



# August 2020 TAX UPDATE

## Monthly Tax Update series

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# What we are covering today...

- 2020 Draft Tax Bills
- Draft Interpretation Note – Taxation of the receipt of deposits
- Recent judgments
- Recent Rulings and other SARS documents



# 2020 Draft Bills

- 2020 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (draft Rates Bill) (rereleased)
- 2020 Draft Taxation Laws Amendment Bill (draft TLAB),
- 2020 Draft Tax Administration Laws Amendment Bill (draft TALAB)
- Draft Regulations Prescribing Electronic Services

Published 31 July for public comment

Due date for public comment: 31 August 2020



# Main proposed amendments

- Proposed introduction of an export tax on scrap metals
- Tax measures required as a result of the modernisation of the foreign exchange control system
- Extension of deemed disposal on ceasing to be a resident
- Amendments to Carbon Tax
- Anti-avoidance rules for trusts
- Employer provided bursaries
- Clarifying rollover relief for unbundling transactions



# Main proposed amendments (cont.)

- Consequential amendments as a result of 2019 changes to section 72 of the VAT Act
- Removal of the requirement to prove intent with regard to certain offences listed in the Fourth Schedule to the Income Tax Act, the Value-Added Tax Act and the Tax Administration Act
- Refusal to authorise a refund where returns are outstanding under the Skills Development Levies Act and the Unemployment Insurance Contributions Act
- Withholding of a refund pending a criminal investigation
- Estimated assessments where relevant material requested by SARS has not been supplied



# Proposed export tax on scrap metals

- Applies to ferrous metals, aluminium, red metals and other waste and scrap metals
- Rates as announced in the 2020 Budget to replace the current price preference system.
- Proposed export tax rates as recommended by ITAC are shown in the table below.

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



# Tax measures required as a result of the modernisation of the foreign exchange control system

- Withdrawing from retirement funds on emigration
  - Applicable provisions:
    - Section 1 of the Act, the definitions of “Pension Preservation Fund”, “Provident Preservation Fund” and “Retirement Annuity Fund”



# Withdrawing from retirement funds on emigration

- Background
  - Currently, the definitions of “pension preservation fund”, “provident preservation fund” and “retirement annuity fund” in s 1 of the Income Tax Act make provision for a payment of lump sum benefits when a member of a pension preservation, provident preservation or retirement annuity fund withdraws from the retirement fund due to that member emigrating from South Africa, and such emigration is recognised by the South African Reserve Bank (SARB) for exchange control purposes.





# Reasons for change

- As outlined in Annexure E of the 2020 Budget Review, Government will be modernising the foreign exchange control system.
  - As a result, a new capital flow management system will be put in place. This new system will move from a “negative list” system to one where all foreign-currency transactions, other than those contained on the risk-based list of capital flow measures, will be allowed.
- For individuals, one of the changes to be implemented during this process is the phasing out of the concept of “emigration” for exchange control purposes.
  - The phasing out of this concept will have a direct impact on the application of the tax rules as the tax legislation makes provision for a payment of lump sum benefits when a member emigrates from South Africa and such emigration is recognised by the SARB for exchange control purposes.



# Proposal

- Definitions of “pension preservation fund”, provident preservation fund and “retirement annuity fund” in s 1 of the Act to be amended
  - remove the reference to payment of lump sum benefits when a member emigrates from SA and such emigration is recognised by the SARB for exchange control purposes.
- As such, a new test is to be inserted which will make provision for the payment of lump sum benefits when a member ceases to be a SA tax resident (as defined in the Act), and such member has remained non-tax resident for at least three consecutive years or longer.



# Proposed amendment

- para (c)(ii) of the proviso to the definition of “pension preservation fund”
- para (c)(ii) of the proviso to the definition of “provident preservation fund”
- para (b)(x)(dd) of the proviso to the definition of “retirement annuity fund”
  
- A member shall, prior to his/her retirement date, be entitled to the payment of a lump sum benefit contemplated in para 2(1)(b)(ii) of the second Schedule where that member -
  - is a person who is **[or was]** not a resident **[who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control]** for an uninterrupted period of three years or longer



# Effective date

- The proposed amendments will come into operation on 1 March 2021.



