2016 Budget, Tax and Payroll Update

Presented by

Prof Piet Nel

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Piet is the Head of the recently established School of Applied Tax at the SA Institute of Tax Professionals (SAIT). He formerly lectured in taxation at UNISA and the University of Pretoria and acted as study supervisor on post graduate level. Prior to joining SAIT, Piet was the project director for tax at SAICA. Over a period of more than a decade, Piet presented numerous tax seminars and workshops to tax practitioners.
Programme:

08:15 – 08:55  Registration
09:00 – 10:30  2016 Budget, Tax and Payroll Update
10:30 – 10:50  Tea Break (20 mins)
10:50 – 13:00  2016 Budget, Tax and Payroll Update
13:00          Conclusion
Welcome
2015 Budget & Tax Updates

Presented by Prof. Piet Nel

Upcoming CPD Events
Upcoming CPD Events
Refer to our website for all upcoming events

• 2016 Planning for HNI
• 2016 Tax on SMME’s

2016 Budget, Tax and Payroll Update
Program

• The 2016 budget
• Retirement reform – the latest and the law applying to the 2017 year of assessment
• Investments
• Employees tax 2017 and payroll issues
• The taxation of deceased persons, deceased estates (a new taxpayer) and the heirs
• Withholding tax on services
• Value-Added Tax
• Provisional tax
• Some changes to the Tax Administration Act and the amnesty

In combination, adjustments to capital gains tax and transfer duty raise R2 billion. An amount of R7.6 billion will be raised as a result of limited fiscal drag relief, less R1.1 billion for an increase in medical scheme tax credits.

To reduce the impact of inflation on lower- and middle-income earners, government proposes that the primary rebate and the bottom three income brackets be adjusted by 1.8 per cent and 3.4 per cent respectively.

Transfer duty
Government proposes to increase the transfer duty rate on property sales above R10 million from 11 percent to 13 per cent. This new rate will become effective for property acquired on or after 1 March 2016.
### Section 2 of the Transfer Duty Act

<table>
<thead>
<tr>
<th>... at the rate of ...</th>
<th>The value of the property so much of the said value or the said amount ...</th>
<th>Before 1 March 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>0% of</td>
<td>as does not exceed R750 000</td>
<td>R600 000</td>
</tr>
<tr>
<td>3% of</td>
<td>as exceeds R750 000 but does not exceed R1,25 million</td>
<td>R600 000 and R1 million</td>
</tr>
<tr>
<td>6% of</td>
<td>as exceeds R1,25 million but does not exceed R1,75 million</td>
<td>R1,25 and 1,5 million 5 per cent</td>
</tr>
<tr>
<td>8% of</td>
<td>as exceeds R1,75 million but does not exceed R2,25 million</td>
<td>R1,5 million</td>
</tr>
<tr>
<td></td>
<td><strong>Before 1 March 2016</strong></td>
<td><strong>For 2015</strong></td>
</tr>
<tr>
<td>11% of</td>
<td>as exceeds R2.25 million but does not exceed 10 million</td>
<td>as exceeds R2,25 million</td>
</tr>
<tr>
<td>13% of</td>
<td>as exceeds R10 million</td>
<td></td>
</tr>
</tbody>
</table>

Applies in respect of property acquired or interest or restriction in any property renounced on or after 1 March 2016

### Fixing of rates of normal tax

in respect of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit) of any natural person, deceased estate, insolvent estate or special trust in respect of any year of assessment commencing on or after 1 March 2016 or ending on 28 February 2017

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Rate of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not exceeding R188 000</td>
<td>18 per cent of taxable income</td>
</tr>
<tr>
<td>Exceeding R188 000 but not exceeding R293 000</td>
<td>R33 840 plus 26 per cent of amount by which taxable income exceeds R188 000</td>
</tr>
<tr>
<td>Exceeding R293 000 but not exceeding R406 400</td>
<td>R61 269 plus 31 per cent of amount by which taxable income exceeds R293 000</td>
</tr>
<tr>
<td>Exceeding R406 400 but not exceeding R550 100</td>
<td>R96 264 plus 36 per cent of amount by which taxable income exceeds R406 400</td>
</tr>
<tr>
<td>Exceeding R550 100 but not exceeding R701 300</td>
<td>R147 996 plus 39 per cent of amount by which taxable income exceeds R550 100</td>
</tr>
<tr>
<td>Exceeds R701 300</td>
<td>R206 964 plus 41 per cent of amount by which taxable income exceeds R701 300</td>
</tr>
</tbody>
</table>

... deceased estate ...
Fixing of rates of normal tax

The rate of tax to be levied in respect of the taxable income of a trust in respect of any year of assessment commencing on or after 1 March 2016 or ending on 28 February 2017 is 41 per cent.

No change from 2016 year.

Fixing of rates of normal tax

The rate of tax to be levied in respect of the taxable income of a company (in respect of any year of assessment ending during the period of 12 months ending on 31 March 2017) is, subject to the provisions of paragraph 10, as follows:

(a) 28 per cent of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c) and (d))

No change.

... mining for gold

... long-term insurance business

... in respect of its ... individual policyholder fund, 30%; company policyholder fund and corporate fund, 28%
Fixing of rates of normal tax

... any public benefit organisation that has been approved... or any recreational club that has been approved... or any small business funding entity...

4. The rate of tax referred to in section 2(1) to be levied in respect of the taxable income of any public benefit organisation that has been approved by the Commissioner in terms of section 30(3) of the Income Tax Act, 1962, or any recreational club that has been approved by the Commissioner in terms of section 30A(2) of that Act or any small business funding entity that has been approved by the Commissioner in terms of section 30C is 28 per cent—

(a) in the case of an organisation, club or small business funding entity that is a company, in respect of any year of assessment ending during the period of 12 months ending on 31 March 2017; or

(b) in the case of an organisation or small business funding entity that is a trust, in respect of any year of assessment commencing on 1 March 2016 or ending on 28 February 2017.

... approved by SARS...

---

Fixing of rates of normal tax

... any company which qualifies as a small business corporation as defined in section 12E... in respect of any year of assessment ending during the period of 12 months ending on 31 March 2017

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>Rate of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not exceeding R75 000</td>
<td>0 per cent of taxable income</td>
</tr>
<tr>
<td>Exceeding R75 000 but not exceeding R365 000</td>
<td>7 per cent of amount by which taxable income exceeds R75 000</td>
</tr>
<tr>
<td>Exceeding R365 000 but not exceeding R550 000</td>
<td>R20 300 plus 21 per cent of amount by which taxable income exceeds R365 000</td>
</tr>
<tr>
<td>Exceeding R550 000</td>
<td>R59 150 plus 28 per cent of amount by which taxable income exceeds R550 000</td>
</tr>
</tbody>
</table>

It is proposed that the legislation be amended to make it clear that small business corporations in special economic zones are subject to corporate income tax at either the applicable graduated rate or 15 per cent, whichever is lower. To be eligible for the 15 per cent rate, the small business corporation will still need to comply with the provisions of section 12R of the Income Tax Act.
Fixing of rates of normal tax

... a qualifying company within a special economic zone

The rate of tax to be levied on taxable income attributable to income derived by a qualifying company within a special economic zone (as contemplated in section 12R of the Income Tax Act, 1962), is 15 cents on each Rand of taxable income.

Fixing of rates of normal tax

... in respect of the taxable turnover of a person that is a registered micro business ...
... ending during the period of 12 months ending on 28 February 2017...

<table>
<thead>
<tr>
<th>Taxable turnover</th>
<th>Rate of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not exceeding R335 000</td>
<td>0 per cent of taxable turnover</td>
</tr>
<tr>
<td>Exceeding R335 000 but not exceeding</td>
<td>1 per cent of amount by which taxable turnover</td>
</tr>
<tr>
<td>R500 000</td>
<td>exceeds R355 000</td>
</tr>
<tr>
<td>Exceeding R500 000 but not exceeding</td>
<td>R1 650 plus 2 per cent of amount by which</td>
</tr>
<tr>
<td>R750 000</td>
<td>taxable turnover exceeds R500 000</td>
</tr>
<tr>
<td>Exceeding R750 000</td>
<td>R6 650 plus 3 per cent of amount by which</td>
</tr>
<tr>
<td></td>
<td>taxable turnover exceeds R750 000</td>
</tr>
</tbody>
</table>

Remember: A person that meets the requirements may elect to be registered as a micro business before the beginning of a year of assessment or such later date during that year of assessment as SARS may prescribe by notice in the Gazette; or in the case of a person that commenced business activities during a year of assessment, within two months from the date of commencement of business activities.
### Fixing of rates of normal tax

... a retirement fund lump sum withdrawal benefit ...

<table>
<thead>
<tr>
<th>Taxable income from lump sum benefits</th>
<th>Rate of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not exceeding R25 000</td>
<td>0 per cent of taxable income</td>
</tr>
<tr>
<td>Exceeding R25 000 but not exceeding  R660 000</td>
<td>18 per cent of amount by which taxable income exceeds R25 000</td>
</tr>
<tr>
<td>Exceeding R660 000 but not exceeding  R990 000</td>
<td>R114 300 plus 27 per cent of amount by which taxable income exceeds R660 000</td>
</tr>
<tr>
<td>Exceeding R990 000</td>
<td>R203 400 plus 36 per cent of amount by which taxable income exceeds R990 000</td>
</tr>
</tbody>
</table>

... a retirement fund lump sum benefit ... a severance benefit ...

<table>
<thead>
<tr>
<th>Taxable income from lump sum benefits</th>
<th>Rate of tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not exceeding R500 000</td>
<td>0 per cent of taxable income</td>
</tr>
<tr>
<td>Exceeding R500 000 but not exceeding  R700 000</td>
<td>18 per cent of amount by which taxable income exceeds R500 000</td>
</tr>
<tr>
<td>Exceeding R700 000 but not exceeding  R1 050 000</td>
<td>R36 000 plus 27 per cent of amount by which taxable income exceeds R700 000</td>
</tr>
<tr>
<td>Exceeding R1 050 000</td>
<td>R130 500 plus 36 per cent of amount by which taxable income exceeds R1 050 000</td>
</tr>
</tbody>
</table>

Still cumulative and over the different tables.

### Normal tax rebates

<table>
<thead>
<tr>
<th>Section 6</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>primary rebate</td>
<td>R23 500</td>
<td>R13 257</td>
<td>R12 726</td>
</tr>
<tr>
<td>secondary rebate</td>
<td>R7 407</td>
<td>R7 407</td>
<td>R7 110</td>
</tr>
<tr>
<td>tertiary rebate</td>
<td>R2 466</td>
<td>R2 466</td>
<td>R2 367</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 6A</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>in respect of benefits to the person</td>
<td>R286</td>
<td>R270</td>
<td>R257</td>
</tr>
<tr>
<td>in respect of benefits to the person and one dependant</td>
<td>R572</td>
<td>R540</td>
<td>R514</td>
</tr>
<tr>
<td>in respect of benefits to each additional dependant</td>
<td>R192</td>
<td>R181</td>
<td>R172</td>
</tr>
</tbody>
</table>
What does the Minister want to change?

