



# 2020 Budget and Tax update

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The Tax Faculty

## Outline

- 2019 Tax amendments (promulgated January 2020)
- Budget 2020 Tax proposals
- Recent case law judgments
- Recent SARS documents



# The Tax Faculty

## 2019 Tax Amendments



### Main 2019 amendments (promulgated January 2020)

- Employment tax incentive
- Variable remuneration
- Retirement fund amendments
- Withholding tax on pensions
- Anti-dividend stripping provisions
- Amendments to corporate reorganisation rules
- Section 240 deduction amendments
- Controlled foreign companies
- Permanent establishments
- Transfer pricing
- CGT and foreign currency translation
- Venture Capital Company deduction
- Special Economic Zone incentive
- Energy efficiency savings incentives
- CGT: base cost of an asset
- Reviewing s 72 of the VAT Act
- Tax Administration Amendments
- Case Law judgments
- SARS documents

## Employment tax incentive (ETI)

- Introduced in January 2014 to promote employment, particularly of young workers.
- Aims to reduce the cost of hiring young people between the ages of 18 and 29 (qualifying employees) through a cost-sharing mechanism with Government, while leaving the wages received by the qualifying employees unaffected.
- The amount by which the employer's PAYE liability can be reduced by is prescribed by a formula, and is calculated based on the wages paid to the qualifying employees.

## Employment tax incentive (ETI)

- One of the conditions for claiming the incentive is that the wage paid to eligible employees should exceed the applicable wage regulating measure, specifically a collective agreement, a sectoral determination or a binding bargaining council agreement. If none of these are applicable, a minimum wage of R2 000 per month is eligible for the ETI.
- The National Minimum Wage Act, 2018, introduced a national minimum wage of R20 per hour or R3 500 per month.

## Employment tax incentive (ETI)

- Budget Proposal: wage-regulating measures in the Employment Tax Incentive Act (2013) will be revised in line with the National Minimum Wage Act (2018).
- Remuneration limits increased
  - R4 000 to R4 500 per month and R6 000 to R6 500 per month:
    - Monthly remuneration
      - > than R2 000 but less than [R4 000] R4 500: ETI = R1 000
      - [R4 000] R4 500 or more but < [R6 000] R6500, ETI is determined according to a formula

## ETI formula: first 12 months of employment –

Monthly Remuneration	Determination	Monthly ETI Amount
R0 – R2000	50% x monthly remuneration	R0 - R1000
R2001 - R4500 (was R4000)	Fixed at R1000	R1000
R4501 – R6500 (was R6000)	Formula: $X = A - (B \times (C - D))$	R 999 - R0
	X = monthly calculated amount	
	A = R1000	
	B = 0,5	
	C = Monthly Remuneration D = R4500	

## 'Variable remuneration'

s 7B(1) (Prior to amendment)

**'variable remuneration'** means-

- (a) overtime pay, bonus or commission contemplated in the definition of 'remuneration' in para 1 of the Fourth Schedule;
- (b) an allowance or advance paid in respect of transport expenses as contemplated in s 8(1)(b)(ii); or
- (c) any amount which an employer has during any year of assessment become liable to pay to an employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by the employee during that year.

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## Variable remuneration Amended definition

- Paragraphs added –
  - (d) any night shift allowance;
  - (e) any standby allowance; or
  - (f) any amount paid or granted in reimbursement of any expenditure as contemplated in s8(1)(a)(ii)
- comes into operation on 1 March 2020 and applies in respect of amounts accrued or expenditure incurred on or after that date.

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## Proviso added

s 8(1)(a)(ii) & (iii)

- where an allowance or advance is deemed to have accrued under s 7B to the recipient in the year of assessment during which that allowance or advance is paid, the distance travelled for business purposes in respect of which that allowance or advance is received shall be deemed to have been travelled during the year in which that allowance or advance is paid.

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## Aligning the effective date of tax-neutral transfers from pension to provident funds

- changes to align the effective date of tax neutral transfers from pension to provident or provident preservation funds with the effective date of compulsory annuitisation of provident funds (1 March 2021).
- amendments:
  - s 1 definition of 'provident fund'
  - Paragraph 6(1)(a) of the Second Schedule

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# Amendments to the Second Schedule

## para 6(1)

Non-taxable transfers effective 1 March 2019:

- benefits paid or transferred for the benefit of the person from a -
  - (aa) pension fund into any pension fund, pension preservation fund or retirement annuity fund;
  - (bb) pension preservation fund into any pension fund, pension preservation fund or retirement annuity fund;
  - (cc) provident fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;
  - (dd) provident preservation fund into any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and
  - (ee) retirement annuity fund into any retirement annuity fund;

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# Amendments to the Second Schedule

## para 6(1)

Non-taxable transfers **effective 1 March 2021** :

- benefits 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; or
  - (ii) retirement annuity fund into any retirement annuity fund

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## Exemption of non-deductible contributions

s 10C

- Once a member of a retirement fund retires and receives an annuity as a retirement benefit, any contributions to the retirement fund that did not previously qualify for tax deduction are tax-exempt – either against a lump sum benefit (Second Schedule) or an annuity (s 10C).
- The s 10C exemption applies to annuities from pension, pension preservation and RA funds but did not previously apply to annuities from a provident or provident preservation fund.
- 2019 Amendment: to encourage annuitisation, the exemption should be extended to annuities from provident and provident preservation funds.

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## Bulk payments to former members of closed funds

- Background: Para 2C of the Second Schedule to the Act read together with the notice published by the Minister of Finance in GG 32005 (11 March 2009) allowed for extraordinary lump sum payments to be made by registered, active retirement funds.
- When the notice was published in 2009, some retirement funds paid the extraordinary lump sum payments (unclaimed benefits) to the fund administrators and these unclaimed benefits are currently still held by the respective fund administrators.
- In view of the fact that para 2C of Second Schedule, read with the GG 32005 Notice, allows for the extraordinary lump sum payments to be made by registered active retirement funds, extraordinary lump sum payments made by fund administrators will not qualify for the tax exemption.