# Anti-avoidance rules for trusts (s 7C)

- The use of preference share funding avoids the application of the anti-avoidance rules as the 2017 changes only apply in respect of loans that are advanced or credit that is made available to a company that is owned by a trust that is a connected person in relation to the natural person advancing that loan or credit.
- As announced in the 2020 Budget Speech, the scope of s 7C is to be extended to preference share structures



# Proposed amendment

*insertion after subsection (1A) of the following subsection:*

(1B) Where –

(a) a natural person; or

(b) at the instance of a natural person, a company that is a connected person in relation to that natural person in terms of paragraph (d)(iv) of the definition of ‘connected person’,

subscribes for a preference share in a company in which 20% or more of the equity shares are held (whether directly or indirectly) or the voting rights can be exercised by a trust that is a connected person in relation to that natural person or to that company, whether alone or together with any person who is a beneficiary of that trust –

(i) consideration received by or accrued to that company for the issue of that preference share shall be deemed to be a loan for the purposes of subsection (3); and

(ii) any dividend declared in respect of that preference share shall be deemed to be interest in respect of the loan contemplated in subsection (1).



# Effective date

- deemed to have come into operation on 1 January 2021 and applies in respect of years of assessment commencing on or after that date.



# Employer provided bursaries (s 10(1)(q) & (qA))

- Bona fide scholarship or bursary granted to enable or assist any person to study at a recognized educational or research institution
  - Employee
  - Relative of employee
  - Person with a disability
- Salary sacrifice exclusion removed 2006





**Proviso:** the exemption shall not apply to a bursary granted by an employer / associated institution if -

- (i) (aa) if any remuneration to which the employee was entitled or might in the future have become entitled was in any manner whatsoever reduced or forfeited as a result of the grant of such scholarship or bursary; or
  - (bb) in the case of a scholarship or bursary granted to so enable or assist any such employee, unless 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;



## Proviso (cont)

Unchanged:

(ii) in the case of a scholarship or bursary granted to enable or assist any such relative of an employee so to study-

(aa) if the remuneration proxy derived by the employee in relation to a year of assessment exceeded R600 000; and

(bb) to so much of any scholarship or bursary as in the case of any such relative, during the year of assessment, exceeds –

(A) R20 000 (Grade R-12 and NQF levels 1-4)

(B) R60 000 (NQF level 5-10)



## Proviso (cont)

(iii) in the case of a scholarship or bursary granted to so enable or assist any such relative of an employee so to study if the employer does not provide similar scholarships or bursaries to enable or assist members of the general public so to study



# Reasons for change

- Number of schemes developed and marketed to the employer as a means of providing tax exempt bursaries to their employees or relatives at no additional cost to the employer.
- These schemes seek to reclassify ordinary taxable remuneration received by the employee as a tax-exempt bursary granted to the relatives of employees.
- As a result, an employee can cater for their relative's studies by way of a salary sacrifice. The portion of the salary sacrificed by the employee is paid directly by the employer to the respective school and is treated as a tax-exempt bursary in the employee's or relative's hands.
- Loss to the fiscus caused Government to review its policy position taken in 2006 of making the tax exemption available irrespective of whether a bursary or scholarship scheme contained an element of salary sacrifice.



# Proposed amendments

- The exemption in respect of a bona fide bursary or scholarship granted by the employer to the relatives of the employee as contemplated in paragraph (ii) of the provisos to s10(1)(q) and s10(1)(qA) should only apply if that bona fide bursary or scholarship granted by the employer is not restricted only to the relatives of the employee, but is an open bursary or scholarship available and provided to members of the general public;
- The requirement that the applicability of the exemption is dependent on the fact that the employee's remuneration package is not subject to an element of salary sacrifice, to be reinstated.
- As a means of further encouraging employers to grant bursaries to relatives of employees without subjecting such bursary to an element of salary sacrifice, the employer deduction in relation to said bursaries will only be allowed if the bursary to the employee's relative is not subject to an element of salary sacrifice.



# Effective date

- The proposed amendments will come into operation on 1 March 2021 and apply in respect of years of assessment commencing on or after that date.



# Removal of the requirement to prove intent

- Proposed amendment: the requirement of wilful conduct be removed with regards to criminal offences in the wording of the statutory offence
- “Any person who **[wilfully and]** without just cause –”
- Offences listed in
  - Para 30 of the Fourth Schedule (*Offences*)
  - Section 58 of the Value-Added Tax Act (*Offences*)
  - Section 234 of the Tax Administration Act (*Criminal offences relating to non-compliance with tax Acts*)



# Draft Regulations Prescribing Electronic Services

- substitution for the definition of “telecommunications services” of the following definition:
  - “telecommunications services” means the transmission, emission or reception, and the transfer or assignment of the right to use capacity for the transmission, emission or reception, of signals, writing, images, sounds or information of any kind **by wire, cable, radio, optical or other electromagnetic system**, or by a similar technical system, and includes access to global information networks but does not include the content of the telecommunication.