I start with the tax proposals in Chapter 4. Most of the Annexure C proposals will be dealt with when the 2015 amendments are discussed.

Budget 2016: Chapter 4

Some comments - overview:

October 2015

... former Minister of Finance Nhlanhla Nene cautioned that, “If we do not achieve growth, revenue will not increase. If revenue does not increase, expenditure cannot be expanded.” Since then, the economic growth outlook has deteriorated.

Tax revenues in 2015/16 are projected to be R11.6 billion below the 2015 Budget forecast...

Key considerations include the need to maintain the progressive nature of South Africa’s fiscal system, and ensure that tax measures do not unduly prejudice economic growth or poor households.

While personal and corporate income taxes are relatively high, the VAT rate is lower than in most other jurisdictions, especially those with high levels of social spending.
... a recent World Bank report concluded that VAT and fuel levies are mildly progressive in South Africa, with poorer households paying a lower share of such taxes than their share of disposable income. Most VAT revenue is contributed by the top 20 per cent of households.

Last year, government increased marginal rates of personal income tax. In future, the balance between taxes on income (direct taxes) and consumption (indirect taxes) will be an important consideration in ensuring a diversified, efficient, equitable and sustainable tax system.

The current tax mix suggests that there may be greater room to increase indirect taxes, such as VAT. Any proposals along these lines would need to be accompanied by measures to improve the pro-poor character of expenditure programmes so that the fiscal system remains progressive.

South Africa’s voluntary disclosure programme gives non-compliant taxpayers the opportunity to correct their tax affairs. With a new OECD global standard for the automatic exchange of financial information between tax authorities coming into effect from 2017, time is running out for taxpayers who still have undisclosed assets abroad. The National Treasury, SARS and the Reserve Bank have received requests from parties with unauthorised foreign assets who wish to regularise their affairs. Accordingly, government proposes to relax voluntary disclosure rules for a period of six months, from 1 October 2016, to allow non-compliant individuals and firms to disclose assets held and income earned offshore.

Note: a draft Bill gave some idea of what this will entail and will be dealt with in the Tax Administration part of this seminar.
Budget 2016: Chapter 4
Learnership and employment tax incentives

Both incentives will expire towards the end of 2016. SARS has made data on the employment tax incentive available and a review is under way. It is envisaged that results from the review of both incentives will be published and presented to Parliament by the third quarter of 2016.

If there are delays in completing these reviews, government may consider extending the incentives by one year.

Budget 2016: Chapter 4
Increasing the incentive for employers to provide bursaries

To support skills development, government proposes to increase the fringe benefit tax exemption thresholds for bursaries provided to employees or their relatives. The income eligibility threshold for employees to access the relief will be increased from R250 000 to R400 000. The value of qualifying bursaries will be increased from R10 000 to R15 000 for National Qualifications Framework levels 1 to 4, and from R30 000 to R40 000 for levels 5 to 10.

The 'income eligibility threshold' is the remuneration proxy – see the payroll discussion.
Government is considering expanding the list of public-benefit education and training activities to accommodate industry-based training organisations, which would exempt them from tax.

Research and development

A task team established by the Minister of Science and Technology is investigating the challenges faced by businesses in trying to access the R&D tax incentive. Its work should be completed in April 2016, after which proposals will be considered to enhance this incentive.

Budget 2016: Chapter 4

Hybrid debt instruments

Government will implement measures, effective 24 February 2016, to eliminate mismatches associated with hybrid debt instruments where the issuer is not a South African resident taxpayer. Such situations potentially result in double non-taxation. Interest payments on debt and dividend payments on equity are treated differently for tax purposes. Hybrid financial instruments, which exhibit both debt and equity features, have become commonplace. This can result in one party to a transaction deducting the payment while the counterparty receives exempt income.

Existing rules reclassify an interest payment as a dividend payment for tax purposes. However, it is only possible to deny interest deductions for a South African resident that issues a debt instrument. This results in a mismatch in tax treatment between two countries, as the South African rules apply a low or zero tax rate to the reclassified dividend payment.
Budget 2016: Chapter 4

Tax treatment of trusts

An important role of the tax system is to reduce inequality. Some taxpayers use trusts to avoid paying estate duty and donations tax. For example, if the founder of a trust sells his or her assets to the trust, and grants the trust an interest-free loan as payment, donations tax is not triggered and the assets are not included in his or her estate at death.

To limit taxpayers’ ability to transfer wealth without being taxed, government proposes to ensure that the assets transferred through a loan to a trust are included in the estate of the founder at death, and to categorise interest-free loans to trusts as donations.

Further measures to limit the use of discretionary trusts for income-splitting and other tax benefits will also be considered.

Budget 2016: Chapter 4

Government proposes to increase the inclusion rate for capital gains...

Paragraph 10 of the Eighth Schedule to the Income Tax Act, is amended by substituting ...

(a) in the case of a natural person or a special trust as defined in section 1 of the Act, [33,3] 40 per cent

(b) in the case of an insurer, in respect of its—
   (i) individual policyholder fund, [33,3] 40 per cent;
   (ii) untaxed policyholder fund, 0 per cent.
   (iii) company policyholder fund, [66,6] 80 per cent; and
   (iv) risk policy fund, [66,6] 80 per cent;

(c) in any other case, [66,6] 80 per cent,

Apply in respect of years of assessment commencing on or after 1 March 2016. Section 29B deemed disposals in (b) - 29 February 2016

[33,3] goes to 40%, [66,6] goes to 80%
Budget 2016: Chapter 4

Government proposes to increase the inclusion rate for capital gains...
The annual amount above which capital gains become taxable for individuals will increase from R30 000 to R40 000.
Nothing in the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2016. (Bill).

Encouraging sustainable practices for a cleaner environment

Government is committed to protecting the environment. In addition to raising revenue, environmental taxes and levies are designed to encourage businesses and individuals to make more environmentally friendly decisions about their purchases and behaviour.

Encouraging the manufacture of clean fuels

Compliance with new fuel specifications will require an estimated R40 billion in capital expenditure by South African oil refineries. To facilitate the necessary upgrades, government proposes to provide an accelerated depreciation allowance for a limited time. This would allow qualifying capital expenditure to be deducted over a three-year period, instead of the normal five years.
Encouraging sustainable practices for a cleaner environment

Renewable energy incentives

Over the past several years, government has provided incentives to encourage investment in renewable energy through targeted accelerated depreciation allowances. However, capital expenditure that indirectly supports renewable electricity production, such as the construction of fences and roads, does not qualify for such deductions. To encourage investment in renewable energy, government will consider enhancing existing provisions to include some necessary indirect infrastructure costs.

Fuel taxes

Fuel taxes raise general revenue, fund compensation for road accidents, and help to address pollution and congestion. Government proposes to increase the general fuel levy by 30c/litre, effective 6 April 2016.

Encouraging sustainable practices for a cleaner environment

Tyre levy

The tyre levy proposed in the 2015 Budget is intended to reduce waste, while encouraging reuse, recycling and recovery, and discouraging disposal into landfills. This levy will be implemented at a rate of R2.30/kg of tyre, effective 1 October 2016. See Annexure C for more details. The levy will replace the current fee arrangements for tyres, as regulated by the Department of Environmental Affairs.

Government proposes the introduction of an environmental levy on new and re-treaded pneumatic tyres with effect from 1 October 2016.
Encouraging sustainable practices for a cleaner environment

**Incandescent globe tax**

An environmental levy on incandescent light bulbs was introduced in 2009 to encourage the use of more efficient compact fluorescent bulbs and reduce electricity demand. This levy was last increased in 2013. To take account of inflation, it is proposed that the levy be increased from R4 to R6 per globe, effective 1 April 2016.

**Plastic bag levy**

This levy, in place for 10 years, aims to counter the dispersion of plastic bags that end up as wind-blown litter or in waste facilities. Overall, it has helped to reduce the production and import of plastic bags. This levy was last increased in 2013. Government proposes to increase the levy from 6 cents to 8 cents per bag, effective 1 April 2016, to account for inflation.

Encouraging sustainable practices for a cleaner environment

The motor vehicle emissions tax aims to encourage consumers to use more fuel-efficient, low-carbon-emitting vehicles, and manufacturers to improve fuel efficiency. To maintain this strategy, government proposes that a combined inflationary adjustment based on the 2013–2015 period be implemented, effective 1 April 2016.

For passenger vehicles, this will increase the tax rate from R90 to R100 for every gram of emissions/km above 120 gCO2/km and, for double cabs, from R125 to R140 for every gram of emissions/km in excess of 175 gCO2/km.
Encouraging sustainable practices for a cleaner environment

Taxing sugar-sweetened beverages

Obesity stemming from overconsumption of sugar is a global concern. Over the past 30 years the problem has grown in South Africa, which has the worst obesity ranking in sub-Saharan Africa, and led to greater risk of heart disease, diabetes and cancer.

Government proposes to introduce such a tax on 1 April 2017 to help reduce excessive sugar intake.

Encouraging sustainable practices for a cleaner environment

Excise duties on alcoholic beverages and tobacco products

In line with health and fiscal policy objectives, tax rates on alcoholic beverages have been consistently increased beyond inflation since 2002. The 2016 Budget continues this trend, with excise duty rate increases of between 6.7 per cent and 8.5 per cent. Mixtures of grain-fermented beverages (such as beverages made from maize) with an alcohol content ranging from 2.5 per cent to 9 per cent by volume are proposed as an additional excise duty category.

The excise adjustments for cigarettes, cigarette tobacco and pipe tobacco are attributable to inflation-linked price increases for the most popular brands in each category.

A review of tobacco product taxation will begin in 2016/17, and will consider both existing and non-traditional tobacco products and their alternatives, such as e-cigarettes.
**Annexure C – not dealt with later**

Clarification regarding raising an assessment for re-calculating fringe benefit:
Paragraph 3(2) of the Seventh Schedule of the Income Tax Act allows the SARS Commissioner under certain circumstances to re-determine the cash equivalent of a fringe benefit and assess either the employer or the employee. Uncertainty exists regarding under what circumstances this determination will be made. To provide clarity, it is proposed that the wording of paragraph 3(2) of the Act’s Seventh Schedule be aligned with the wording in paragraph 5(2) of the Fourth Schedule.