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## Bulk payments to former members of closed funds

- 2019 Amendment:
  - to ensure consistent tax treatment in respect of extraordinary lump sum payments, changes will be made in the Second Schedule and a revised Notice will be published making provision for the payment of extraordinary lump sums currently held by fund administrators on behalf of deregistered funds to qualify for tax exempt treatment, provided that they meet the criteria to be determined by the Minister of Finance in the notice.
  - New para 2D of the Second Schedule
- The amendment is effective from the date to be determined by the Minister of Finance by notice in the Government Gazette.

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## New para 2D

- Any lump sum benefit, or part thereof, received by or accrued to a person subsequent to the person's retirement, death, withdrawal or resignation from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund held by or under the control of an administrator, as defined in s 1(1) of the Pension Funds Act, in consequence of an event prescribed by the Minister by notice in the *Gazette* shall not constitute gross income of that person.

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## Tax treatment of pension annuities

- 2019 Budget Proposal:
  - Surviving spouses to be provided with effective communication relating to tax and financial issues
  - The monthly spousal pension be subject to PAYE withholding at a specified flat rate
  - Tax rebates should not be taken into account in the calculation of spousal pensions.
  - Any PAYE excessively withheld as a result of this proposal will be refunded upon assessment.

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## Para 2 of the Fourth Schedule: addition of sub-para (2B)

- a pension fund, pension preservation fund, provident fund or a person that pays an annuity amount as defined in s 10A(1) shall, when deducting or withholding employees' tax in respect of any year of assessment, disregard the s6 rebates (primary, secondary and tertiary rebates) in determining the amount of employees' tax to be withheld
- if the Commissioner, pursuant to an application made by that person, issues a directive that the amount must be disregarded, where the person to whom that annuity amount is paid receives an amount of remuneration from more than one employer.

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# Trading stock

s 22(1)(a) amended: proviso added

- Proviso added to s 22(1)(a):
  - for the purposes of this subsection—
    - (i) the amount of trading stock must be taken into account in determining taxable income by including such amount in gross income; and
    - (ii) in determining any diminution in the value of trading stock, no account must be taken of the fact that the value of some items of trading stock held and not disposed of by the taxpayer may exceed their cost price.
- Comes into operation on 1 January 2020 and applies in respect of years of assessment commencing on or after that date.

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# Addressing dividend stripping

s 22B & par 43A

- Following 2017 and 2018 amendments
- Target: arrangements involving the target company distributing a substantial dividend to its current company shareholder and subsequently issuing shares to a third party. As a result, the value of the current company shareholder's holding in the shares of the target company is diluted and these shares are not immediately disposed of. This differs from the previous avoidance arrangements that involved disposing of the same shares in return for a tax-exempt dividend.
- To curb this new form of abuse, it is proposed that the rules governing share buy-backs and dividend stripping be amended.
- These amendments will take effect on 20 February 2019.

## EG (s 22B and para 43A)

- HCo holds 100% of the shares in Subco which it acquired ten years ago for R2million. Current market value of Subco shares = R7million (unchanged for the last 18 months). HCo wishes to sell Subco shares.
- Subco distributes a dividend of R5million to Hco and Immediately after the dividend distribution Holdco sells the shares for R2million.
  - The R5 million is an 'exempt dividend' as it is not subject to either normal tax OR dividends tax
  - The 'extraordinary exempt dividend' = R3 950 000 (R5million less 15% of MV of R7 million)
- Para 43A deems the 'extraordinary exempt dividend' (R3 950 000) to be additional proceeds derived by Hco on the disposal of the shares
- Proposed amendment deals with: IF Subco distributed the dividend and then issued shares to a third party, thus diluting Hco's interest

## 2019 amendments

### Explanatory Memorandum to TLAB19

- The anti-avoidance rules will no longer apply only when a shareholder company disposes of shares in a target company.
  - For purposes of ensuring that the new avoidance arrangements will also be subject to the dividend stripping rules, a deemed disposal will be imposed on such arrangements. This deemed disposal will be imposed solely for purposes of the dividend stripping rules and will result in an income inclusion or capital gain in the hands of the shareholder company.

## 2019 amendment (cont.)

- The deemed disposal rule will operate as follows:
  - A shareholder company will be deemed to have disposed of its shares in the target company, if the target company issues shares to another party and after that issuance of shares, it is determined that the effective interest held by the shareholder company in the target company is reduced by reason of that issuance of shares.
  - In such an instance, the shareholder company will be deemed to have disposed of a percentage of the shares it holds in the target company immediately after the share issue that results in a decrease in the effective interest it holds in the shares of the target company.
  - The percentage deemed to have been disposed of is the percentage by which the effective interest held by the shareholder company in the target company has been reduced by as a result of the issuance of shares.

## 2019 amendment (cont.)

- Effective date: The amendments will be deemed to have come into operation on 20 February 2019 and apply in respect of shares held by a company in another company if the effective interest of those shares held by that company in that other company is reduced by reason of shares issued by that other company, on or after 20 February 2019 to a person other than that company.

## Explanatory memorandum

- The deemed disposal will be imposed solely for purposes of the dividend stripping rules and will result in an income inclusion or capital gain (and not proceeds arising from disposal) in the hands of the shareholder company.
- The shareholder company will therefore have to account for an immediate additional tax but will still be able to apply their original cost of the shares (i.e. base cost) against the consideration they receive in the event that the shares they hold are actually disposed of after the deemed disposal.

## Exclusion of corporate transactions

s 22B and para 43A

- dividend *in specie* distributed in terms of a deferral transaction must not be taken into account as an 'extraordinary dividend' to the extent to which that distribution was made in terms of an unbundling transaction as defined in s 46(1)(a) or a liquidation distribution as defined in s 47(1)(a)
- Effective 30 October 2019 and applies in respect of dividends received or accrued on or after that date.