# Venture Capital Company (VCC) survey

- All VCCs registered with SARS as at 1 March 2020 are requested to submit to the Minister of Finance information prescribed in the survey as mandated in terms of s 12J(10) of the Income Tax Act, 1962.
- The information will be considered in determining the extent to which the VCC tax incentive contributes towards Government's policy objectives of facilitating funding for small businesses that cannot obtain financing from financial institutions, economic growth and job creation.
- This follows the announcement in Annexure C of the Budget Review 2020 that Government will review the effectiveness, impact and role of this regime to ascertain whether the incentive should be discontinued.



# Extension of some COVID-19 Tax Relief measures

- Minister of Finance tabled the COVID-19 Tax Bills before Parliament on 24 June 2020 for consideration.
- The Bills provide for tax measures to combat the COVID-19 pandemic, following announcements by the Minister of Finance on 29 March 2020, 23 April 2020 and 24 June 2020 in the 2020 Supplementary Budget.
- The measures in the COVID-19 Tax Bills are proposed to take effect on 1 April 2020 and 1 May 2020 and apply for a limited period of four months, ending on 31 July 2020 and 31 August 2020, respectively.
- *After careful consideration of the written public comments, and presentations made by the stakeholders during the public hearings convened by the SCoF and SeCoF in Parliament on 22 July 2020 on the COVID-19 Tax Bills, as well as the potential impact on the fiscal framework that has been approved by Parliament, the Minister of Finance will, in terms of the Money Bills Amendment Procedure Act where necessary, make a request to the SCoF for the extension of the following COVID-19 tax relief measures:*



# COVID-19 Tax Bills: proposed extensions

- Streamlined special tax dispensation for funds established to assist with COVID-19 disaster relief efforts
  - This tax relief provides a special tax exemption for COVID-19 relief funds for a period of four months from 1 April 2020 to 31 July 2020.
  - Proposed that the four month period be extended by two months to six months. As a result, this relief will cease to apply on 30 September 2020.



# COVID-19 Tax Bills: proposed extensions

- Deferral of the payment of employees tax liability for tax compliant small to medium sized businesses
  - This tax relief permits tax compliant small to medium sized businesses to defer payment of 35% of the employees' tax they have deducted from their employees in the four months from 1 April 2020 to 31 July 2020.
  - Proposed that the four month period be extended by one month (August). As a result of this extension, repayments on the deferred tax will only begin in October 2020 and run through until March 2021.



# COVID-19 Tax Bills: proposed extensions

- 90-day deferral for the payment of excise taxes on alcohol and tobacco
  - Permits compliant businesses to defer the payment of excise taxes on alcohol and tobacco in order to assist them in respect of payments to be made in May and June 2020.
  - Proposed:
    - a 90 day deferral to assist compliant businesses in respect of payments of excise taxes on alcohol to be made in August and September of 2020; and
    - the deferral in respect of payments of excise taxes on tobacco originally to be made in May and June 2020 be extended to 150 days.

These deferrals will be effected through Customs and Excise Act Rules to be published by SARS.



# National Treasury (31 July 2020)

- Additional tax proposals aimed at mitigating the effects of the COVID-19 pandemic, which have been made by commentators and are not included in the COVID-19 Tax Bills, will be considered based on their potential impact on the fiscal framework that has been approved by Parliament, amongst other criteria.
- In view of the fact that the tax impact of many of these additional tax proposals will be realised when taxpayers file their tax returns at the end of the year of assessment, it is proposed that any potential consideration of these additional tax proposals be accommodated in a second batch of the 2020 draft TLAB.



# Specific items that require immediate action (SAIT Member Alert 17 Aug 2020)

- Permanent establishment and place of effective management
- Individual tax residency and the application of s 10(1)(o)(ii)



# Permanent establishment and place of effective management

- A permanent establishment or place of effective management, has much to do with the tax jurisdictions within which the employees and those in charge of the business perform their actions/services.
- Due to the impact of lockdown regulations globally, individuals are/were not able to move freely. In most instances, these individuals continued to work and render services wherever they were stuck. Through submission to National Treasury and at the public hearings, SAIT requested guidance and possible relief in instances where, due to individuals being stuck in a country due to lockdown, there is possibility of a permanent establishment being created, or an entity would change as a result.
- There is international precedent regarding these areas, and SAIT requested the Parliamentary Committees, National Treasury and SARS to investigate the application of the international precedent and policies so that South Africa is not out of step with our international counterparts.