Alignment of the definition of private travel:
The concept of private travel has been difficult for employers to apply in practice. The difference in the wording of the definition of private travel in section 8 and the Seventh Schedule of the Income Tax Act adds to the difficulties. To correct this, it is proposed that the wording of the two provisions be aligned.

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**Retirement reform**

After consideration of the comments received, Government proposes to proceed with the broader objective of retirement reforms (as approved in the 2013 Taxation Laws Amendment Act) to ensure more equity across income groups.

The Minister must, after consulting relevant stakeholders, review the impact and implementation of this and table a report on the review in the National Assembly not later than 30 June 2018.
Accordingly, the following changes will be introduced through an urgent tax amendment bill, to be tabled next week:

- The bill will propose to Parliament to postpone the annuitisation requirement for provident funds for two years, until 1 March 2018.
- Provident fund members will not be required to annuitise contributions to their funds that were made before 1 March 2018.
- To ensure the integrity of the retirement system, the ability to transfer tax-free from pension fund to provident fund will also be delayed until 1 March 2018.
- Clarity on possible misinterpretations will also be provided in the bill, to ensure that payroll administrators apply the law in line with original intentions.

Media release 18 February 2016
The new rules for provident funds

- (b) the rules of the fund provide—
  - (i) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;
  - (ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which—
    - (aa) the fund comes into operation; or
    - (bb) the employer becomes a participant in that fund;
  - (iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than 12 months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;
  - (iv) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R165 000 or where the employee is deceased:

These changes are postponed to 1 March 2018

The new rules – the before 1 March proviso

in determining the value of the retirement interest

<table>
<thead>
<tr>
<th>an amount calculated as follows must not be taken into account—</th>
</tr>
</thead>
<tbody>
<tr>
<td>in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2016</td>
</tr>
<tr>
<td>or</td>
</tr>
<tr>
<td>in any other case of a person who is a member of a provident fund</td>
</tr>
</tbody>
</table>

For all three the funds

any amount contributed to a provident fund of which that person is a member on 1 March 2016

with addition of any other amounts credited to the member’s individual account of the provident fund prior to 1 March 2016

any fund return, as defined in the Pension Funds Act, in relation to the contributions or amounts credited;

reduced by any amounts permitted in terms of any law to be deducted from the member’s individual account of the provident fund

1 March 2018
The new rules – employer deduction

For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived—

- any amount contributed by a person that is an employer during the year of assessment for the benefit of any employee or former employee of the employer or for any dependant or nominee of a deceased employee or former employee of that employer to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund.

For the purposes of this paragraph a partner in a partnership is deemed to be an employee of the partnership and a partnership is deemed to be the employer of the partners in that partnership.

For Employers Section 11(l)

The new rules – taxable benefit

For the purposes of the Seventh Schedule and of paragraph (i) of the definition of “gross income” in section 1 of this Act, a taxable benefit shall be deemed to have been granted by an employer to his employee in respect of the employee’s employment with the employer, if as a benefit or advantage of or by virtue of such employment or as a reward for services rendered or to be rendered by the employee to the employer:

- the employer has made any contribution for the benefit of any employee to any pension fund, provident fund or retirement annuity fund.
The new rules – taxable benefit

The cash equivalent of the value of the benefit contemplated in paragraph 2(l),

where the benefits payable to members in respect of a fund member category of a pension, provident or retirement annuity fund

- consists solely of defined contribution components,
  - is the value of the amount contributed by the employer for the benefit of an employee who is a member of that fund.

- consists of components other than only defined contribution components,
  - is an amount that must be determined in accordance with a formula.

The new rules – member deduction

For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived—

- in terms of the rules of that fund
- any amount contributed during a year of assessment to any pension fund, provident fund or retirement annuity fund by a person that is a member of that fund:
  - Section 11(k)

- Provided that—

Act No. 31 of 2013
The new rules – member deduction

Provided that: (i) the total deduction to be allowed must not in the year of assessment exceed the lesser of:

- R350 000;
- 27.5% of the higher of the person’s:

or

other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit:

- remuneration as defined in paragraph 1 of the Fourth Schedule;
- taxable income as determined before allowing any deduction under this paragraph;

Section 11(k) continued

Provided that:

The new rules – member deduction

Provided that: (ii) any amount so contributed in any previous year of assessment which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of that year of assessment is deemed to be an amount so contributed in the current year of assessment, except to the extent that the amount so contributed has been:

- allowed as a deduction against income in any year of assessment;
- accounted for under paragraph 5(1)(a) or 6(1)(b)(i) of the Second Schedule; or
- exempted under section 10C;
The new rules – member deduction

Provided that:

(iii) any amount so contributed by an employer of the person for the benefit of the person must, to the extent that the amount has been included in the income of the person as a taxable benefit in terms of the Seventh Schedule, be deemed to have been contributed by the person;

(iv) for the purposes of this paragraph, a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;

The new rules – summary (member)

Amount contributed in any previous year of assessment which has been disallowed

- Amount contributed during a year of assessment to any pension fund, provident fund or retirement annuity fund by a person that is a member of that fund
- any amount contributed by a person that is an employer for the benefit of
- Amount that qualifies for the deduction

Calculate 27.5% of taxable income (before this deduction) and of remuneration
Take the higher of the two
If it is R350 000 or less, deduct the full amount
If it is more than R350 000 it is carried forward to the next year of assessment
### The new rules – lump sums

For all the funds the following applies with respect to the lump sum that may be taken at retirement (death):

- ... that not more than one-third of the total value of the retirement interest may be commuted for a single payment,

- and that the remainder must be paid in the form of an annuity (including a living annuity)

- except where two-thirds of the total value does not exceed R165 000 or where the employee is deceased

If the two-thirds is R165 000, then the full retirement interest is R247 500. Until 29 February 2016 it was R50 000 and R75 000 respectively. The R100 000 and R150 000 were replaced before the respective amendments became effective.

As was already mentioned, the value of the retirement interest in a provident fund at 1 March 2018 will be excluded from this – can therefore be taken as a lump sum.

### Retirement reform – non-residents

The current provisions do not allow for expatriates to withdraw a lump sum from their retirement annuity when they cease to be tax resident and leave South Africa or when they leave South Africa at the expiry of the work visa.

The definition of “retirement annuity fund” in section 1(b)(x)(dd) provides for a lump sum payment of benefits where the member emigrated from the country and that emigration is recognized by the South African Reserve Bank for the purposes of exchange control.

This definition only caters for South African nationals who emigrate to another country. When expatriates cease to be tax resident and/or leave South Africa after the term of the fixed employment contract, or when they leave South Africa at the expiry of their work visa, they are not regarded as having emigrated by the South African Reserve Bank for the purposes of exchange control. As a result, they are not entitled to receive a lump sum payment from their retirement annuity funds.
Retirement reform – non-residents

the definition of “retirement annuity fund” in paragraph (b)(x) of the proviso for item (dd) is substituted by the following item:

that the rules of the fund provide that a member who discontinues his or her contributions prior to his or her retirement date shall be entitled to—

(dd) the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member:

(A) ceases to be a resident; or

(B) departed from the Republic at the expiry of a visa obtained for the purposes of—

(AA) working as contemplated in paragraph (i) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002, or

(BB) a visit as contemplated in paragraph (b) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002, issued in terms of paragraph (b) to the proviso of section 11 of that Act by the Director-General, as defined in section 1 of that Act

Retirement reform – withdrawal or resignation

Paragraph 6(1) of the Second Schedule:
The deduction to be allowed for the purposes of paragraph 2(1)(a)(ii) or (b) is an amount equal to—

(a) in the case of a lump sum benefit contemplated in paragraph 2(1)(b) (iA) and (iB), so much of the benefit as is paid or transferred for the benefit of the person from a—

(i) pension fund, pension preservation fund, provident fund or provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

... into any ...

or (ii) retirement annuity fund into any retirement annuity fund; and
The 2008 Taxation Laws Amendment Act removed a limitation that individuals with a retirement annuity fund would be required to retire (purchase an annuity) before they reached the age of 70. The intention here was to allow individuals to work beyond the regular retirement age and still contribute to their retirement.

In the same year, the Estate Duty Act was amended to exclude lump sum retirement assets from the dutiable portion of the estate upon death (pension annuities were already exempt). The explanatory memorandum stated that the amendment was intended to “alleviate financial difficulties that a family may face upon the death of the family’s income provider” and that the change was “in line with Government’s efforts to promote long-term retirement savings”.

These two amendments opened up an opportunity for individuals to use retirement annuity contributions to avoid estate duty. Contributions to retirement annuity funds that did not receive a deduction, since they were above the deductibility limit, could pass to the estate upon death (without being subject to the retirement lump sum tax tables) and could then pass to the beneficiaries of the estate free from estate duty.

Although it would be more difficult to actively plan, the same route for avoidance of estate duty could potentially exist for contributions to provident funds or pension funds that were above the deductibility limits.

Comes into operation on 1 January 2016 and applies in respect of the estate of a person who dies on or after that date in respect of contributions made on or after 1 March 2015.
**Retirement reform – at death**

Section 3(2)(bA) of the Estate Duty Act, 1955

“Property” means any right in or to property, movable or immovable, corporeal or incorporeal, and includes—

so much of the amount of any contribution made by the deceased in consequence of membership or past membership of any pension fund, provident fund, or retirement annuity fund, as was not allowed as a deduction in terms of section 11(k) or (n) of the Income Tax Act, 1962 ..., or paragraph 2 of the Second Schedule to that Act or, as was not exempt in terms of section 10C of that Act in determining the taxable income as defined in section 1 of that Act, of the deceased;’

... as was not allowed as a deduction in terms of section 11(k) or (n) of the Income Tax Act, 1962..., or paragraph 2 of the Second Schedule to that Act or, as was not exempt in terms of section 10C of that Act in determining the taxable income as defined in section 1 of that Act ...

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**Investment income**

No change to the interest exemptions in section 10(1)(i).

There shall be exempt from normal tax any amount received by or accrued to a natural person or deceased estate or insolvent estate of that person in respect of a tax free investment.

Section 64F(1): Any dividend is exempt from the dividends tax to the extent that it does not consist of a dividend in specie if the beneficial owner is (o) a natural person or deceased estate or insolvent estate of that person in respect of a dividend paid in respect of a tax free investment as contemplated in section 12T(1).

The section 12T amendments are deemed to have come into operation on 1 March 2015.
Exemption of foreign dividends

Section 10B of the Income Tax Act, 1962, was amended by the substitution in subsection (3)(b)(ii) for item (aa) of the following item:

“(aa) where the person is a natural person, deceased estate, insolvent estate or trust, the ratio of the number [25] 26 to the number [40] 41;”.

This is deemed to have come into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

No need for a change in 2017 as there was no increase in the tax rate.