## Interaction with other provisions

- Paragraph 19 of the Eighth Schedule amended to apply subject to para 43A
- Excludes any amount taken into account as an extraordinary dividend under para 43A

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## Clarification of interaction between group reorganisation rules

ss 24BA & 40CA

- EM: In order to provide clarification on the interaction between the two set of rules contained in s 24BA and s 40CA, it is proposed that changes be made in the deemed expenditure incurral rule in s 40CA. The proposed changes will provide that the deemed expenditure incurred by a company that acquires an asset in exchange for the issue of its own shares must be equal to the sum of the market value of the issued shares immediately after the acquisition of the asset in respect of the asset and any deemed capital gain which arose in terms of the value shifting rules in respect of the acquisition of that asset.
- **Effective date:** 1 January 2020 and apply in respect of acquisitions made on or after that date.

## Amendment to s 40CA

- Assets acquired in exchange for shares issued by a company
  - that company must be deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to the sum of -
    - (i) the market value of the shares immediately after the acquisition; and
    - (ii) any deemed capital gain determined in terms of s 24BA(3)(a) in respect of the acquisition of that asset

## Special interest deduction s 240

- 'acquisition transaction' means any transaction in terms of which a company acquires an equity shares in another company that does not form part of the same group of companies as that company, if -
  - (a) that other company is -
    - (i) an operating company that is continuously carrying on a business on the date of acquisition; and
    - (ii) as a result or which, at the end of the day of that transaction -
      - (aa) that company is a controlling group company in relation to that other company and
      - (bb) that company and that other company form part of the same group of companies as defined in s 41(1); or



# Acquisition transaction

s 240 (cont.)

(b) that other company is—

(i) a controlling group company in relation to an operating company contemplated in para (a)(i) that forms part of the same group of companies, as defined in s 41(1), as that controlling group company; and

(ii) as a result or which, at the end of the day of that transaction—

(aa) that company is a controlling group company in relation to that other controlling group company; and

(bb) that company and that other company form part of the same group of companies as defined in s 41(1)

- Deemed to have come into operation on 1 January 2019 and applies in respect of years of assessment ending on or after that date.

# Group transactions

s 240(5) (added)

- Where a company that acquired equity shares in a controlling group company in relation to an operating company as contemplated in para (b) of the definition of 'acquisition transaction' acquires the equity shares held by that controlling group company in that operating company in terms of -
  - (a) an unbundling transaction in respect of which s 46 was applied; or
  - (b) a liquidation distribution in respect of which s 47 was applied, those equity shares be treated -
    - (i) as having been acquired by that company in terms of para (a) of the definition of 'acquisition transaction'; and
    - (ii) as constituting a qualifying interest in an operating company to the extent to which the value of the equity shares in the controlling group company from which the equity shares in the operating company were acquired was derived from the value of the equity shares in the operating company so acquired.
- Effective 1 January 2019 and applies in respect of years of assessment ending on or after that date.

## Approval of tax exempt status

ss 30(3B) and 30A(4)

- Currently, the Commissioner has the discretion to approve an organisation as a PBO in terms of s 30(3B) or a recreational club (in terms of s 30A(4) retrospectively.
- The draft amendment sought to remove this discretion.
- Revised after consultation

## S 30(3B) & 30A(4)

(a) Subject to para (b), where an organisation applies for approval, the Commissioner may approve that organisation for the purposes of this section with retrospective effect, if the Commissioner is satisfied that that organization during the relevant period prior to its application complied with the requirements of a public benefit organisation as defined in s 30(1).

## S 30(3B) & 30A(4)

- (b) For the purposes of para (a), where the organisation—
- (i) has complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment may in terms of s 99(1) of that Act not be made; or
  - (ii) has not complied with all its obligations under chapters 4, 10 and 11 of the Tax Administration Act, the Commissioner may not extend approval to the years of assessment in respect of which an assessment could in terms of s 99(1) of that Act, not have been made had the income tax returns relating to those years of assessment been submitted in accordance with s 25(1) of that Act.

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## Controlled foreign companies – comparable tax exemption

s 9D(2A)(aa)

- the aggregate amount of taxes on income payable to all spheres of government of any country other than the Republic by the controlled foreign company in respect of the foreign tax year of that controlled foreign company is at least 67,5% of the amount of normal tax that would have been payable in respect of any taxable income of the controlled foreign company had the controlled foreign company been a resident for that foreign tax year
- Effective date: comes into operation on 1 January 2020 and applies in respect of years of assessment ending on or after that date

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## Transfer pricing provision

s 31(1) definition of 'affected transaction'

- ... and those persons are connected persons or associated enterprises in relation to one another
- insertion of definition of 'associated enterprise':
  - means an associated enterprise as contemplated in Article 9 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development

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## Transfer pricing provision

s 31

- Explanatory Memorandum: the scope of the transfer pricing rules is to be extended to also include transactions between persons that are not connected persons, but that are "associated enterprises" as described in Article 9(1) of the OECD MTC on Income and on Capital.
- Effective date: 1 January 2021 and applies in respect of years of assessment commencing on or after that date.

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# Comparable tax exemption

s 31(6)

- Applies where financial assistance or use of IP is granted to by a resident to a CFC
  - If the aggregate amount of tax payable to all spheres of government of any country other than the Republic by that CFC in respect of any foreign tax year of that controlled foreign company during which that transaction, operation, scheme, agreement or understanding exists is at least 67,5% of the amount of normal tax that would have been payable in respect of any taxable income of that controlled foreign company had that controlled foreign company been a resident for that foreign tax year
- Effective 1 January 2020 and applies in respect of years of assessment ending on or after that date

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# CGT and foreign currency translation

S 24I and para 43 of the Eighth Schedule

- EM: to clarify the interaction between the currency gains and losses determined under s 24I that are part of a capital gain or capital loss, it is proposed that the rules for companies and trading trusts in para 43(1A) of the Eighth Schedule be amended by inserting a new proviso to provide an appropriate mechanism for eliminating double taxation.
- Effective date: The amendments will come into operation on 1 January 2020 and apply in respect of years of assessment commencing on or after that date.

