

REPUBLIC OF SOUTH AFRICA

**DRAFT
TAXATION LAWS
AMENDMENT BILL, 2016:
(Second Batch)**

Revisions and additions for public comment

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

(MINISTER OF FINANCE)

23 September 2016

Insertion of section 7C in Act 58 of 1962

1. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 7B:

“Loan or credit advanced to a trust by a connected person. —

7C. (1) This section applies in respect of any loan, advance or credit that—

(a) a natural person; or

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

directly or indirectly provides to a trust in relation to which that person or company, or any person that is a connected person in relation to that person or company, is a connected person.

(2) No deduction, loss, allowance or capital loss may be claimed in respect of—

(a) a disposal, including by way of a reduction or waiver; or

(b) the failure, wholly or partly, of a claim for the payment,

of any amount owing in respect of a loan, advance or credit referred to in subsection (1).

(3) If a trust incurs—

(a) no interest in respect of a loan, advance or credit referred to in subsection (1); or

(b) interest at a rate lower than the official rate of interest as defined in paragraph 1 of the Seventh Schedule,

an amount equal to the difference between the amount incurred by that trust as interest in respect of a year of assessment and the amount that would have been incurred by that trust at the official rate of interest must, for purposes of Part V of Chapter II, be treated as a donation made to that trust on the last day of that year of assessment by the person referred to in paragraph (a) of subsection (1).

(4) If—

(a) a loan, advance or credit was provided by a company to a trust at the instance of more than one person that is a connected person in relation to that company as referred to in paragraph (b) of subsection (1); and

(b) an amount must in terms of subsection (3) be treated as having been donated to that trust on the last day of a year of assessment of that trust,

each of those persons must be treated as having donated, to that trust, the part of that amount that bears to that amount the same ratio as the equity shares or voting rights in that company that were held by that person during that year of assessment bears to the equity shares or voting rights in that company held in aggregate by those persons during that year of assessment.

(5) Subsections (2) and (3) do not apply in respect of any amount owing by a trust during a year of assessment in respect of a loan, advance or credit referred to in subsection (1) if—

(a) that trust is a public benefit organisation approved by the Commissioner in terms of section 30(3);

(b) that loan, advance or credit was provided to that trust by a person by reason of or in return for a vested interest held by that person in the receipts and accruals and assets of that trust and—

(i) the beneficiaries of that trust hold, in aggregate, a vested interest in all the receipts and accruals and assets of that trust;

(ii) no beneficiary of that trust can, in terms of the trust deed governing that trust, hold or acquire an interest in that trust other than a vested interest in the receipts and accruals and assets of that trust;

(iii) the vested interest of each beneficiary of that trust is determined solely with reference and in proportion to the assets, services or funding contributed by that beneficiary to that trust; and

(iv) none of the vested interests held by the beneficiaries of that trust is subject to a discretionary power conferred on any person in terms of which that interest can be varied or revoked;

(c) that trust is a special trust as defined in paragraph (a) of the definition of a special trust;

(d) that trust used that loan, advance or credit wholly or partly for purposes of funding the acquisition of an asset and—

(i) that asset was used throughout that year of assessment by the person referred to in paragraph (a) of subsection (1) or by that person's spouse as a primary residence as defined in Part VII of the Eighth Schedule; and

(ii) the amount owed relates to the part of that loan, advance or credit that funded the acquisition of that asset;

(e) that loan, advance or credit constitutes an affected transaction as defined in section 31(1) that is subject to the provisions of that section;

(f) that loan, advance or credit was provided to that trust in terms of a sharia compliant financing arrangement; or

(g) that loan, advance or credit is subject to the provisions of section 64E(4).”.

(2) Subsection (1) comes into operation on 1 March 2017 and apply in respect of any amount owed by a trust in respect of a loan, advance or credit provided to that trust before, on or after that date.