Withholding taxes

A foreign person is exempt from the withholding tax on royalties if—
(a) ... natural person who was physically present in the RSA for a period exceeding 183 days ...; or
(b) the property in respect of which that royalty is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer in terms of Chapter 3 of the Tax Administration Act; or
(c) that royalty is paid by a headquarter company ...

Section 50A(1):
“ ’interest’ means interest as contemplated in paragraph (a) or (b) of the definition of ’interest’ in section 24J(1);”.

Comes into operation on 1 March 2016
Withholding of amounts from payments to non-resident sellers of immovable property

Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (14) for paragraph (b) of the following paragraph:

(b) in respect of any deposit paid by a purchaser for purposes of securing the disposal of the immovable property by the seller to that purchaser, until the agreement for that disposal has become unconditional, in which case any amount which would have been required to be withheld from the amount of that deposit, must be withheld from the first following payments made by that purchaser in respect of that disposal.

Withdrawal of withholding tax on service fees

The withholding tax on service fees has introduced unforeseen issues, including uncertainty on the application of domestic tax law and taxing rights under tax treaties.

To resolve these issues, it is proposed that the withholding tax on service fees be withdrawn from the Income Tax Act and dealt with under the provisions of reportable arrangements in the Tax Administration Act (2011).
Payroll related

• Tax tables – covered in the first part
  – When can you apply the tax rates announced in the budget?
• How does the retirement reform impact the monthly returns?
  – Employees tax, UIF and SDL?
• How is the medical rebates taken into account?
• Bursaries
• Residential accommodation changes

When can you apply the tax rates announced in the budget?

Paragraph 2(1):
Every—
(a) employer who is a resident; or
(b) representative employer (employer who is not a resident),
who pays or becomes liable to pay any amount by way of remuneration to any employee must, unless SARS has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum (Second Schedule), deduct from the employees benefit or minimum individual reserve, by way of employees’ tax an amount which must be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable,
When can you apply the tax rates announced in the budget?

Paragraph 9(1):
SARS may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement or as varied by the Minister under section 5(3) of the Act, to the rebates applicable in terms of section 6 and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees’ tax to be deducted from any amount of remuneration must be determined in accordance with such tables.

Any tables prescribed by SARS in accordance with subparagraph (1) shall come into force on such date as may be notified by the Commissioner in the Gazette, and shall remain in force until withdrawn by the Commissioner.

Determining the balance of remuneration from 1 March 2016

Start with

Remuneration

Deduct

- contribution by the employee to a pension fund or provident fund
- contribution to a retirement annuity fund by the employee
- any contribution made by the employer to any retirement annuity fund
- any section 18A donation made by the employer on behalf of the employee

Equals

the balance of (the) remuneration

Paragraph 4(2) summary
Determining the balance of remuneration from 1 March 2016

Start with Remuneration

This includes the employer contributions, unless the nil value applies

Deduct

any contribution by the employee concerned to any pension fund or provident fund which the employer is entitled or required to deduct from that remuneration

Limited to 27,5% or R350 000 (R1 272 727)

Note: The employer must only have regard to the remuneration – not taxable income.

Start with Remuneration

• As “remuneration” (in terms of the Unemployment Insurance Contributions Act, 2002) means “remuneration” as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, the amount of the taxable benefit in terms of paragraph 12D will now increase this amount and the UIF contribution will increase.

• For the purposes of the skills development levy, the leviable amount means the total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month, as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act for the purposes of determining the employer’s liability for any employees’ tax in terms of that Schedule, whether or not such employer is liable to deduct or withhold such employees’ tax.
What about medical?

There must be deducted from the amount to be withheld or deducted by way of employees’ tax as contemplated in paragraph 2 the amount—

of the medical scheme fees tax credit that applies in respect of that employee in terms of section 6A;

and where the employee is entitled to a rebate under section 6(2)(b), of the additional medical expenses tax credit that applies in respect of that employee in terms of section 6B(3)(a)(i),

if the employer effects payment of the medical scheme fees as contemplated in section 6A(2)(a)

the employer does not effect payment of the medical scheme fees as contemplated in section 6A(2)(a), at the option of the employer, if proof of payment of those fees has been furnished to the employer.

Section 10(1)(q) - bona fide scholarship or bursary

(A) R10 000 in respect of—

(AA) grade R to grade twelve as contemplated in the definition of ‘school’ in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996); or

(BB) a qualification to which an NQF level from 1 up to and including 4 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and
Relocation of employee

Section 10(1)(nB)(ii)

of [such] the costs [as the Commissioner may allow] which have been incurred by the employee in respect of the sale of his or her previous residence and in settling in permanent residential accommodation at his or her new place of residence

Apply in respect of amounts received during years of assessment commencing on or after 1 January 2016

residential accommodation

Paragraph 9 of the Seventh Schedule – subparagraph (3)(a)(ii)

“‘B’ represents an abatement equal to an amount of [R73 650] R 75 000:”.

‘remuneration proxy’

‘remuneration proxy’, in relation to a year of assessment, means the remuneration, as defined in paragraph 1 of the Fourth Schedule, derived by an employee from an employer during the year of assessment immediately preceding that year of assessment, other than the cash equivalent of the value of a taxable benefit derived from the occupation of residential accommodation as contemplated in paragraph 9(3) of the Seventh Schedule
residential accommodation

The new wording of subparagraph (3):

Subject to the provisions of subparagraph [(3A)] (3C) and (4), the rental value to be placed on such accommodation for any year of assessment shall be an amount determined in accordance with the formula.“; and

(d) by the deletion of subparagraph (3A).

Employee’s right to use an asset

• Paragraph 6(4)(b) of the Seventh Schedule to the Income Tax Act, is hereby amended:

• (b) the asset consists of any equipment or machine which the employer concerned allows his employees in general to use from time to time for short periods and [the Commissioner is satisfied that] the value of the private or domestic use of the asset, as determined under subparagraph (2), [is negligible] as does not exceed an amount determined on a basis as set out in a public notice issued by the Commissioner;

• At the time the notes were finalised this was not available yet
Alignment of the definition of private travel

The concept of private travel has been difficult for employers to apply in practice. The difference in the wording of the definition of private travel in section 8 and the Seventh Schedule of the Income Tax Act adds to the difficulties.

To correct this, it is proposed that the wording of the two provisions be aligned.

Anglo Platinum Management Services v CSARS

Judge Cachalia

The scheme involved its employees sacrificing or foregoing a portion of their cash remuneration ‘packages’ in return for their use of company-owned motor vehicles.

What is in issue is whether the scheme constituted a valid and binding salary sacrifice arrangement that gave rise to a cash equivalent to be determined in accordance with the Seventh Schedule under para (i).
Anglo Platinum Management Services v CSARS

Judge Cachalia

In this court, the Commissioner eschews reliance on the Tax Court’s judgment. Instead he approaches the matter on a firmer and proper foundation that in commercial practice and in the commercial world employers and employees are entitled to structure salary packages in a tax efficient manner. And that salary sacrifice arrangements, whereby employees sacrifice or forego a portion of their cash salaries in return for some *quid pro quo* or fringe benefit from the employer that reduces their tax liability, are perfectly lawful.

In addition, the Commissioner does not contend that the scheme was a sham or disguised to appear to be genuine, whereas in truth it was not. In other words he does *not* invoke the *substance over form* doctrine. Instead his case is that the taxpayer and its employees did not achieve what they purported to achieve, namely, a valid and binding salary sacrifice agreement. And therefore, that the use of the vehicles, was, in reality, a consideration the employees received as part of their employment and formed part of their gross remuneration.
Anglo Platinum Management Services v CSARS

Judge Cachalia

It is a question of fact in each case whether a salary sacrifice agreement was achieved. In this regard a court is not concerned with the subjective belief of the parties to the agreement – no matter how genuine this belief may be – but with whether the facts, objectively viewed, establish that this result was attained.

It would thus have to show that the employees’ remuneration packages were structured in a manner that they received their remuneration partly by way of cash and the balance by way of a fringe benefit; and that the taxpayer unconditionally assumed liability for payments and contributions for the motor vehicles that were part of the scheme, thereby releasing its employees from any such obligation.

Anglo Platinum Management Services v CSARS

Judge Cachalia

In other words by foregoing part of their remuneration package in return for the use of a motor vehicle, the employees divested themselves of their right to this amount of money.

Therefore, the Commissioner’s argument that the use of the vehicles was in reality a consideration received by each employee as part of their employment and thus taxable under para (c) of the definition ‘gross income’, as opposed to para (i) as a taxable benefit by virtue of a valid salary sacrifice, must fail.
EXPLANATORY MEMORANDUM ON THE TAXATION LAWS AMENDMENT BILL, 2015
4 December 2015

Removing anomalies for income and disposals to and from deceased estate

... a new exit charge upon death and a revised version of section 25 will now give effect to the rules currently contained in paragraphs 40 and 41 of the Eighth Schedule and will subject to tax all the gains and losses of the deceased person. In addition, roll over rules will be provided for in respect of assets inherited by a deceased person’s spouse that are currently embedded in paragraph 67 of the Eighth Schedule.

In principle, gains and losses of whatever nature will, in terms of the unified rules, be triggered on a person’s death with the current exceptions being preserved. Subsequently, income received by or accrued to the deceased estate will be taxed in the hands of the deceased estate and roll-over relief will be provided in respect of transfers from the deceased estate to any heir or legatee.
Disposal by deceased person

General rule
A deceased person must be treated as having disposed of his or her assets, other than:

Section 9HA(1)
Applies in respect of a person who dies on or after 1 March 2016 at the date of that person’s death for an amount received or accrued equal to the market value as contemplated in paragraph 31 of the Eighth Schedule of those assets.

Disposal by deceased person other than:

other than:
assets disposed of to his or her surviving spouse

Section 9HA(1)
a long-term insurance policy of the deceased,
capital gain ... disregarded in terms of paragraph 55 of the Eighth Schedule

an interest of the deceased in:
a pension, pension preservation, provident, provident preservation or retirement annuity fund in the RSA
capital gain ... lump sum benefit... disregarded in terms of paragraph 54 of the Eighth Schedule

a fund, arrangement or instrument situated outside the RSA which provides benefits similar to above

In other words there is no disposal at the date of death.
A deceased person must, if his or her surviving spouse is a resident, be treated as having disposed of an asset to that surviving spouse:

- if that asset is acquired by that surviving spouse
  - by *ab intestato* or testamentary succession;
  - or as a result of a redistribution agreement between the heirs and legatees of that person in the course of liquidation or distribution of the deceased estate of that person;
  - or in settlement of a claim arising under section 3 of the Matrimonial Property Act, 1984

The expenditure incurred by that person in respect of that asset that was allowed in terms of sections 11(a) or 22 as a deduction for purposes of determining that person’s taxable income for the year of assessment ending on the date of that person’s death;

The base cost of that asset, as contemplated in paragraph 20 of the Eighth Schedule, as at the date of that person’s death.
Disposal by deceased person to an heir

Section 9HA(3)

If any asset that is treated as having been disposed of by a deceased person is transferred directly to an heir or legatee of that person, that heir or legatee must be treated as having acquired that asset as contemplated in subsection (1) for an amount of expenditure incurred equal to the market value as contemplated in paragraph 31 of the Eighth Schedule of that asset as at the date of that deceased person’s death.