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## Amendment to para 43(1A)

- Proviso added:
  - Provided that the amount of any capital gain or capital loss determined under this subparagraph in respect of an exchange item contemplated in s 24I must be taken into account in terms of this paragraph only to the extent to which it exceeds the amounts determined in respect of that exchange item under s 24I.

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## Venture capital companies

s 12J

- 2019 Amendments to
  - limit/prevent abusive schemes
  - Introduce a cap on the deduction
- Sunset date: 30 June 2021
  - 2020 Budget Speech: Government will review the effectiveness, impact and role of this incentive to ascertain whether it should be discontinued.

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## Amendment to s 12J(1)

- definition of 'qualifying company':
  - (a) a resident;
  - (b) not a controlled group company in relation to a group of companies of which a venture capital company to which that company has issued any share forms part from the date of issue of any such share and at any time during any year of assessment after that date
  - (c) – (h) unchanged

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## Explanatory memorandum

- The amendment seeks to clarify that the controlled company group test is not a once-off test but that it needs to be met from the date of acquisition (from the date of issue of the shares to the venture capital company) and any time during every year of assessment after that date.
- Effective from date of promulgation of the TALAA, 2019 (15 January 2020).

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## Amendments to s 12J:

addition of s 12J(3C)

- The deduction to be allowed in respect of a year of assessment in respect of expenditure incurred during that year by a taxpayer that is -
  - (a) a company must not exceed R5 million; and
  - (b) a person other than a company must not exceed R2,5 million.
- Effective 21 July 2019 and applies in respect of expenditure incurred by the taxpayer on or after that date.

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## Amendments to s 12J:

addition of s 12J(6A)

- Withdrawal of approval as a VCC
  - If, at the end of any year of assessment, after the expiry of a period of 36 48 months commencing on the first date of the issue of venture capital shares –
    - Less than 80% of expenditure incurred as required; or
    - More than 20% of share issue receipts used to acquire qualifying shares in any one company
- Effective 21 July 2019

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## Special Economic Zones incentive

s 12R

- Limit incentive to new companies
- Clarity on Employment Tax Incentive
- Sunset date: years of assessment starting on or after 1 January 2024

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## Certified emissions reduction exemption

s 12K

- Section 12K of the Income Tax Act, 1962 repealed
- Effective 1 June 2019

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## Energy-efficiency savings incentive

s 12L

- Introduced in 2013, will be used to offset the tax burden on industry from the introduction of the carbon tax.
- Was due to expire on 31/12/19 but extended to 31/12/2022 (any year of assessment ending before 1 January 2023) to encourage additional investment in energy efficiency, government has proposed extending the incentive.

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## CGT: base cost of an asset para 20 of the Eighth Schedule

- Included in base cost  
(e) the expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset

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## CGT: base cost of an asset para 20 of the Eighth Schedule

- para 20 amended by the substitution in subparagraph (3)(b) for subitem (iii) of the following subitem:
  - (iii) applied to reduce an amount of expenditure incurred in respect of—
    - (aa) trading stock as contemplated in s 19; or
    - (bb) any other asset as contemplated in para 12A(3)
- Paragraph (c) of subsection (1) is deemed to have come into operation on 1 January 2018 and applies in respect of years of assessment commencing on or after that date.

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## Reviewing section 72 of the VAT Act

- Section 72 gives SARS discretionary powers to apply provisions relating to the calculation or payment of tax or the application of any provision, exemption or zero rate, in cases where “difficulties, anomalies or incongruities have arisen” due to the business conduct of a particular vendor or vendors.

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# Amendment to s 72 of the VAT Act

## Explanatory Memorandum to TLAB19

- In view of the fact that the provisions of the VAT Act are in itself mandatory, in order to address the above-mentioned anomaly, changes are made in s 72 of the VAT Act to align the provisions of this section with the spirit of the other provisions of the VAT Act.
- Effective date: The amendments are deemed to have come into operation on 21 July 2019.

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# Impact on directives previously issued

## s 72(3)

- An arrangement or decision made in terms of s 72 of the VAT Act, in respect of an application made before 21 July 2019 that -
  - (a) ceases to be effective on or before 31/12/2021, may be reconfirmed by the Commissioner, on application by the vendor in whose favour the arrangement or decision was made: Provided that—
    - (i) the effective period of the reconfirmed arrangement or decision may not extend beyond 31/12/2021;
    - (ii) for purposes of the application to reconfirm such arrangement or decision, the wording of s 72, prior to the amendment in s 72(1) shall apply;
    - (iii) the application to reconfirm such arrangement or decision must be received by the Commissioner no later than 2 months prior to the expiry date of such decision or, in exceptional circumstances, such other date acceptable to the Commissioner; and
  - (b) ceases to be effective after 31/12/2021 or that does not specify an effective period, shall cease to be effective on 31/12/2021.

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## Impact on directives previously issued

s 72(4)

- An arrangement or decision made in terms of s 72, which constituted a binding general ruling and ceases to be effective on or after 21/7/2019 or does not specify an effective period, shall cease to be effective on 31/12/2021.
- 2020 Budget Announcement: to be reviewed

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## Declarations and written undertakings

ss 49E, 50E, 64G and 64H

- Amendment: To ease the compliance burden in respect of the withholding taxes on royalties and interest, the requirement to submit a declaration before each payment will be removed and be replaced by a requirement to provide such a declaration once every two years, along with an undertaking to inform the payor if circumstances change during that period
- Declarations and written undertakings are no longer valid after a period of 5 years from the date of the declaration
  - Effective date: 1 July 2020

## Employer reconciliations

Para 14(6) of the Fourth Schedule

- If an employer fails to render to the Commissioner a complete return referred to in subpara (3) within the period prescribed in that subparagraph, the Commissioner may impose on that employer a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, for each month that the employer fails to submit a complete return which, in total, may not exceed 10% of the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld by the employer from the remuneration of employees for the period described in that subparagraph

## Provisional tax exemption

Additional proviso to para 19 of the Fourth Schedule

- in respect of the year of assessment in which a person dies, no estimate is required to be made in respect of the period ending on the date of death of that person.