Amendment of section 8C of Act 58 of 1962, as inserted by section 8 of Act 32 of 2004 and amended by section 12 of Act 31 of 2005, section 7 of Act 20 of 2006, section 11 of Act 35 of 2007, section 11 of Act 60 of 2008, section 12 of Act 7 of 2010, section 19 of Act 24 of 2011, section 10 of Act 31 of 2013 and section 6 of Act 43 of 2014

3. (1) Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) A taxpayer must include any amount received by or accrued to him or her during a year of assessment in respect of a restricted equity instrument in his or her income for that year of assessment if that amount does not constitute—

(a) a return of capital or foreign return of capital by way of a distribution of a restricted equity instrument;

(b) a dividend or foreign dividend in respect of that restricted equity instrument; or

(c) an amount that must be taken into account in determining the gain or loss, in terms of this section, in respect of that restricted equity instrument.”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of

2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, sections 8 and 62 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 31 of Schedule 1 to that Act, sections 19, 144, 157 and 166 of Act 22 of 2012, section 23 of Act 31 of 2013, section 14 of Act 43 of 2014 and section 16 of Act 25 of 2015

4. Section 10 of the Income Tax Act, 1962, is hereby amended by the addition in the proviso to subsection (1)(k)(i) after paragraph (ii) of the following paragraph:

“(jj) notwithstanding the provisions of paragraphs (dd) and (ii), to any dividend in respect of a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in section 8C if that dividend is derived directly or indirectly from, or constitutes an amount—

(A) transferred or applied by a company as consideration for the acquisition or redemption of any share in that company; or

(B) received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company;”.

Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012, section 20 of Act 22 of 2012, section 25 of Act 31 of 2013 and section 15 of Act 43 of 2014

5. Section 10B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Subsections (2) and (3) do not apply to any foreign dividend received by or accrued to a person in respect of a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in section 8C or in respect of services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office, other than a foreign dividend—

(a) in respect of a restricted equity instrument or a share held by that person; and

(b) that is not derived directly or indirectly from, or constitute, an amount—

(i) transferred or applied by a company as consideration for the acquisition or redemption of any share in that company; or”.

Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009 and amended by section 25 of Act 7 of 2010, section 36 of Act 24 of 2011, section 27 of Act 22 of 2012 and section 21 of Act 43 of 2014

6. (1) Section 12H of the Income Tax Act, 1962 is hereby amended:

(a) by the substitution in subsection (1) in the definition of “registered learnership agreement” for paragraph (b) of the following paragraph:

“(b) entered into between a learner and an employer before [1 October 2016] 31 March 2022;”;

(b) by the substitution for subsections 2, 3 and 4 of the following subsections:

“(2)(a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

(i) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer; and

(ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R40 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of ‘registered learnership agreement’ within a period of twelve months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition.

(2A)(a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

- (i) during any year of assessment a learner who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer; and
- (ii) that agreement was entered into pursuant to a trade carried on by that employer, there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R20 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of ‘registered learnership agreement’ within a period of twelve months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition

(3) In addition to any deductions allowable in terms of this Act, where—

- (a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer for a period of less than 24 full months;
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000.

(3A) In addition to any deductions allowable in terms of this Act, where—

(a) during any year of assessment a learner who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer for a period of less than 24 full months;

(b) that agreement was entered into pursuant to a trade carried on by that employer;
and

(c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000.

(4) In addition to any deductions allowable in terms of this Act, where—

(a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;

(b) that agreement was entered into pursuant to a trade carried on by that employer;
and

(c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement

(4A) In addition to any deductions allowable in terms of this Act, where—

(a) during any year of assessment a learner is a party who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;

(b) that agreement was entered into pursuant to a trade carried on by that employer;
and

(c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(5) Where a learner contemplated in subsection (2), (3) or (4) is a person with a disability (as defined in section 6B (1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2), (3) or (4) must be increased by an amount of R20 000.

(5A) Where a learner contemplated in subsection (2A), (3A) or (4A) is a person with a disability (as defined in section 6B (1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2A), (3A) or (4A) must be increased by an amount of R30 000.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2016 and applies in respect of learnership agreements entered into on or after that date.

