscal marking, tracking and tracing intervention to include excise and levy goods

The 2018 Budget strengthened the fiscal marking, tracking and tracing intervention for tobacco products to comply with South Africa's obligations under the Illicit Trade Protocol of the World Health Organisation Framework Convention on Tobacco Control. Other excise and levy goods pose similar illicit trade risks causing significant revenue losses. The intervention could also address these concerns in a cost-effective manner. Over time, the intervention will be expanded to include other excise and levy products where feasible.

Progress with the review of the diesel refund administration

During August 2018, the National Treasury and SARS jointly held extensive consultations on the published discussion paper, "Review of the Diesel Fuel Tax Refund System", through a series of industry-specific workshops. Discussions focused on defining primary production activities for different sectors, linked to the equipment and vehicles typically used in each sector; a separate diesel refund administration system; fishing and mining authorisations; outsourcing, contraction and partnerships; logbooks and recordkeeping; registration and user profiling; and special dispensations for small-scale users. Stakeholders provided more written inputs based on the workshops for their respective sectors by November 2018. These intensive consultations demonstrated the need for developing industry-specific provisions for each sector for a focused and effective diesel refund administration system. The proposed system will shift the basis from eligible users to eligible activities. The design of the new standalone diesel refund administration will be outlined in draft rules and notes that will be developed and published for public comment during the course of the year. Certain industries and representative bodies may be further engaged during this drafting process if additional consultations are needed to inform the new design.

Sharing client-specific information with relevant departments for carbon tax purposes

Implementing the carbon tax requires SARS, the Department of Environmental Affairs and the Department of Energy to share client-specific information. Provisions in the Customs and Excise Act that permit information sharing with strict confidentiality will be enhanced for the purposes of carbon taxation and the associated regulation of greenhouse gas emissions and energy efficiency.

Ad valorem proposals to consistently apply and extend current items

Expanding the computer category:

Ad valorem taxes apply to televisions and monitors with screens larger than 45 cm, irrespective of their end use. "Smart" technology items are harder to distinguish and therefore difficult to categorise. To prevent these items from escaping *ad valorem* tax, it is proposed that the computer category be expanded to include any apparatus with a screen larger than 45 cm.

Expanding the gaming category:

Ad valorem taxes on gaming consoles are currently limited to consoles that use a television screen. However, games are now displayed on many different items. It is proposed that the provisions be amended to include any external screen or surface on which gaming console images can be reproduced.

Duty rebates and refunds in circumstances of vis major

Government will review provisions relating to duty rebates and refunds in circumstances of *vis major* (an unpreventable incident caused by a superior external force) in the Customs and Excise Act and its schedules to align them with international best practice.

Curbing smuggling and illicit financial flows

Government will consider amendments enabling the confidential disclosure of names and associated reference numbers of customs clients, as well as other information necessary to verify legitimate financial flows. The proposed amendment will align the Customs and Excise Act with the similar approach adopted in the Tax Administration Act (2011).

Tax administration

Model mandatory disclosure rules and non-compliance penalties

It has emerged internationally that offshore structures and arrangements are being designed in an attempt to circumvent financial account reporting under the OECD's Common Reporting Standard. The standard is used for the exchange of information between countries. It is proposed that the OECD's model mandatory disclosure rules be implemented in South Africa to identify and counter such structures and arrangements, and that similar penalties to those currently in force for non-compliance with the reportable arrangement legislation be imposed for non-compliance with the rules.

Tax compliance certificates

The legislative provisions relating to tax compliance certificates will be updated to include recent system requirements.

■ Technical corrections

In addition to the amendments described above, the 2019 tax legislation will include various technical corrections, which mainly cover inconsequential items – typing errors, grammar, punctuation, numbering, incorrect cross-references, updating and removing obsolete provisions, removing superfluous text, and incorporating regulations and commonly accepted interpretations into formal law. Technical corrections also include changes to effective dates and the proper coordination of transitional tax changes.

A final set of technical corrections relate to modifications that account for practical implementation of the tax law. Although tax amendments go through an intensive comment and review process, new issues arise once the law is applied (including obvious omissions and ambiguities). These issues typically arise when tax returns are prepared for the first time after the tax legislation is applied. Technical corrections of this nature are limited to recent legislative changes.

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