

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

(As amended by the Standing Committee on Finance)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 18B—2019]

ISBN 978-1-4850-0623-7

No. of copies printed500

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 Estate Duty Act, 1955, so as to amend certain provisions; to amend the Income Tax Act, 1962, so as to amend certain provisions; to make new provision; to repeal certain provisions; 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; to make new provision; 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 provisions; to amend the Taxation Laws Amendment Act, 2015, so as to amend a certain provision; to amend the Taxation Laws Amendment Act, 2016, so as to amend a provision; to amend the Taxation Laws Amendment Act, 2018 so as to amend certain provisions; to amend the Carbon Tax Act, 2019, so as to amend certain provisions, amend a schedule and substitute a schedule; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 45 of 1955, as amended by section 2 of Act 65 of 1960, section 8 of Act 77 of 1964, section 2 of Act 81 of 1965, section 4 of Act 92 of 1971, section 3 of Act 89 of 1972, section 3 of Act 102 of 1979, section 10 of Act 106 of 1980, section 2 of Act 92 of 1983, section 4 of Act 81 of 1985, section 9 of Act 87 of 1988, section 7 of Act 97 of 1993, section 6 of Act 27 of 1997, section 13 of Act 30 of 1998, section 7 of Act 30 of 2000, section 5 of Act 31 of 2005, section 2 of Act 60 of 2008, section 3 of Act 25 of 2015 and section 1 of Act 17 of 2017

1. (1) Section 3 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (2) for paragraph (bA) of the following paragraph:

“(bA) so much of the amount of any contribution made by the deceased in consequence of membership or past membership of any pension fund, provident fund, or retirement annuity fund, as was [not] allowed as a deduction in terms of [section 11(k), section 11(n) or section 11F of the Income Tax Act, 1962 (Act No. 58 of 1962), or] paragraph [2] 5 of the Second Schedule to [that Act] the Income Tax Act, 1962 (Act No. 58 of 1962), [or, as was not exempt in terms of section 10C of that Act in determining] to determine the taxable [income as defined in section 1 of that Act, of the deceased] 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 and section 1 of Act 23 of 2018

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

- (a) by the substitution in subsection (1) in the definition of “dividend” for subparagraph (iii) of the following subparagraph:

“(iii) constitutes an acquisition by the company of its own securities by way of a 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, licenced under the Financial Markets Act, that 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;”;

- (b) by the substitution in subsection (1) for the definition of “domestic treasury management company” of the following definition:

“**‘domestic treasury management company’** means a company—

- (a) that is incorporated or deemed to be incorporated—
 - (i) by or under any law in force in the Republic and is not subject to exchange control restrictions by virtue of being registered with the financial surveillance department of the South African Reserve Bank; or
 - (ii) by or under the law of any country other than the Republic and is not subject to exchange control restrictions by virtue of being registered before 1 January 2019 with the financial surveillance department of the South African Reserve Bank; and
- (b) that has its place of effective management in the Republic;”;

- (c) by the substitution in subsection (1) in the definition of “gross income” in paragraph (n) for the words and subparagraphs preceding the proviso of the following words:
- “any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer’s income and that amount must [—
- (i)] for the purposes of this paragraph be deemed to have been received by or to have accrued to the taxpayer; [and
- (ii) **in the case of any amount required to be included in the taxpayer’s income in terms of section 8(4), be deemed to have been received or accrued from a source within the Republic notwithstanding that such amounts may have been recovered or recouped outside the Republic:]”;**
- (d) by the substitution in subsection (1) in the definition of “identical share” for paragraph (b) of the following paragraph:
- “(b) any other share that is substituted for a listed share in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listings Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited **[Listing]** Listings Requirements or a corporate action as contemplated in the listings requirements of any other exchange, licenced under the Financial Markets Act, that are substantially the same as the requirements prescribed by the JSE Limited Listings Requirements, where that corporate action complies with the applicable requirements of that exchange;”;
- (e) by the substitution in subsection (1) in the proviso to the definition of “provident fund” for paragraph (b) of the following paragraph:
- “(b) that the rules of the fund—
- (i) contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of subparagraphs (aa), (bb), (cc), (ee) and (ff) of paragraph (ii) of the proviso to paragraph (c) in the definition of “pension fund”; [and]
- (ii) may provide for an employee who elects to transfer the withdrawal interest to a pension fund established by the same employer or a pension fund in which that employer participates; and
- (iii) may provide for the employee to elect to transfer the retirement interest to a pension preservation fund, provident preservation fund or retirement annuity fund; and”;
- (f) by the substitution in subsection (1) in paragraph (b) of the definition of REIT for subparagraph (ii) of the following subparagraph:
- “(ii) as shares in a REIT as defined in the listing requirements of an exchange approved in consultation with the Minister 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;”;
- (g) by the substitution in subsection (1) in the definition of “return of capital” for paragraph (ii) of the following paragraph:
- “(ii) an acquisition by the company of its own securities by way of a 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 by way of a general repurchase of securities as contemplated in the listings requirements of any other exchange, licenced under the Financial Markets Act, that 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;” and

- (h) by the substitution in subsection (1) for the definition of “withdrawal interest” of the following definition:

“**‘withdrawal interest’** means the value of the member’s share of the pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund value, as determined in terms of the rules of the fund **[, immediately prior to the date on which the member becomes entitled to a benefit from that fund because of an event other than the member attaining normal retirement age, as determined by the rules of the fund]** on the date on which the member elects to withdraw due to an event other than the member attaining normal retirement age;”.

- (2) Paragraphs (e) and (h) of subsection (1) are deemed to have come into operation on 1 March 2019.

Amendment of section 7B of Act 58 of 1962, as inserted by section 8 of Act 22 of 2012

3. (1) Section 7B of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in the definition of “variable remuneration” in subsection (1) for paragraph (b) of the following paragraph:

“(b) an allowance or advance paid in respect of transport expenses as contemplated in section 8 (1)(b)(ii) or (iii); **[or]**”; and

- (b) by the addition in the definition of “variable remuneration” in subsection (1) after paragraph (c) of the following paragraphs—

“(d) any night shift allowance;
(e) any standby allowance; or
(f) any amount paid or granted in reimbursement of any expenditure as contemplated in section 8(1)(a)(ii);”.

- (2) Subsection (1) comes into operation on 1 March 2020 and applies in respect of amounts accrued or expenditure incurred on or after that date.

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 and section 9 of Act 23 of 2018

4. Section 7C of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

“**Loan, advance or credit [advanced] granted to [a] trust by [a] connected person.**”.

Substitution of section 7F of Act 58 of 1962, as inserted by section 11 of Act 23 of 2018

5. The following section is hereby substituted for section 7F of the Income Tax Act, 1962:

“Deduction of interest repaid to SARS

7F. In determining the taxable income derived by any person during a year of assessment, any amount of interest paid by SARS to that person under a tax Act and deemed to have accrued to that person in terms of section 7E that has to be repaid by that person to SARS, to the extent that the amount of interest is or was included in the taxable income of that person, must be deducted from that person’s **[taxable]** income in the year of assessment during which that amount is repaid to SARS.”.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36