

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 22—2021]

ISBN 978-1-4850-0756-2

No. of copies printed350

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Transfer Duty Act, 1949, so as to amend a provision; to amend the Estate Duty Act, 1955, so as to amend certain provisions; to amend the Income Tax Act, 1962, so as to amend certain definitions; to amend certain provisions; to make new provision; to amend certain Schedules; and to replace a Schedule; to amend the Customs and Excise Act, 1964, so as to make provision for continuations; to amend the Value-Added Tax Act, 1991, so as to amend certain provisions; and to amend a Schedule; to amend the Securities Transfer Tax Act, 2007, so as to amend certain provisions; to amend the Employment Tax Incentive Act, 2013, so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2013, so as to amend certain effective dates; to amend the Carbon Tax Act, 2019, so as to amend certain provisions; and to amend a Schedule; to amend the Taxation Laws Amendment Act, 2019, so as to amend a certain effective date; to amend the Disaster Management Tax Relief Act, 2020, so as to amend the long title; to amend the Preamble; and to amend certain provisions; to amend the Taxation Laws Amendment Act, 2020, so as to amend certain provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007, section 1 of Act 60 of 2008, section 3 of Act 17 of

2009, section 3 of Act 7 of 2010, section 5 of Act 24 of 2011, section 1 of Act 22 of 2012 and section 2 of Act 31 of 2013

1. Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1)(l) for subparagraph (iv) of the following subparagraph:

“(iv) a transaction which would have constituted a transaction or distribution contemplated in subparagraphs (i) to (iii) regardless of whether that [person] company acquired that property as a capital asset or as trading stock.”. 5

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1966, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991, section 9 of Act 97 of 1993, section 1 of Act 19 of 2001 and section 12 of Act 60 of 2001 10

2. Section 5 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1)(d)*bis* for the words preceding the proviso of the following words: 15

“in the case of any annuity to which the provisions of section 3(3)(a) [or (a)*bis*] apply, an amount equal to the value of the annuity capitalized at twelve per cent[.] over the expectation of life of the annuitant, or if the annuity is payable for a lesser period than the life of the annuitant, over such lesser period:”. 20

Amendment of section 13 of Act 45 of 1955, as amended by section 7 of Act 92 of 1971 and section 14 of Act 87 of 1988

3. Section 13 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every executor who is required to pay duty in respect of any property referred to in paragraph (a)(i), or in the proviso to paragraph (b)(i) [or (b)(iA)], or in paragraph (b)(ii), of section 11, shall be entitled to recover from the person liable therefor the duty attributable to such property.”. 25

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016, section 2 of Act 17 of 2017, section 1 of Act 23 of 2018, section 34 of Act 34 of 2019 and section 2 of Act 23 of 2020 30 35 40 45 50 55

4. (1) Section 1(1) of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in paragraph (e) of the definition of “company” for subparagraph (iii) of the following subparagraph:
- “(iii) portfolio of a collective investment scheme in property that qualifies as a REIT as defined in the listing requirements of an exchange, as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act, where those listing requirements have been approved in consultation with the [Minister] Director-General of the National Treasury and published by the [Prudential Authority] appropriate authority, as [defined] contemplated in section 1 of the Financial Markets Act, in terms of section 11 of that Act or by the Financial Sector Conduct Authority; or”;
- (b) by the substitution in the definition of “connected person” for the words in paragraph (d)(iv) preceding item (aa) of the following words:
- “any person, other than a company as defined in section 1 of the Companies Act that [individually or jointly] alone or together with any connected person in relation to that person, holds, directly or indirectly, at least 20 per cent of—”;
- (c) by the addition to the definition of “contributed tax capital” of the following further proviso:
- “: Provided further—
- (i) that an amount transferred by a company as contemplated in paragraph (a) or (b) must not comprise a transfer of contributed tax capital unless all holders of shares in that class participate in the transfer in the same manner and are actually allocated an amount of contributed tax capital based on their proportional shareholding within that class of shares; and
- (ii) that no regard must be had to paragraph (i) of this further proviso if the amount transferred constitutes an acquisition by the company of its own securities by way of general repurchase of securities, as contemplated in subparagraph (b) of paragraph 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to 5.81 of section 5 of the JSE Limited Listings Requirements or a general repurchase of securities as contemplated in the listings requirements of any other exchange licensed under the Financial Markets Act, which requirements are substantially the same as the requirements prescribed by the JSE Limited Listings Requirements, where that acquisition complies with the applicable requirements of that exchange;”;
- (d) by the addition in subsection (1) in the proviso to paragraph (c) of the definition of “gross income” of the following paragraph:
- “(vii) the provisions of this paragraph shall not apply in respect of any amount received by or accrued to or for the benefit of any person in respect of long service as defined in paragraph 5(4) of the Seventh Schedule, to the extent that the aggregate value of an amount determined under this paragraph together with all amounts determined under paragraphs 5(2)(b), 6(4)(d) and 10(2)(e) of the Seventh Schedule do not exceed R5 000;”;
- (e) by the insertion after the definition of “linked unit” of the following definition:
- “**‘liquidation and distribution account’** means the account required to be submitted by an executor to a Master in accordance with section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);”;
- (f) by the substitution in paragraph (ii) of the proviso to the definition of “pension fund” for subparagraph (dd) of the following subparagraph:
- “(dd) 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), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000, where the employee is deceased or where the employee elects to transfer the retirement interest to a pension

preservation fund or a retirement annuity fund: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account—

- (A) in the case of a person who was a member of a provident fund or provident preservation fund and who was 55 years of age or older on 1 March 2021— 5
- (AA) any amount contributed to a provident fund or transferred to a provident preservation fund prior to, on and after 1 March 2021 of which that person was a member on 1 March 2021; 10
- (BB) with the addition of any other amount credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; and
- (CC) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in item (a) or amounts credited contemplated in subitem (b); 15
- (B) in any other case of a person who was a member of a provident fund or provident preservation fund on 1 March 2021—
- (AA) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021; 20
- (BB) with the addition of any other amount credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member's individual account or minimum individual reserve on 1 March 2021; and 25
- (CC) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in item (AA) or amounts credited contemplated in subitem (BB), 30
- reduced proportionally by an amount permitted in terms of the Pension Funds Act to be deducted from the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; 35
- Provided further that in the case where the remaining balance is utilised to provide or purchase more than one annuity, the amount utilised to provide or purchase each annuity must exceed R165 000;”;
- (g) by the substitution in paragraph (a) of the proviso to the definition of “pension preservation fund” for subparagraph (v) of the following subparagraph: 40
- “(v) former members of a pension fund [or], pension preservation fund, provident fund or provident preservation fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this pension preservation fund and who made the election while they were members of that other fund;”;
- (h) by the substitution in the proviso to the definition of “pension preservation fund” for paragraph (e) of the following paragraph: 45
- “(e) 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), a combination of annuities (including a combination of methods of paying the annuity) or a combination of types of annuities except where two-thirds of the total value does not exceed R165 000 [or], where the member is deceased or where the member elects to transfer the retirement interest to a pension preservation fund, a provident preservation fund or a retirement annuity fund; Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account— 55
- (a) in the case of a person who was a member of a provident fund or provident preservation fund and who was 55 years of age or older on 1 March 2021— 60