# Reportable arrangement and mandatory disclosure penalty

s 212 of the TAA

- Applies to
  - A person referred to
    - As a 'participant' under s 34, who fails to disclose the information in respect of a reportable arrangement, as required by s 37; or
    - In the definition of 'intermediary' in the regulations issued under the 'international tax standard', who fails to disclose the information required to be disclosed under the regulations

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# Tax clearance status

s 256 of the TAA

- Amendments update the provisions relating to a taxpayer's tax compliance status to take account of recent system developments that speed up the process.
- Also enables the Commissioner to, by public notice, insert a de minimis for the amount of outstanding tax debt that will contribute to a taxpayer's tax compliance status as being indicated as non-compliant.

## Tax clearance status

s 256(3) of the TAA

The taxpayer's tax compliance status may only be indicated as compliant if the taxpayer -

- (a) is registered for tax as required in terms of a tax Act;
- (b) does not have any outstanding tax debt, excluding a tax debt—
  - (i) contemplated in s 167 or 204; or
  - (ii) that has been suspended under s 164; or
  - (iii) that may not be recovered for the period specified in s164(6);  
or
  - (iv) that does not exceed the amount referred to in s 169(4) or any higher amount that the Commissioner may determine by public notice; and
- (c) does not have any outstanding return, unless an arrangement with SARS has been made for the submission of the return.

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2020 Tax Proposals





# Main tax proposals

- VAT rate stays at 15%
- No changes to individual tax rates
- Individual tax tables updated
- Company tax rate stays at 28%
- Limitations on assessed loss
- Limitation on interest deductions
- Dividends tax rate stays at 20%
- CGT exemption & inclusion rates unchanged
- Bursary schemes to be addressed
- Trust tax rates unchanged
- Estate duty & donations tax rates unchanged
- Transfer duty thresholds raised
- Fuel taxes increased
- Sin taxes increased
- Carbon tax rate increased
- Plastic bag levy increased
- Other environmental taxes
- Tax Administration amendments

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# Tax Tables - Individuals

<u>2019/20</u>		<u>2020/21</u>	
<b>Taxable Income</b>	<b>Rates of Tax</b>	<b>Taxable Income</b>	<b>Rates of Tax</b>
R0 – R195 850	18%	R0 – R205 900	18%
R195 851 – R305 850	35 253 + 26%	R205 901 – R321 600	37 062 + 26%
R305 851 – R423 300	63 853 + 31%	R321 601 – R451 100	67 144 + 31%
R423 301 – R555 600	100 263 + 36%	R451 101 – R584 200	105 429 + 36%
R555 601 – R708 310	147 891 + 39%	R584 201 – R744 800	155 505 + 39%
R708 311 – R1 500 000	207 448 + 41%	R744 801 – 1 577 300	218 139 + 41%
R1 500 001 and above	532 041 + 45%	R1 577 301 and above	559 464 + 45%

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## Rebates

	<u>2019/20</u>	<u>2020/21</u>
<b>Under 65</b>	<b>R 14 220</b>	<b>R 14 958</b>
Increase	R 153	R 738
Increase	1%	5%
<b>Over 65</b>	<b>R 7 794</b>	<b>R 8 199</b>
Increase	R 81	R 405
Increase	1%	5%
<b>Over 75</b>	<b>R 2 601</b>	<b>R 2 736</b>
Increase	R 27	R 135
Increase	1%	5%

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## Tax thresholds

	<u>2019/20</u>	<u>2020/21</u>
<b>Under 65</b>	<b>R79 000</b>	<b>R83 100</b>
Increase	R850	R4 100
Increase %		5,2%
<b>Over 65</b>	<b>R122 300</b>	<b>R128 650</b>
Increase	R1 300	R6 350
<b>Over 75</b>	<b>R136 750</b>	<b>R143 850</b>
Increase	R1 450	R7 100

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## Company tax rates: unchanged

Companies and close corporations	28%
Foreign resident companies earning SA source income	28%

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## 2020 Budget proposal: Limitation on deduction of interest

- For years of assessment commencing on/after 1 January 2021
- Net interest expense deduction will be capped at 30% of taxable income before interest & capital allowances (EBITDA)
- Will apply to companies in multinational groups
- Carry-forward of excess for up to 5 years
- Sub minimum amount
- Consultation: discussion document on the National Treasury website – closing date for comments: 17 April 2020

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## 2020 Budget proposal: Limitation on set-off of assessed losses

- For years of assessment commencing on/after 1 January 2021
- Assessed losses carried forward from previous years: deduction will be limited to 80% of taxable income in the current year
- Remaining assessed losses may be carried forward – may have a time limit

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## Dividends tax remains at 20%

<b>Effective tax rate on dividends:</b>	
Company tax rate	28%
Effective tax rate on dividends (72 x 20%)	14,4%
<b>Effective tax rate on distributed profits</b>	<b>42,4%</b>

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## Small business corporations

### Minimal change

<b>Years of assessment ending between 1 April 2020 and 31 March 2021</b>	
<b>Taxable income (R)</b>	<b>Rate of tax</b>
0 – 83 100	0% of taxable income
83 101 – 365 000	7% of taxable income above R83 100
365 001 – 550 000	R19 733 + 21% of taxable income above R365 000
550 001 and above	R58 583 + 28% of taxable income above R550 000

  