# Individual tax residency and the application of s 10(1)(o)(ii)

- An individual's tax residency, and whether an individual qualifies for national or tax treaty tax relief, depends on the tax jurisdiction within which the individual spends their time and/or renders services.
- Lockdown regulations globally: the repatriation of South Africans back to SA as well as foreigners in SA back to their home countries has not been within the control of those individuals. Unless relief is provided, the lockdown and further restrictions will result in these individuals being physically present in countries for an extended period which could have a direct impact on their tax resident status and the possibility of being liable to such countries' taxation.
- Many countries (including Australia, Ireland, UK) have reportedly confirmed they will be ignoring 'lockdown days' for residence purposes. Furthermore, the OECD has also stated it will not factor in these days for tax treaty residence purposes.
- SAIT has proposed that SA should similarly adopt the international approach otherwise the lack of a consistent approach among tax treaty partners will leave globally mobile employees in an uncertain position where double taxation may just be a reality.



# Draft Interpretation Note – Taxation of the receipt of deposits

- **Date published:** 23 July 2020
- **Explanatory Note**

The Note provides guidance on the words "received by" in the definition of gross income and the treatment of the receipt of a deposit in the ordinary course of business. The Note does not deal with amounts deposited by clients with banks and similar deposit-taking financial institutions.
- **Due date for comments:** 18 September 2020



# Recent judgments

- SARSTC VAT 1712 (VAT) (JHB) (29 April 2020)
  - Value-added tax; fringe benefit; whether the Appellant was liable for output tax in respect of fringe benefits under section 18(3) of the VAT Act.
- SARSTC VAT 1712 (VAT) (JHB) (29 April 2020)
  - Value-added tax; supplies; whether the Appellant was entitled to input tax claims and whether it met the requirement of "supplies" in the VAT Act
- SARSTC 13720 (ADM) (JHB) (27 March 2020)
  - Tax administration; revised assessments; whether the Respondent was entitled to revised certain assessments and impose an understatement penalty on the Appellant



# Recent Rulings and other SARS documents

1 August 2020      Guides published for Filing Season 2020

[IT-AE-36-G05 - Comprehensive Guide to the ITR12 Income Tax Return For Individuals - External Guide](#)

[IT-GEN-06-G01 - Guide to the Individual ITR12 Return for Deceased and Insolvent Estates - External Guide](#)

[IT-AE-36-G02 - Comprehensive Guide to the Income Tax return for Trusts - External Guide](#)

[IT-AE-37-G02 – Step-by-Step Guide to complete your Trust return via eFiling - External Guide](#)

[IT-AE-36-G06 - How to submit your individual income tax return via eFiling - External Guide](#)

[GEN-ELEC-06-G01 - Guide to Help-You-eFile - External Guide](#)

[IT-AE-40-G02 - Guide to the SARS MobiApp - External Guide](#)



# Recent Rulings and other SARS documents

Notifications from SARS to see the progress of your audit case

SARS will now send you, step-by-step progress notification of your Personal Income Tax (PIT), Value Added Tax (VAT), Company Income Tax (CIT) and Trust Compliance Audit cases. These can be viewed via eFiling or the SARS MobiApp (PIT Only). You are now able to view at which stage your case is e.g. Supporting Documents received, case allocated to Auditor, Audit finalised etc.

Additionally, SARS will issue real time automated SMS and email notification updates, as your case moves from one step to the next.

SARS encourages Individual Taxpayers, Tax Practitioners, Registered Traders and Vendors to use our digital channels for improved communication and efficient service delivery. This will also avoid you having to hold the line for our Contact Centre or visit a SARS branch.



# Recent Rulings and other SARS documents

14 August 2020      Tax Exemption

Updated [Income Tax Exemption Application Checklist:](#)

- A Valid email address must be completed on the EI1 application form.
  - In addition to the CIPC MOI a detailed supplementary MOI will be acceptable".
- NB: MOI must be signed by the directors and dated.
- Amended requirement for submission of financial statement.
  - Bank statement can be used for both, as proof of bank details and proof of physical address



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THANK YOU!



# Any Questions

- Please use the Question Portal on iLearn to post any questions.



Question Portal