

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 27B—2020]

ISBN 978-1-4850-0682-4

No. of copies printed350

a deduction in terms of paragraph 5 of the Second Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), to determine the taxable portion of the lump sum benefit that is deemed to have accrued to the deceased immediately prior to his or her death.”.

(2) Subsection (1) is deemed to have come into operation on 30 October 2019 and applies in respect of—

- (a) the estate of a person who dies on or after that date; and
- (b) any contributions made on or after 1 March 2016.

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 and section 34 of Act 34 of 2019

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

- (a) by the deletion in subsection (1) of the definition of “controlled foreign company”;
- (b) by the insertion in subsection (1) after the definition of “contributed tax capital” of the following definition:
 - “**‘controlled foreign company’** means a controlled foreign company as defined in section 9D;”;
- (c) by the substitution in subsection (1) for paragraph (f) of the definition of “financial instrument” of the following paragraph:
 - “(f) any [**cryptocurrency**] crypto asset;”;
- (d) by the substitution in subsection (1) in the definition of “gross income” for paragraph (m) of the following paragraph:
 - “(m) any amount received or accrued in respect of a policy of insurance of which the taxpayer is the policyholder, where the policy relates to the death, disablement or illness of an employee or director (or former employee or director) of the taxpayer, including by way of any [**loan or advance**] debt: Provided that any amount so received or accrued shall be reduced by the amount of any such [**loan or advance**] debt which is or has been included in the taxpayer’s gross income;”;
- (e) by the deletion in subsection (1) in the definition of “living annuity” of the word “and” after paragraph (e);
- (f) by the insertion in subsection (1) in the definition of “living annuity” after paragraph (e) of the following paragraph:

- “(eA) in anticipation of the termination of a trust, the value of the assets referred to in paragraph (a) must be paid to the trust as a lump sum pursuant to that termination; and;”;
- (g) by the deletion in subsection (1) in paragraph (a) of the definition of “pension preservation fund” of subparagraph (iii); 5
- (h) by the addition in subsection (1) in paragraph (a) of the definition of “pension preservation fund” after subparagraph (v) of the following subparagraph:
 “(vi) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund or nominees or dependants of that former member in respect of whom an “unclaimed benefit” as defined in the Pension Funds Act is due or payable by that fund;”;
- (i) by the substitution in subsection (1) in paragraph (c)(ii) of the proviso to the definition of “pension preservation fund” for item (aa) of the following item:
 “(aa) (a) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or;
 (b) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or”;
- (j) by the substitution in subsection (1) in paragraph (b) of the definition of “provident preservation fund” for subparagraph (ii) of the following subparagraph:
 “(ii) a pension fund, pension preservation fund, provident fund or provident preservation fund of which such member’s former spouse is or was previously a member and such payment or transfer was made pursuant to an election by such member in terms of section 37D(4)(b)(ii) of the Pension Funds Act;”;
- (k) by the deletion in substitution (1) in paragraph (a) of the definition of “provident preservation fund” of subparagraph (iii);
- (l) by the substitution in subsection (1) in paragraph (b) of the definition of “provident preservation fund” for subparagraphs (iv) to (v) of the following subparagraphs respectively:
 “(iv) a person who has elected to transfer an amount awarded to that person in terms of a court order contemplated in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), from a pension fund, pension preservation fund, provident fund or provident preservation fund for the benefit of that person; [or]
 (v) former members of a pension fund or provident fund who have elected to have a lump sum benefit contemplated in paragraph 2(1)(c) of the Second Schedule transferred to this provident preservation fund and who made the election while they were members of that other fund; or”;
- (m) by the addition in subsection (1) in paragraph (b) of the definition of “provident preservation fund” after subparagraph (v) of the following subparagraph:
 “(vi) former members of a pension fund, pension preservation fund, provident fund or provident preservation fund or nominees or dependants of that former member in respect of whom an “unclaimed benefit” as defined in the Pension Funds Act is due or payable by that fund;”;
- (n) by the substitution in subsection (1) in paragraph (c)(ii) of the proviso to the definition of “provident preservation fund” for item (aa) of the following item:

- “(aa) (a) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or; 5
- (b) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021; or”; 10
- (o) by the substitution in subsection (1) for paragraph (b) of the definition of “REIT” of the following paragraph:
- “(b) the equity shares of which are listed—
- (i) on an exchange (as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act); and 15
- (ii) as shares in a REIT as defined in the listing requirements of [an] that exchange approved in consultation with the [Minister] Director-General of the National Treasury and published, after approval of those listing requirements by the Director-General of the National Treasury, by the appropriate authority, as contemplated in section 1 of the Financial Markets Act, in terms of section 11 of that Act or by the Financial Sector Conduct Authority;”; 20
- (p) by the substitution in subsection (1) in paragraph (b)(x)(dd) of the proviso to the definition of “retirement annuity fund” for subitem (a) of the following subitem: 25
- “(a) (a) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control in respect of applications for that recognition received on or before 28 February 2021 and approved by the South African Reserve Bank or an authorised dealer in foreign exchange for the delivery of currency on or before 28 February 2022; or; 30
- (b) is a person who is not a resident for an uninterrupted period of three years or longer on or after 1 March 2021;”; and 35
- (q) by the deletion in subsection (1) in paragraph (b)(x)(dd)(b) of the proviso to the definition of “retirement annuity fund” of the comma and words following sub-subitem (BB). 40
- (2) Paragraphs (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (p) and (q) of subsection (1) come into operation on 1 March 2021. 40

Amendment of section 7C of Act 58 of 1962, as inserted by section 12 of Act 15 of 2016 and amended by section 5 of Act 17 of 2017, section 9 of Act 23 of 2018 and section 4 of Act 34 of 2019

3. (1) Section 7C of the Income Tax Act, 1962, is hereby amended— 45
- (a) by the 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’, 50
- subscribes for a preference share in a company in which 20 per cent 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— 55
- (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