<b>Years of assessment ending between 1 April 2019 and 31 March 2020</b>	
<b>Taxable income (R)</b>	<b>Rate of tax</b>
0 – 79 000	0% of taxable income
79 001 – 365 000	7% of taxable income above R79 000
365 001 – 550 000	R20 020 + 21% of taxable income above R365 000
550 001 and above	R58 870 + 28% of taxable income above R550 000

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## Turnover tax on micro businesses

### No change

<b>Year of assessment ending 28/9 February 2020/21</b>	
<b>Taxable turnover (R)</b>	<b>Rate of tax</b>
0 – 335 000	0% of taxable turnover
335 001 – 500 000	1% of taxable turnover above 335 000
500 001 – 750 000	R1 650 + 2% of taxable turnover above R500 000
750 001 and above	R6 650 + 3% of taxable turnover above R750 000

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# Trusts

## No change in rates

*Budget Announcement: Addressing the circumvention of anti-avoidance rules for trusts*

- In 2016, anti-avoidance measures were introduced to curb the transfer of growth assets to trusts using low interest or interest-free loans, which was done to avoid estate duty on the asset's subsequent growth in value.
- In 2017, these rules were strengthened to prevent the transfer of growth assets through low interest or interest-free loans made to companies owned by trusts.
- Certain taxpayers are undermining the adjusted rules by subscribing for preference shares in companies owned by trusts that are connected to the individuals.
- To curb this new form of abuse, it is proposed that the rules preventing tax avoidance through the use of trusts be amended.

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# Local interest exemption

## No change

Under 65	R23 800
65 and over	R34 500

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6

## Medical scheme credit (s 6A)

	<u>2019/20</u> Per month	<u>2020/21</u> Per month
Member and 1 <sup>st</sup> dependent	R310	R319
Member plus 1 <sup>st</sup> dependent	R620	R638
Each additional dependent	R209	R215

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## Additional medical credit (s 6B):No change

- 65 and older, or if an individual, his or her spouse, or his or her child is a person with a disability:
  - 33.3% of the sum of
    - qualifying medical expenses paid and borne by the individual +
    - excess contributions (amount by which medical scheme contributions paid by the individual exceed **3 x** medical scheme fees tax credits for the tax year)
- Other individuals:
  - 25% of the sum of
    - qualifying medical expenses paid and borne by the individual +
    - excess contributions (amount by which medical scheme contributions paid by the individual exceed **4 x** medical scheme fees tax credits for the tax year)
    - Less: 7.5% of taxable income (excl. retirement fund lump sums and severance benefits)

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## Retirement fund lump sum withdrawal benefits: unchanged

<u>Taxable lump sum</u>		<u>Rate of tax</u>
	<u>R</u>	
0	- 25000	0%
25001	- 660000	18% of the amount exceeding R 25000
660 001	- 990000	R 114 300 + 27% of the amount exceeding R660 000
990 001	-	R 203 400 + 36% of the amount exceeding R990 000

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## Retirement fund lump sum benefits and severance benefits: unchanged

<u>Taxable lump sum</u>		<u>Rate of tax</u>
	<u>R</u>	
0	- 500 000	0%
500 001	- 700 000	18% of the amount exceeding R500 000
700 001	- 1 050 000	R 36 000 + 27% of the amount exceeding R700 000
1 050 001	-	R130 500 + 36% of the amount exceeding R1050000

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## Budget Announcement: Clarifying deductions in respect of contributions to retirement funds

- Paragraphs 5(1)(a) and 6(1)(a) of the Second Schedule to the Income Tax Act make provision for a deduction of retirement fund contributions that did not qualify for a deduction in terms of s 11F
- These paragraphs refer to “own contributions”, which inadvertently prevents employer retirement fund contributions on behalf of employees (made on or after 1 March 2016) from qualifying for a deduction under either paragraph
- Proposed: legislation to be amended to remove this anomaly

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## Travel allowance table - unchanged Year ending 28 February 2021

Value of the vehicle (including VAT)	Fixed cost	Fuel cost	Maintenanc e cost
<i>R</i>	<i>R per annum</i>	<i>c per km</i>	<i>c per km</i>
0 - 95 000	31 332	105.8	37.4
95 001 – 190 000	55 894	118.1	46.8
190 001 – 285 000	80 539	128.3	51.6
285 001 – 380 000	102 211	138.0	56.4
380 001 – 475 000	123 955	147.7	66.2
475 001 – 570 000	146 753	169.4	77.8
570 001 – 665 000	169 552	175.1	96.6
Exceeding 665 000	169 552	175.1	96.6

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## Fixed travel rate

- No tax is payable on an allowance paid by an employer to an employee up to the rate of R3,98 (was R3,61) per kilometre, regardless of the value of the vehicle.
- NB: this alternative is not available if other compensation in the form of an allowance or reimbursement (other than for parking or toll fees) is received from the employer in respect of the vehicle.
- Full remuneration on reimbursement at more than R3,98/km

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## Subsistence allowances

### •Travel in the Republic

- meals and incidental costs: R452 (was R435) per day
- incidental costs only: R139 (was R134) per day

### •Travel outside the Republic

daily amount per country: No changes from last year

EG

- France € 128 per day
- USA US\$146 per day
- United Kingdom GBP102 per day
- Swaziland RSA Rand 818 per day
- Other countries not listed US\$ 215 per day

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## Budget announcement: subsistence allowances

- If an employee is away from the office on a day trip, advances or reimbursements are not taxed if the employee can prove that they incurred these expenses on the instruction of the employer, in the furtherance of the employer's trade.
- An anomaly arises when an employee purchases meals and incurs incidental costs during a day trip for work, but the employer has not explicitly instructed the employee to do so.
- 2020 proposal: legislation to be amended to exempt reimbursement expenses incurred by an employee for meals and incidental costs during a business day trip, provided the employer's policy allows for such reimbursement.