Disposal by deceased person – trading stock [section 22(8)(b)(ii)]

If during any year of assessment any taxpayer has disposed of trading stock, other than in the ordinary course of his or her trade, or has disposed of an asset to his or her surviving spouse as contemplated in section 9HA(2), for a consideration less than the market value thereof;

and the cost price of such trading stock has been taken into account in the determination of the taxable income of the taxpayer for any year of assessment, the taxpayer shall be deemed to have recovered or recouped—

where such trading stock has been applied, disposed of or distributed in a manner contemplated above (otherwise than for the purpose of making a donation - section 18A) or ceases to be held as trading stock,

an amount equal to the market value of such trading stock;

and ... included in the income of the taxpayer ...
Section 25 makes provision for any income received or accrued and expenses incurred by the deceased estate for the benefit of ascertained heirs and legatees to be deemed to be income received or accrued or expenses incurred by those heirs and legatees.

This approach was adopted in 1961 and was based on the premise that revenue gains and losses would not be triggered for the deceased person upon death, but that such revenue gains and losses could be taxed in the deceased estate or in the hands of an heir or legatee.

The result of these provisions is that the deceased estate is treated as a conduit in respect of the income received by it if it has been derived for the immediate or future benefit of an ascertained heir or legatee.

Removing anomalies for income and disposals to and from deceased estate

Section 25 makes provision for any income received or accrued and expenses incurred by the deceased estate for the benefit of ascertained heirs and legatees to be deemed to be income received or accrued or expenses incurred by those heirs and legatees.

This approach was adopted in 1961 and was based on the premise that revenue gains and losses would not be triggered for the deceased person upon death, but that such revenue gains and losses could be taxed in the deceased estate or in the hands of an heir or legatee.

The result of these provisions is that the deceased estate is treated as a conduit in respect of the income received by it if it has been derived for the immediate or future benefit of an ascertained heir or legatee.

Taxation of deceased estates – 25(1)

Any income received by or accrued to or in favour of any person in his or her capacity as the executor of the estate of a deceased person;

and amount received or accrued as contemplated above which would have been income in the hands of that deceased person had that amount been received by or accrued to or in favour of that deceased person during his or her lifetime,

must be treated as income of the deceased estate of that deceased person.

Removing anomalies for income and disposals to and from deceased estate

Section 25 makes provision for any income received or accrued and expenses incurred by the deceased estate for the benefit of ascertained heirs and legatees to be deemed to be income received or accrued or expenses incurred by those heirs and legatees.

This approach was adopted in 1961 and was based on the premise that revenue gains and losses would not be triggered for the deceased person upon death, but that such revenue gains and losses could be taxed in the deceased estate or in the hands of an heir or legatee.

The result of these provisions is that the deceased estate is treated as a conduit in respect of the income received by it if it has been derived for the immediate or future benefit of an ascertained heir or legatee.

Taxation of deceased estates – 25(1)

Any income received by or accrued to or in favour of any person in his or her capacity as the executor of the estate of a deceased person;

and amount received or accrued as contemplated above which would have been income in the hands of that deceased person had that amount been received by or accrued to or in favour of that deceased person during his or her lifetime,

must be treated as income of the deceased estate of that deceased person.
Taxation of deceased estates – 25(2)

Where the deceased estate of a person acquires an asset from that person, that deceased estate must, if that asset is an asset—

other than an asset contemplated in section 9HA(2), be treated as having acquired that asset for an amount of expenditure incurred equal to the market value of that asset as at the date of the death of that deceased person; and

contemplated in section 9HA(2), be treated as having acquired that asset for an amount of expenditure incurred equal to the amount contemplated in section 9HA(2)(b).

Taxation of deceased estates – 25(3)

Where the deceased estate of a person disposes of an asset to an heir or legatee of that person—

(a) that deceased estate must be treated as having disposed of that asset for an amount received or accrued equal to the amount of expenditure incurred by the deceased estate in respect of that asset;

and (b) the heir or legatee must be treated as having acquired that asset for an amount of expenditure incurred equal to the expenditure incurred by the deceased estate in respect of that asset.
Where the deceased estate of a person disposes of an asset contemplated in section 9HA(2) to the surviving spouse of that person, that spouse must be treated as having—

(a) acquired that asset on the date that the deceased person acquired that asset;

and (b) incurred—

(i) the expenditure incurred by that deceased person in respect of that asset as contemplated in section 9HA(2)(b);

and (ii) any expenditure, other than the expenditure contemplated in section 9HA(2)(b), incurred by that deceased estate in respect of that asset,

on the same date and in the same currency in which it was incurred by the deceased person or the deceased estate, …;

and (c) used that asset in the same manner as the manner in which that asset had been used by the deceased person and the deceased estate.

Removing anomalies for income and disposals to and from deceased estate

As a rule, the legislation will allow for the deceased estate to be treated as a “natural person” (as defined in section 1 of the Act) for tax purposes. Some of the exemptions applicable to a natural person, excluding rebates contemplated in section 6, section 6A and section 6B, will apply to the deceased estate.
Taxation of deceased estates – 25(5)

A deceased estate must, other than for the purposes of section 6, section 6A and section 6B, be treated as if that estate were a natural person.

“person” includes—
(a) an insolvent estate;
(b) the estate of a deceased person;
(c) any trust; and
(d) any portfolio of a collective investment scheme,
but does not include a foreign partnership;

Section 1(1)

Taxation of deceased estates – 25(6) and (7)

(6) Where—
(a) the tax determined in terms of this Act, which relates to the taxable capital gain derived by a deceased person from assets disposed of by that person as contemplated in section 9HA, exceeds 50 per cent of the net value of the estate of that person, as determined in terms of section 4 of the Estate Duty Act for purposes of that Act, before taking into account the amount of that tax so determined; and
(b) the executor of the estate is required to dispose of any asset of the estate for purposes of paying the amount of the tax contemplated in paragraph (a),

any heir or legatee of the estate who would have been entitled to that asset contemplated had there been no liability for tax, may elect that that asset be distributed to that heir or legatee if the amount of tax which exceeds 50 per cent of that net value be paid by that heir or legatee within a period of three years after the date that the estate has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965.
Rebate in respect of foreign taxes on income from source within Republic

... it is proposed that the special tax credit for service fees be withdrawn.

Section 6quin of the Income Tax Act, 1962, is amended by the deletion of subsections (1) to (4) and applies in respect of years commencing on or after 1 January 2016.

All tax treaty disputes should be resolved by competent authorities of the respective countries through mutual agreement procedure available in the tax treaties as a mechanism to resolve disputes.

As a concession, in order to mitigate double tax faced by South African taxpayers in doing business with the rest of Africa, amendments will be made to the current provisions of section 6quat(1C) and (1D) to allow for a deduction in respect of foreign which are paid or proved to be payable without taking into account the option of the mutual agreement procedure under tax treaties.

Rebate or deduction in respect of foreign taxes on income

(1C) (a) For the purpose of determining the taxable income derived by any resident from carrying on any trade, there may at the election of the resident be allowed as a deduction from the income of such resident so derived the sum of any taxes on income (other than taxes contemplated in subsection (1A)) paid or proved to be payable by that resident to any sphere of government of any country other than the Republic, without any right of recovery by any person other than in terms of a mutual agreement procedure in terms of an international tax agreement or a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment.
Rebate or deduction in respect of foreign taxes on income

(b) Where, during any year of assessment, any amount was deducted in terms of this section from the normal tax payable by a resident and, in any year of assessment subsequent to that year of assessment, that resident receives any amount by way of refund in respect of the amount so deducted or is discharged from any liability in respect of that amount, so much of the amount so received or so much of the amount of that discharge as does not exceed that amount must be deemed to be an amount of normal tax payable by that resident in respect of that subsequent year of assessment.”;

Cancellation of any contract

New Adventure Shelf 122 (Pty) Ltd v CSARS

... the transaction was accounted for capital gains tax purposes in the assessment of the taxpayer’s taxable income for the 2007 tax year as if the proceeds had been received in full in that year. The contract was cancelled during the taxpayer’s 2012 year of assessment. The terms of cancellation provided for the return of the property to the taxpayer, which was entitled to retain that part of the purchase price that had been paid by that stage as pre-estimated damages. In the result, part of the amount of the proceeds of the transaction that had been taken into account in determining the taxpayer’s capital gain in respect of the disposal became irrecoverable.
The cancellation of any contract is regarded as a disposal for capital gains tax purposes as contemplated in the Eighth Schedule.

The tax treatment of such cancellation will be determined by a facts and circumstances test to draw a distinction between whether the contract was cancelled in the same year of assessment in which the contract was entered into or if that contract was cancelled in the subsequent year of assessment in which the contract was entered into.

The Eighth Schedule further makes the distinction between the taxpayers involved in the contract and the two distinctive separate tax events – the original owner that initially disposes of an asset to another person and the new owner that obtains the asset from the original owner, but that is deemed to dispose of the asset back to the original owner upon the cancellation of the contract.

Cancellation of any contract

A. Same year cancellation
When a contract is entered into and cancelled in the same year, the Eighth Schedule contains distinct adjustment rules with the intention too effectively from a taxation point of view, put the taxpayers in a zero tax position as if they never entered into the transaction.

B. Subsequent year cancellation
However, from a tax event perspective if the cancellation of a contract occurs in a subsequent year to when it was entered into, in summary, based on the application of current legislation, the original owner will have a deemed capital loss equal to the proceeds received in the year of disposal while the base cost in the year of the original disposal is treated as capital gain in the year of cancellation. The intended policy effect was to reverse the previous year’s capital gain on the asset as an aggregate capital loss in the year of cancellation.
domestic goods and services

“domestic goods and services” means goods and services provided in any enterprise supplying commercial accommodation, including—

(a) cleaning and maintenance;
(b) electricity, gas, air conditioning or heating;
(c) a telephone, television set, radio or other similar article;
(d) furniture and other fittings;
(e) meals;
(f) laundry;
(g) nursing services; or
(h) water;

So ‘water’ is added – note the “or”
This monetary threshold distinguishes between the supply of a dwelling and the supply of commercial accommodation.