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## Employer-provided bursaries

s 10(1)(q) and (qA)

- Exempt: bona fide scholarship or bursary granted to assist or enable any person to study at a recognised educational or research institution
- 2020 Budget speech: A number of employer bursary schemes seek to reclassify ordinary remuneration as a tax-exempt bursary granted to the dependents of an employee
- Proposal: Government proposes to close this loophole, with amendments effective on 1 March 2020

## **Employer-provided bursaries s 10(1)(q)**

- Remuneration threshold of R600 000
- Exemption limits
  - R20 000 for education at Grades R to 12 or NQF level 1 to 4; and
  - R60 000 for qualifications at NQF level 5 to 10.

## **Employer-provided bursaries – person with a disability - s 10(1)(qB)**

- Exemption for any bona fide scholarship or bursary granted to enable or assist any person who is a person with a disability as defined in s6B(1) to study at a recognised educational or research institution
  - A bursary to an employee is exempt only if the employee agrees to reimburse the employer for any scholarship or bursary granted to that employee if that employee fails to complete his or her studies for reasons other than death, ill-health or injury

## Employer-provided bursaries to employees' dependants – s 10(1)(qA)

- Bursary to a person with a disability who is a member of an employee's family, in respect of whom that employee is liable for family care and support, to study is exempt -
  - If remuneration of does not exceed R600 000.
  - Exemption limit:
    - R30 000 in respect of grades R to 12 or NQF level 1 to 4; and
    - R90 000 in respect of a qualification on NQF level 5 to 10.

## Estate duty and donations tax Unchanged

<b>Estate duty</b>	
Estates up to R30m	20%
Exceeding R30M	25%

<b>Donations tax</b>	
Donations up to R30m (from 1/3/2018)	20%
Exceeding R30M	25%

# Capital exemptions

## Unchanged

Donations tax exemption (individuals; per annum)	R100 000
Estate duty abatement	R3 500 000

# CGT exemptions

## Unchanged

Annual exclusion (individuals)	R40 000
Primary residence exclusion	R2 000 000
Annual exclusion in year of death	R300 000
Sale of small business assets	R1 800 000
• Max. value of small business asset disposal	R10 000 000

## CGT inclusion rates

### Unchanged

	<b>Inclusion rate</b>	<b>Max. marginal rate</b>	<b>Max. effective rate</b>
Individuals	40%	45%	18%
Companies	80%	28%	22.4%
Trusts	80%	45%	36%

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## Budget Announcement: anti-avoidance provision regarding change of residence

- Capital gains tax is levied when a person ceases to be a SA tax resident.
- When a company ceases to be a resident, there is a deemed disposal of its assets that triggers capital gains tax.
- Despite these rules, residents that hold shares in the company could subsequently dispose of the shares and qualify for a participation exemption for the sale of company shares.
- It is proposed that amendments be made to the legislation to close this loophole.

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## Other withholding taxes

Interest withholding tax	15%
Royalties	15%
Foreign entertainers and sportspersons	15%
Disposal of immovable property	Seller: 7.5% - individual, 10% - company, 15% - trust

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## Specific excise duties

- Increase in excise duties on alcohol and tobacco by between 4.4 and 7.5 per cent.
- Government will introduce a new excise duty on heated tobacco products, to be taxed at a rate of 75% of the cigarette excise rate *with immediate effect*.
- A tax on e-cigarettes (eg vapes) is also being considered to take effect in 2021, in line with international trends

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## Sin Taxes

- Excise duties to increase as follows:
  - Can of beer: 8c
  - 750ml bottle of wine: 14c
  - 750ml bottle of sparkling wine: 61c
  - 750 ml spirits: R 2.89
  - Pack of 20 cigarettes: 74c
  - 25 gram of piped tobacco: 40c
  - 23 gram cigar: R 6.73
  - No change to excise duty on sorghum beer

## Fuel levies

R/litre Inc from 1 Apr 2020	2019/20		2020/21	
	93 octane petrol	Diesel	93 octane petrol	Diesel
General fuel levy (16c/l inc)	3,54	3,39	3,70	3,55
Road Accident Fund levy (9c/l inc)	1,98	1,98	2,07	2,07
Customs and excise levy	0,04	0,04	0,04	0,04
<b>Carbon fuel levy</b> <i>effective from 5 June 2019</i>	0,07	0,08	0,07	0,08
<b>Total</b>	<b>5,63</b>	<b>5,49</b>	<b>5,88</b>	<b>5,74</b>
<b>Increase</b>	<b>29c/l</b>	<b>30c/l</b> <sup>98</sup>	<b>25c/l</b>	<b>25c/l</b>

## Motor vehicle emissions tax

	<b>Passenger vehicles</b>	<b>Double cabs</b>
1 April 2016	R100 per gram of emissions per km above 120g/km	R140 per gram of emissions per km above 175g/km
1 April 2018	R110 per gram above 120g/km for passenger vehicles	R150 per gram above 175 g/km
1 April 2020	R120 per gram above 95gCO <sub>2</sub> /km	R160 per gram above 160gCO <sub>2</sub> /km

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## Other environmental taxes

- Carbon tax rate: Increase by 5.6% from R 120 per ton of carbon dioxide to R127 per ton of carbon dioxide. (R 1.75 billion)
- Heated tobacco products: New excise duty taxed at a rate of 75% of the cigarette excise rate with immediate effect
- Tax on e-cigarettes (vapes): to take effect in 2021
- Tyre levy: R2.30/kg of tyre, introduced in 2017; no change
- Health promotion levy: no change
- Incandescent globe tax: Increase from R8 to R 10 per globe
- Plastic bag levy: increase from 12c a bag to 25c per bag
- Motor vehicle emissions tax: Increase to R 120 (R 110) for passenger vehicles and to R 160 (R 150) for double cab vehicles

## Transfer duty

Value of property (R)	Rate: Acquisition of property on or after 1/3/2020
0 – 1 000 000	0%
1 000 001 – 1 375 000	3% of the value above 900 000
1 375 001 – 1 925 000	11 250 + 6% of the value above 1 375 000
1 925 001 – 2 475 000	44 250 + 8% of the value above 1 925 000
2 475 001 – 11 000 000	88 250 + 11% of the value above 2 475 000
11 000 001 and above	1 026 000 + 13% of the value above 11 000 000

Property value (R)	Acquisition of property 1/3/17 - 29/2/20
R0 - <b>R900 000</b>	0% of property value
R 900 001 - R1 250 000	3% of property value above R900 000
R1 250 001 - R1 750 000	R10 500 + 6% of property value above R1 250 000
R1 750 001 - R2 250 000	R40 500 + 8% of property value above R1 750 000
R2 250 001 - R10 000 000	R80 500 + 11% of property value above R2 250 000
R10 000 001 and above	R933 000 + 13% of property value above R10 000 000

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## Tax-free investments

- Annual allowance for tax free savings accounts
  - increased from R30 000 to R33 000 in 2017
  - increased to R36 000 from 1 March 2020
- Lifetime limit R500 000

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# Foreign employment income tax exemption

s 10(1)(o)(ii)

- Exemption capped at R1,25million from 1 March 2020
- Relief:
  - Double tax agreements
  - Foreign tax rebate (s 6quat)
- Concerns
  - Coverage of the exemption
  - Fringe benefits

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**See also:**

**Interpretation Note No. 16 (Issue 3)**

**SARS FAQs: Foreign Employment Income Exemption (s 10(1)(o)(ii))**

## Recent cases

- ABC (Pty) Ltd v C:SARS (TCIT 14287)
- BMW South Africa (Pty) Ltd v C:SARS (SCA)
- C:SARS v Atlas Copco SA (Pty) Ltd (SCA)
- Africa Cash & Carry (Pty) Ltd v C:SARS
- C:SARS v Clicks Retailers (Pty) Ltd

## ABC (Pty) Ltd v C:SARS TCIT 14287 12 June 2019

- SA dividends tax on dividends paid by a SA resident company to a Dutch resident
- Most favoured nation (MFN) clause in the SA-Netherlands DTA also applies cap SA dividends tax at 0% on dividends paid by a SA resident company to a Dutch resident
- The Tax Court found in favour of the Taxpayer, ordering SARS to
  - refund the dividends tax overpaid to the Taxpayer with interest
  - pay the Taxpayer's costs including the costs of two counsel

## **BMW South Africa (Pty) Ltd v C:SARS ZASCA 107 (6 September 2019)**

- Dismissed the appeal by the appellant, BMW
- Held that payments by BMW to tax consultants to render assistance to its expatriate employees constituted a 'benefit or advantage' as contemplated in the definition of 'gross income' in s 1 of the Income Tax Act 58 of 1962 read with s 2(e) or (h) of the Seventh Schedule.

## **C:SARS v Atlas Copco SA (Pty) Ltd ZASCA 124 (27 September 2019)**

- Income tax – valuation of stock at year end in terms of s 22(1)(a) of the Income Tax Act 58 of 1962
- Taxpayer applied its global accounting policy as a basis for writing down trading stock for tax purposes
- SARS appeal upheld with costs, including those of 2 counsel
- Confirmed SARS' additional assessments for 2008 and 2009 years of assessment
- Judgment demonstrates the burden that rests with a taxpayer to prove a diminution in the market value of trading stock before taking a reduced value into account for tax purposes

## Africa Cash & Carry (Pty) Ltd v C:SARS ZASCA 148 (21 November 2019)

- Income tax and VAT understated
- Tax Administration Act No. 28 of 2011
  - powers of tax court to alter assessment under s 129(2)(b)
  - whether SARS proved 2 that the methods of assessment used were reasonable
  - whether the tax court ought to have remitted the assessment
  - s 89quat interest
- Conclusion: appeal dismissed with costs, including the costs of two counsel

## C:SARS v Clicks Retailers (Pty) Ltd ZASCA 187 (3 December 2019)

- Allowance for future expenditure (s 24C)
- Claim for allowance in respect of cost of complying with terms of loyalty card programme; customer applying for issue of card; award of points on value of purchases; vouchers issued based on number of points accumulated; vouchers presentable as part payment for future purchases of goods; whether amount received from earlier sales used to finance future expenditure on same contract
- Held: appeal upheld with costs including costs of two counsel

## SARS documents



### Interpretation notes: new and updated in 2020

Date	Detail
3 March 2020	<a href="#">Interpretation Note 113</a> – Apportionment of surplus and minimum benefit requirements: Pension Funds Second Amendment Act (replaces GN 29)
21 February 2020	<a href="#">Interpretation Note 44 (Issue 3)</a> – Public benefit organisations: Capital gains tax
11 February 2020	<a href="#">Interpretation Note 75 (Issue 3)</a> – Exclusion of certain companies and shares from a "group of companies" as defined in section 41(1)
31 January 2020	<a href="#">Interpretation Note 16 (Issue 3)</a> – Exemption from income tax: Foreign employment income
28 January 2020	<a href="#">Interpretation Note 67 (Issue 4)</a> – Connected persons



## BGRs recently issued

Date	Detail
30 January 2020	<a href="#">Binding General Ruling (BGR) 9 (Issue 4)</a> – Taxes on income and substantially similar taxes for purposes of South Africa’s tax treaties

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## Guides, etc recently issued

Date	Detail
21 February 2020	<a href="#">Tax Guide for Share Owners (Issue 7)</a>
18 February 2020	<a href="#">Guide on Venture Capital Companies</a>
16 January 2020	<a href="#">List of qualifying physical impairment or disability expenditure</a> – Effective 1 March 202
24 December 2019	<a href="#">Confirmation of Diagnosis of Disability (ITR-DD)</a> – The validity period of the form has been extended (see No 4 on page 5 of the form: 10 years for moderate to severe permanent disability)
12 December 2019	<a href="#">VAT 404</a> – Guide for vendors

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**Thank you!**

**Questions??**

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