The monetary threshold available in the definition of commercial accommodation is similar to the monetary threshold available in the definition of enterprise.

In order to remove the misunderstanding, it is proposed that the monetary threshold should be contained in one definition, that is, in proviso (ix) of the definition of “enterprise” in section 1 of the VAT Act and be removed from the definition of “commercial accommodation” in section 1 of the VAT Act. In addition, it is proposed that the monetary threshold be adjusted from R60 000 to R120 000.

Commercial accommodation – R60 000

the definition of “commercial accommodation”:

(a) lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat, or similar establishment, which is regularly or systematically supplied [and where the total annual receipts from the supply thereof exceeds R60 000 in a period of 12 months or is reasonably expected to exceed that amount in a period of 12 months.] but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;
Commercial accommodation – R60 000

Definition of enterprise:

(ix) where a person carries on or intends carrying on an enterprise or activity supplying commercial accommodation as contemplated in paragraph (a) of the definition of “commercial accommodation” in section 1, and the total value of taxable supplies made by that person in respect of that enterprise or activity in the preceding period of 12 months or which it can reasonably be expected that that person will make in a period of 12 months, as the case may be, will not exceed [R60 000], R120 000 shall be deemed not to be the carrying on of [an] that enterprise

Consideration not determined

Section 9(2)(a) of the Value-Added Tax Act, is amended by the addition in of the following further proviso:

Provided further that this paragraph shall not apply where the whole of the consideration or part thereof for such supply of goods or services cannot be determined at the time the goods are removed or made available or at the time the services are performed, and the recipient would have been entitled under section 16(3) at that time to make a deduction of the full amount of tax in respect of that supply, in which case the provisions of subsection (1) shall apply;

Section 10(4)(a) of the Value-Added Tax Act, 1991, is amended by the substitution of the following paragraph:

(a) a supply is made by a person for no consideration or for a consideration in money which is less than the open market value of the supply or the consideration cannot be determined at the time of supply
vocational training of employees

A person who is a resident of the Republic or a vendor provides services comprising vocational training of employees (other than educational services contemplated in section 12 (h)) for the benefit of an employer who is not a resident of the Republic and who is not a vendor.

The training is provided through a third party vendor for the benefit of an employer who is not resident in South Africa. In order to clarify the policy intent a proviso has been introduced in section 11(2)(r) to exclude situations where the employer contracts with a vendor or resident to provide the training and this vendor or resident further subcontracts the services to another vendor.

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THE PRESIDENCY

No. 20 8 January 2016

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 23 of 2015: Tax Administration Laws Amendment Act, 2015
Withholding of amounts from payments to non-resident sellers of immovable property

- Section 35A of the Income Tax Act, 1962, is hereby amended by the addition to subsection (3) of the following paragraph, the existing subsection becoming paragraph (a):
  - “(b) If the seller does not submit a return in respect of that year of assessment within 12 months after the end of that year of assessment, the payment of that amount is deemed to be a self-assessment in terms of section 95(3) of the Tax Administration Act.”.

Withholding of amounts from payments to non-resident sellers of immovable property

Mr. X (non-resident seller) sells his property in Hermanus in July 2015. SARS determines that R50 000 “advance” payment must be made in terms of section 35A, which Mr. X then pays into SARS’s bank account. The payment is allocated to the provisional account of Mr. X.

The legislation requires that the amount withheld from any payment to the seller, Mr. X, is an advance in respect of his liability for normal tax for the year of assessment during which that property is disposed of by him.

However, Mr. X does not submit a return for that year. Accordingly, the amount stays in the provisional account as section 35A is silent on what happens to this amount if no return is submitted.

In practice, this apparently happens in the majority of such transactions. Accordingly, amendments are proposed to provide that if the seller does not submit a return within 12 months after the end of the year of assessment, the payment of that amount is deemed to be a self-assessment in terms of section 95(3) of the Tax Administration Act, 2011.
Dividends tax

• Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1A) for paragraph (b) of the following paragraph:
  – (b) received a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D that is exempt or partially exempt from dividends tax in terms of section 64F or 64FA.”

The ... amendment to section 64K(1A)(b) provides that recipients of foreign dividends, paid by foreign companies, that are exempt from dividends tax need not submit a return.

Employees tax

• Paragraph 5 of the Fourth Schedule to the Income Tax Act, is amended:
  • (2) Where the employer has failed to deduct or withhold employees’ tax in terms of paragraph 2 and the failure was not due to an intent to postpone payment of the tax or to evade the employer’s obligations under this Schedule, the Commissioner may, on application in the prescribed form and manner by the employer and if he or she is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from the employer’s liability under sub-paragraph (1) of this paragraph.

• Comes into operation on a date determined by the Minister of Finance by notice in the Gazette.
Employees tax

- Paragraph 5 of the Fourth Schedule to the Income Tax Act, is amended:
  - (3) An employer who has not been absolved from liability as provided in sub-paragraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of sub-paragraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Commissioner on application in the prescribed form and manner by the employer decides.
    - Comes into operation on a date determined by the Minister of Finance by notice in the Gazette.
- Budget: Uncertainty exists regarding under what circumstances this determination will be made. To provide clarity, it is proposed that the wording of paragraph 3(2) of the act’s Seventh Schedule be aligned with the wording in paragraph 5(2) of the Fourth Schedule.

Standard income tax on employees

The discontinuation of the standard income tax on employees (SITE) was announced in the 2010 Budget Review and was implemented in a phased approach from 1 March 2011. The final year of assessment during which this was applied has been reached and the provision for SITE in paragraph 11B is therefore repealed.

Paragraph 11B of the Fourth Schedule to the Income Tax Act, is and it comes into operation on 1 March 2016 and applies in respect of years of assessment commencing on or after that date.

With that, amongst others, disappears the definition of ‘standard employment’ – definition used by SARS not only in the context of SITE.
Employees tax

IRP5’s

Paragraph 13(2) of the Fourth Schedule to the Income Tax Act,

c) if the said employer has ceased to be an employer, within [seven] 14 days of the date on which [he] the employer has so ceased,

VAT invoice

Sections 20 and 21 of the Value-Added Tax Act

The proposed amendment relaxes the particulars required for a tax invoice without compromising the audit trail or policy intent for the requirements of the section.

The proposed amendment relaxes the particulars required for a credit note and debit note in accordance with the proposed amendment in paragraph 2.26.

The term ‘in a prominent place’ is no longer a requirement.

The terms ‘VAT invoice’ or ‘invoice’ can nou be used – or the old ‘tax invoice’.
Section 20(4) of the VAT Act prescribes the particularity that must be set out in a tax invoice. Much of it has nothing whatsoever to do with the entitlement to an input tax deduction, for example, the requirement that the words ‘tax invoice’ must appear in a prominent place on the document, that it must bear a serialized number and date of issue. and that it must bear the name, address and VAT registration number of the supplier. If the requirements of s 20(4) had to be satisfied, there would be no need or scope for s 16(2)(f).

As it is, the identity of the suppliers is evident from the contract documents. It is not in issue that they are registered vendors. They all happen to be organs of state. Their addresses are well-known, or readily ascertainable.

The quantity or volume of the goods and services supplied is also determined in terms of the contractual documentation. That what was stipulated was supplied is not in issue.

It is also not in contention that the sponsors were obliged to issue the appellant with tax invoices and that they have failed to do so despite request.

The respondent’s (SARS’s) reliance on non-compliance with s 20(4) is wholly without merit.
VAT documentation for input tax

(f) the vendor, in any other case, except as provided for in paragraphs (a) to (e)] the case where an amount is deducted from the sum of the amounts of output tax which are attributable to that period in terms of subsection (3)(c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) or (n), is in possession of documentary proof, as is acceptable to prescribed by the Commissioner, substantiating the vendor’s entitlement to the deduction at the time a return in respect of the deduction is furnished.

or (g) in the case where the vendor, under such circumstances prescribed by the Commissioner, is unable to obtain any document required in terms of paragraph (a), (b), (c), (d), (e) or (f), the vendor is in possession of documentary proof, containing such information as is acceptable to the Commissioner, substantiating the vendor’s entitlement to the deduction at the time a return in respect of the deduction is furnished.

Provisional taxpayer - defined

The following persons are not provisional taxpayers:

(dd) natural person who does not derive any income from the carrying on of any business, if:

(AA) the taxable income of that person for the relevant year of assessment does not exceed the tax threshold;

or (BB) the taxable income of that person for the relevant year of assessment which is derived from interest, dividends, foreign dividends and rental from the letting of fixed property does not exceed R30 000;

a small business funding entity; and

(ff) a deceased estate;

Paragraphs (dd) and (ff) of the definition of “provisional taxpayer”. Paragraph 18 is repealed.
Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (8).

Subparagraph (8) provided that every person who is a provisional taxpayer must apply to SARS for registration as a provisional taxpayer.

This registration requirement is no longer required as paragraph 19 of the Fourth Schedule imposes an obligation to submit a return of an estimate for each year of assessment and section 25 of the Tax Administration Act, 2011, specifies that the return must be in the prescribed form and manner.

The subparagraph can therefore be deleted.

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Items (a) and (b) of paragraph 19(1) of the Fourth Schedule to the Income Tax Act is amended by replacing “should ... so require” with “unless ... directs otherwise”.

... submit to the Commissioner ([should] unless the Commissioner [so require] directs otherwise) a return of an estimate...

SARS no longer informs taxpayers individually that they should submit returns and the obligation to submit returns in paragraph 19 applies to all provisional taxpayers except if the Commissioner directs otherwise (i.e. specifically excludes certain classes of taxpayers, e.g. dormant companies, from this obligation).
Item (c) of paragraph 19(1) of the Fourth Schedule to the Income Tax Act is amended by deleting

unless the Commissioner, having regard to the circumstances of the case, agrees to accept an estimate of a lower amount,

The amendment removes the requirement that the Commissioner must agree to accept an estimate lower than the basic amount ...

and replaces it with: unless the circumstances of the case justify the submission of an estimate of a lower amount.

... the provisional taxpayer may submit an estimate of a lower amount than the basic amount if justified by the circumstances of the case.

The Commissioner may call upon any provisional taxpayer to justify any estimate made by the provisional taxpayer ..., or to furnish particulars of the provisional taxpayer's income and expenditure or any other particulars that may be required, and, if the Commissioner is dissatisfied with the said estimate, he or she may increase the amount thereof to such amount as he or she considers reasonable, which increase of the estimate is not subject to objection and appeal.

Reason: If the taxpayer is dissatisfied with the estimate by SARS, there is an internal remedy available to the taxpayer under section 9 of the Tax Administration Act, 2011, to request a review of the decision by SARS. Furthermore, if liquidity concerns arise, the instalment payment provisions under that Act are also available to the taxpayer.
Provisional tax – final estimate

If ... the final or last estimate of his or her taxable income is not submitted in terms of paragraph 19(1)(a) in respect of any year of assessment,

on or before the last day of the period within which provisional tax is or may be payable by that provisional taxpayer as provided in this Part,

the provisional taxpayer shall be deemed to have submitted an estimate of an amount of nil taxable income

unless the estimate in respect of the relevant provisional payment is submitted prior to the date of the subsequent provisional payment under paragraph 21, 23 or 23A.

Consequences of the amendment:

- The underestimation penalty can be reduced.
- The penalty for late payment will have to be paid.
- The amendment to paragraph 20(2A) of the Fourth Schedule to the Income Tax Act comes into operation on the date of promulgation of this Act - not retrospective.

Procedure where legal professional privilege is asserted

PURPOSE

In the context of information requests, interviews and field audits, legal professional privilege is often asserted in respect of information required by SARS.

This section seeks to clarify the requirements that must be met for such assertion and provides for a procedure for matters where SARS does not accept the assertion of legal professional privilege.

The first objective of section 42A is to resolve the matter between SARS and the taxpayer as opposed to starting with an adjudicative and generally more protracted process.

Applying this approach to assertions of legal professional privilege regarding relevant material required by SARS means there will be a process to handle the volumes of such matters.
Procedure where legal professional privilege is asserted

**PURPOSE**

The proposed amendment ensures that SARS will have a basic set of information to enable it to determine whether a document is subject to legal professional privilege.

In the absence of this information SARS has no basis for determining whether it agrees or not with the taxpayer’s assertion of privilege or a decision in this regard by an independent legal practitioner or court.

If SARS and the taxpayer agree that the material is privileged, alternative methods such as redaction of the privileged part and providing SARS with the remainder can be pursued.

This will substantially reduce the number of cases that require adjudication by an independent legal practitioner or the High Court.

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Procedure where legal professional privilege is asserted – the law

- the person must provide the following information to SARS:
  - (a) a description and purpose of each item of the material in respect of which the privilege is asserted;
  - (b) the author of the material and the capacity in which the author was acting;
  - (c) the name of the person for whom the author referred to in paragraph (b) was acting in providing the material;
  - (d) confirmation in writing that the person referred to in paragraph (c) is claiming privilege in respect of each item of the material;
  - (e) if the material is not in possession of the person referred to in paragraph (d), from whom did the person asserting privilege obtain the material; and
  - (f) if the person asserting privilege is not the person referred to in paragraph (d), under what circumstances and instructions regarding the privilege did the person obtain the material.
Section 93(1)(d) of the Tax Administration Act was inserted to allow taxpayers a less formal mechanism to request corrections to their returns and so reduced assessments, without having to follow the objection and appeal route to do so. However, taxpayers have attempted to use these requests for correction to raise substantive issues that would more properly be the subject of an objection under section 104, so as to bypass the timeframes and procedures for an objection.

For these reasons, the wording has been amended to provide that SARS must be satisfied that there is a “readily apparent” error to clarify the nature of the errors anticipated here.

The purpose of section 98 was a prescription override remedy for the taxpayer in specified circumstances—see full discussion in paragraph 2.50.

However, the outcome of exercising the remedy will not necessarily result in a withdrawal of the assessment but rather the issue of a reduced assessment. Hence this remedy should not have been included in section 98 but in the section that provides for reduced assessments i.e. section 93.

The remedy provided under section 98(1)(d) has now been included under the taxpayer’s actual remedy in the case of readily apparent errors i.e. to request a reduced assessment (see the proposed new section 93(1)(e)).
Section 93 – reduced assessments

Section 93(1) of the Tax Administration Act, 2011, is amended by the deletion of the word “or” at the end of paragraph (c) and the substitution for paragraph (d) of the following paragraphs:

(d) SARS is satisfied that there is [an] a readily apparent undisputed error in the assessment [as a result of an undisputed error] by—
   (i) SARS; or
   (ii) the taxpayer in a return; or

(e) a senior SARS official is satisfied that an assessment was based on—
   (i) the failure to submit a return or submission of an incorrect return by a third party under section 26 or by an employer under a tax Act;
   (ii) a processing error by SARS; or
   (iii) a return fraudulently submitted by a person not authorised by the taxpayer.”.

Section 98 – withdrawal of assessments

Section 98(1) of the Tax Administration Act, 2011, is amended by the addition of the word “or” at the end of paragraph (b), the substitution for the expression “; or” at the end of paragraph (c) of a full stop and the deletion of paragraph (d).

... and the deletion of paragraph (d).
In addition, section 99(2)(d)(iii) was also amended to cater for the circumstances where SARS becomes aware of the problem but is unable to issue the reduced assessment before expiry of the period for the issue of reduced assessments under section 99(1).

In addition, section 99(2) was amended to allow for the circumstances in the new section 93(1)(e) to constitute an exception to prescription, hence prescription does not apply.

Finality in a tax assessment is important for both taxpayers and SARS, which is why there is a period within which a SARS may revise an assessment to the benefit or otherwise of a taxpayer.

This period, which is commonly known as the prescription period, is either three years for taxes assessed by SARS or five years for taxes that are self-assessed by taxpayers.

Limited exceptions to prescription apply where fraud, misrepresentation or material non-disclosure exists in a tax return, in order to give effect to the outcome of a dispute resolution process — such as an objection or appeal to a court.

A recent tax court case
... it was submitted that SARS had failed to assert even at this stage that there was a basis for lifting the veil of prescription and was relying solely on the issue of onus in respect of salaries and wages. I agree ... I also agree ... that the necessary tests to lift the veil of prescription have not been met in respect of the 2005 salaries and wages adjustment.

Section 79 (of the Income Tax Act) contained the prescription rules before the introduction of the Tax Administration Act.

unless the Commissioner is satisfied... due to fraud or misrepresentation or non-disclosure of material facts ...

In my view further SARS has not met the requirements of establishing such satisfaction and, based on the relative amounts in dispute, it is unable satisfy the requirement of it being a material non-disclosure.

Judge Holmes, in Natal Estates v SIR, said that this is not “... a case of a merely formal decision: on the contrary, the Secretary’s ‘satisfaction’ is a substantive and far-reaching determination, which should be communicated to the taxpayer...”

“Once it is recognized that there should be some evidence of the Secretary’s satisfaction, the taxpayer should be informed of it plainly, and of the particular conduct in respect of which he is satisfied, e.g. fraud, or material nondisclosure.”

“The taxpayer should not have to grope inferentially for the Secretarial satisfaction, or the particular form of dereliction of duty to which it relates. In particular he should not be left to infer from the mere receipt of an additional assessment, after the expiration of three years from the date of the original assessment, that the Secretary, after applying his mind to the matter, is satisfied that the taxpayer’s fraud or misrepresentation or material non-disclosure caused a non-assessment.”
Judge Holmes, in Natal Estates v SIR:
For one thing (and it was common cause in this appeal that the material nondisclosure could be innocent) the taxpayer is entitled to know whether fraudulent conduct - a grave and ugly imputation - is being held against him.

Judge Holmes, in Natal Estates v SIR, with regard to the taxpayer’s burden of proving:
... it was for him (SIR) to state that he was ‘satisfied’ that the non-assessment in question was caused by the taxpayer’s fraud or misrepresentation or nondisclosure of material facts. This is because the proviso to s 79(1) of the Act, read with para(a) thereof, prohibits the Secretary from raising an additional assessment, after the lapse of three years, unless he is so satisfied.

Section 99 – Period of limitations for issuance of assessments
The original purpose of the insertion of section 98(1)(d) was to address problems with erroneous assessments which are often only discovered after all prescription periods and remedies have expired and it becomes apparent that it would be inequitable to recover the tax due under such assessments. An example would be that of a retiree who was assessed in error based on incorrect information supplied by an employer or a retirement fund, who fell below the tax threshold after retirement and thus ceased to submit returns to SARS and was only traced some years later in order to recover the outstanding tax debt as a result of the incorrect assessment.

However, it immediately became apparent that taxpayers interpreted the section as a general mechanism to address their “old mistakes” in assessments that were final, where the taxpayer could no longer request a reduced assessment or where the objection process as well as appeals to the tax and higher courts had been exhausted.
Section 99 – Period of limitations for issuance of assessments

Section 99 of the Tax Administration Act, 2011, is hereby amended by the deletion in subsection (2) of the word “or” at the end of paragraph (c) and the substitution for paragraph (d) of the following paragraphs:

The “three years after the date of assessment of an original assessment“ principle doesn’t apply to the extent that:
(d) it is necessary to give effect to—
   (i) the resolution of a dispute under Chapter 9;
   (ii) a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal; or
   (iii) an assessment referred to in section [98(2)] 93(1)(d) if SARS becomes aware of the error referred to in that subsection before expiry of the period for the assessment under subsection (1); or
(e) SARS receives a request for a reduced assessment under section 93(1)(e).

Extension of prescription date

EXTENSION TO SUBMIT RELEVANT MATERIAL

The South African Revenue Service (SARS) refers to your request at our meeting on 31 January 2013 for an extension until 31 March 2013 to submit relevant material in respect of my letter dated 13 November 2012.

As discussed at our meeting, an extension will be granted to 31 March 2013 on condition that you are agreeable to an extension of the prescription date for the 2008 year of assessment, in terms of section 99(2)(c) of the Tax Administration Act, No. 28 of 2011 as amended, to 30 June 2013.

Kindly submit your response to me by 8 February 2013.
Section 99 – Period of limitations for issuance of assessments

(3) The Commissioner may, by prior notice of at least 30 days to the taxpayer, extend a period under subsection (1) or an extended period under this section, before the expiry thereof, by a period approximate to a delay arising from:

(a) failure by a taxpayer to provide all the relevant material requested within the period under section 46(1) or the extended period under section 46(5); or
(b) resolving an information entitlement dispute, including legal proceedings.

(4) The Commissioner may, by prior notice of at least 60 days to the taxpayer, extend a period under subsection (1), before the expiry thereof, by three years in the case of an assessment by SARS or two years in the case of self-assessment, where an audit or investigation under Chapter 5 relates to—

(i) the application of the doctrine of substance over form;
(ii) the application of Part IIA of Chapter III of the Income Tax Act, section 73 of the Value-Added Tax Act or any other general anti-avoidance provision under a tax Act;
(iii) the taxation of hybrid entities or hybrid instruments; or
(iv) section 31 of the Income Tax Act.”
Section 179 provides that SARS may by notice to a person who holds or owes (or will hold or owe) money for or to a taxpayer, require that person to pay the money to SARS in satisfaction of the taxpayer’s tax debt. The current wording requires a senior SARS official to issue notices of third party appointments (Form AA88).

In line with other amendments proposed in this Bill, it is proposed that the senior SARS official approve the issue of the notices.

In view of SARS's substantial debt book, the issue of these notices may be automated. The proposed amendment will make it clear that if a senior SARS official has approved the system criteria for issuing the notices their issue may be automated.

This only occurs under prescribed circumstances, in particular where there is an outstanding tax debt and letters of demand have been issued.

(5) SARS may only issue the notice referred to in subsection (1) after delivery to the tax debtor of a final demand for payment which must be delivered at the latest 10 business days before the issue of the notice, which demand must set out the recovery steps that SARS may take if the tax debt is not paid and the available debt relief mechanisms under this Act, including, in respect of recovery steps that may be taken under this section—

(a) if the tax debtor is a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on the basic living expenses of the tax debtor and his or her dependants; and

(b) if the tax debtor is not a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on serious financial hardship.
Liability of third party appointed to satisfy tax debts

Section 190(1):
SARS must pay a refund if a person is entitled to a refund, including interest thereon under section 188(3)(a),

The proposed amendment clarifies that a taxpayer is entitled to a refund and interest thereon as provided for in a tax Act.

The current wording of section 190(4) leads to the perception that a taxpayer must, in addition, also claim an assessed refund, and that the taxpayer then only has 3 years for an administrative assessment or 5 years for self-assessment, within which to claim the refund. Paragraph (b) of subsection (1) was incorrectly deleted as the limitation periods only apply where an erroneous overpayment of tax was made. A refund properly refundable and payable under a tax Act in terms of section 190(1)(a) must be paid by SARS and there is no limitation period for such payment.

Voluntary Disclosure Programme - audit

The proposed amendment provides that an audit, unrelated to the default being disclosed by an applicant, will not disqualify an applicant for full voluntary disclosure relief.

As an example, an audit of a taxpayer related to a PAYE issue is in progress. The same taxpayer may wish to submit a disclosure for an amount of VAT. There may be no correlation between these two tax issues and, as such, the enforcement action on the PAYE issue may not be a cause to restrict the relief in respect of the VAT disclosure. The proposed amendment provides that the audit or investigation must be related to the default the person seeks to disclose.

Currently one of the requirements for a valid voluntary disclosure is that the disclosure must involve a “default” which has not previously been disclosed by the applicant.

The proposed amendment now requires that the “default” must not be a default that occurred within five years of the disclosure of a similar “default” by the applicant, thereby widening the scope of the voluntary disclosure regime.
(1) A person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief, unless that person is aware of—
(a) a pending audit or investigation into the affairs of the person seeking relief, which is related to the ‘default’ the person seeks to disclose; or
(b) an audit or investigation that has commenced, but has not yet been concluded, which is related to the ‘default’ the person seeks to disclose.

(2) A senior SARS official may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the official is of the view, having regard to the circumstances and ambit of the audit or investigation, that—
(a) the audit or investigation is related to the ‘default’ the person seeks to disclose;
(b) the ‘default’ in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or investigation; and
(c) the application would be in the interest of good management of the tax system and the best use of SARS’ resources.
Currently one of the requirements for a valid voluntary disclosure is that the disclosure must involve a “default” which has not previously been disclosed by the applicant.

The proposed amendment now requires that the “default” must not be a default that occurred within five years of the disclosure of a similar “default” by the applicant, thereby widening the scope of the voluntary disclosure regime.

The potential imposition of an understatement penalty as a requirement for a valid voluntary disclosure has been interpreted by SARS as meaning that in the absence of voluntary disclosure relief, an understatement penalty would be leviable.

On this interpretation, a *bona fide* inadvertent error as contemplated in section 222(1) does not qualify for voluntary disclosure relief.

A default that does not constitute a substantial understatement and where the other behaviours contemplated in section 223 are also not present would also not qualify for voluntary disclosure relief, notwithstanding that SARS may take a contrary view with regard to the assessment of the relevant behaviour.

The ... amendment aims to resolve this issue by amending the requirement to rather refer to the behaviour in Column 2 of the understatement penalty percentage table in section 223, as opposed to involving the potential imposition of an understatement penalty in respect of the “default”.
Voluntary Disclosure Programme

Section 225 of the Tax Administration Act, 2011, is ... amended by the substitution for the definition of “default” of the following definition:

default’ means the submission of inaccurate or incomplete information to SARS, or the failure to submit information or the adoption of a ‘tax position’, where such submission, non-submission, or adoption resulted in an understatement[—
(a) the taxpayer not being assessed for the correct amount of tax;
(b) the correct amount of tax not being paid by the taxpayer; or
(c) an incorrect refund being made by SARS].

Voluntary Disclosure Programme

Section 225 of the Tax Administration Act, 2011, is ... amended by the substitution for the definition of “default” of the following definition:

Section 227: The requirements for a valid voluntary disclosure are that the disclosure must—
(a) be voluntary;
(b) involve a ‘default’ which has not occurred within five years of the disclosure of a similar ‘default’ by the applicant or a person referred to in section 226 (3);
(c) be full and complete in all material respects;
(d) involve a behaviour referred to in column 2 of the understatement penalty percentage table in section 223;
(e) not result in a refund due by SARS; and
(f) be made in the prescribed form and manner.
Voluntary Disclosure Programme

Section 229 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) grant 100 per cent relief in respect of an administrative noncompliance penalty that was or may be imposed under Chapter 15 or a penalty imposed under a tax Act, excluding a penalty imposed under that Chapter or in terms of a tax Act for the late submission of a return [or a late payment of tax].

A taxpayer can therefore now get relief for a late payment penalty.

TAX AMNESTY

The following persons who are resident on 29 February 2016 may apply for tax relief in terms of this Part:

“foreign asset” means
(a) any funds held in foreign currency; and
(b) any asset transferred from or accumulated outside the RSA, but does not include any foreign bearer instrument;

(a) Any natural person (including the deceased estate of a natural person), a close corporation or company, holding any foreign asset on 29 February 2016, the value of which has been wholly or partly derived from any unauthorised asset;

“unauthorised asset” means any foreign asset which was accumulated as foreign assets or transferred from the RSA in contravention of the Exchange Control Regulations

“held”, “hold” or “holding” in relation to a foreign asset means direct beneficial ownership in that foreign asset, and includes a deemed holding of that foreign asset in terms of section 11;
### TAX AMNESTY

The following persons who are resident on 29 February 2016 may apply for tax relief in terms of this Part:

(b) Any natural person (including the deceased estate of a natural person), a close corporation or company holding any foreign asset on 29 February 2016, the value of which has been wholly or partly derived from any amount that was not declared to the Commissioner as required in terms of a tax Act; and

(c) Any natural person (including the deceased estate of a natural person) or any related party in relation to an applicant, which on or before 29 February 2016 assisted that applicant (otherwise than solely in an advisory capacity)—

(i) by accumulating foreign assets; or

(ii) by transferring funds or assets from the RSA, for the benefit of that applicant in a manner that involves either any contravention of the Exchange Control Regulations or a failure to comply with any tax Act, and those foreign assets, funds or assets are no longer held by that natural person or related party..

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### TAX AMNESTY

This Part does not apply in respect of any amount not declared to the Commissioner or any failure to comply with the requirements of the Income Tax Act, 1962, as contemplated in subsection (1)(b) and (c) where that amount constitutes, or that failure relates to—

(a) an amount withheld or deducted by the natural person, close corporation, trust or facilitator, as the case may be, from an employee in terms of paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962;

(b) an amount of withholding tax on foreign entertainers and sportspersons which must be paid to the Commissioner in terms of Part IIIA of Chapter II of the Income Tax Act, 1962;
This Part does not apply in respect of any amount not declared to the Commissioner or any failure to comply with the requirements of the Income Tax Act, 1962, as contemplated in subsection (1)(b) and (c) where that amount constitutes, or that failure relates to—

(c) an amount of withholding tax on royalties which must be paid to the Commissioner in terms of Part IVA of Chapter II of the Income Tax Act, 1962;

(d) an amount of withholding tax on interest which must be paid to the Commissioner in terms of Part IVB of Chapter II of the Income Tax Act, 1962; or

(e) an amount of dividends tax which must be paid to the Commissioner in terms of Part VIII of Chapter II of the Income Tax Act, 1962.

Election in respect of discretionary trusts

14. (1) For purposes of sections 15 and 16, a person who is a donor (or the deceased estate of a donor) or a beneficiary in relation to a discretionary trust which is not a resident, may elect that any asset situated outside the Republic contemplated in subsection (2), which was held by that discretionary trust on 28 February 2015, must be deemed to be held by the person.

(2) Subsection (1) applies in respect of an asset situated outside the Republic of a discretionary trust which—

(a) was acquired by the trust by way of a donation or is derived from such a donation;

(b) has been wholly or partly derived from any amount not declared to the Commissioner as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962; and

(c) has not at the time of that election vested in any beneficiary of the trust.
(3) Where a person has made an election in relation to an asset situated outside the RSA—
(a) the person must be deemed to have held the asset from the date that the discretionary trust acquired the asset, to have received the income and incurred the expenditure in respect of the asset that the trust has received and incurred and to have dealt with the asset in same manner that the trust has dealt with it until—
   (i) the asset is disposed of by the trust;
   (ii) the person would be treated having disposed of the asset in terms of the Income Tax Act, 1962; or
   (iii) in the case of a deceased estate, company or other juristic person, the person ceases to exist by operation of law, in which case the person shall be deemed to have disposed of that asset for consideration equal to its market value on the date of disposal;
(b) the provisions of sections 7(5), 7(8) and 25B of the Income Tax Act, 1962, and paragraphs 70, 72 and 80 of the Eighth Schedule to that Act, shall not apply in respect of any income, expenditure or capital gain relating to that asset, while it is so deemed to be held by that person.
15. There shall be included in the taxable income of a person contemplated in section 13, in the first year of assessment ending after 1 March 2010, 50 per cent of the total amount used to fund the acquisition of unauthorised assets acquired before 1 March 2010 which amount shall not subject to normal tax in an earlier year of assessment.

(1) There shall be exempt from normal tax an amount, determined in accordance with subsection (2), in respect of additional relief under the voluntary disclosure programme contemplated in Part B of Chapter 16 of the Tax Administration Act, 2011 (Act No. 28 of 2011).

(2) The total amount contemplated in subsection (1) is—
   (a) 50 per cent of a the total amount used to fund the acquisition of unauthorised assets if those assets were acquired before 1 March 2015; and
   (b) 100 per cent of any dividends, foreign dividends, interest, rental or other investment income received or accrued before 1 March 2010 in respect of the assets contemplated in paragraph (a).
Thank you for your attention

Questions