Amendment of section 1 of Act 26 of 2013, as amended by section 112 of Act 43 of 2014

7. (1) Section 1 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution in section 1 in the definition of “monthly remuneration” for paragraph (a) of the following paragraph:

“(a) where an employer employs and remunerates a qualifying employee for **[more than]** at least 160 hours in a month, means the amount paid or payable to the qualifying employee by the employer in respect of a month; or”.

(2) Subsection (1) comes into operation on 1 October 2016.

Amendment of section 4 of Act 26 of 2013, as amended by section 113 of Act 43 of 2014

8. (1) Section 4 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph:

“(i) where the employee is employed and remunerated for **[more than]** at least 160 hours in a month, the amount of R2 000 in respect of a month; or”.

(2) Subsection (1) comes into operation on 1 October 2016.

Amendment of section 7 of Act 26 of 2013, as amended by section 116 of Act 43 of 2014

9. (1) Section 7 of the Employment Tax Incentive Act, 2013, is hereby amended—

(a) by the substitution for subsection (1) of the following section:

“(1) During each month, commencing from 1 January 2014, that an employer employs a qualifying employee, the amount of the employment tax incentive available to that employer is the sum of the amounts determined in respect of each qualifying employee of that employer stipulated in subsections (2) and (3) and section 9, subject to subsection (6).”;

(b) by the substitution in subsection (2) for in paragraph (a) of the following paragraph:

“(a) less than R2 000 [**or less**], is an amount equal to 50 per cent of the monthly remuneration of the employee;”;

(c) by the substitution in subsection (2) for in paragraph (b) of the following paragraph:

“(b) [**more than**] R2 000 or more but less than [**R4 001**] R 4000, is an amount of R1 000;”;

(d) by the substitution in subsection (2) for in paragraph (c) for the words preceding the formula of the following words:

“[**more than**] R4 000 or more but less than [**R6 001**] R 6000, is an amount determined in accordance with the following formula:”;

(e) by the substitution in subsection (2) for in paragraph (d) of the following paragraph:

“(d) [**more than**] R6 000 or more, is an amount of nil.”;

(f) by the substitution in subsection (3) for in paragraph (a) of the following paragraph:

“(a) less than R2 000 [**or less**], is an amount equal to 25 per cent of the monthly remuneration of the employee;”;

(g) by the substitution in subsection (3) for in paragraph (b) of the following paragraph:

(b) more than R2 000 but less than [**R4 001**] R4 000, is an amount of R500;

(h) by the substitution in subsection (3) for in paragraph (c) for the words preceding the formula of the following words:

“[**more than**] R4 000 or more but less than [**R6 001**] R 6000, is an amount determined in accordance with the following formula:”;

(i) by the substitution in subsection (3) for in paragraph (d) of the following paragraph:

“(d) [**more than**] R6 000 or more, is an amount of nil.”;

(j) by the substitution for subsection (5) of the following subsection:

“(5) If an employer employs a qualifying employee for less than 160 hours in a month, the employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount that bears to the total amount calculated in terms of subsection (2) or (3) the same ratio as the number of hours that the qualifying employee was employed and remunerated in respect of those hours by that employer in that month bears to the number 160.”;

(k) by the addition after subsection (5) of the following subsection:

“(6) The sum of the amounts determined in respect of all qualifying employees of that employer stipulated in subsections (2) and (3) and section 9 may not exceed R20 million in respect of any year commencing on 1 March and ending on the last day of February of the following year.”.

(2) Paragraphs (a) and (k) of subsection (1) come into operation on 1 March 2017.

(3) Paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of subsection (1) come into operation on 1 October 2016

Amendment of section 9 of Act 26 of 2013, as amended by section 117 of Act 43 of 2014

10. (1) Section 9 of the Employment Tax Incentive Act, 2013 is hereby amended by the addition after subsection (3) of the following subsection:

“(4) Any amount as as contemplated in subsections (1), (2) and (3), on the first day of the month following the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, must be deemed to be nil in respect of each qualifying employee employed by the employer on that date.”.

(2) Subsection (1) comes into operation on 1 October 2016.

Amendment of section 12 of Act 26 of 2013

11. (1) The following section is hereby substituted for section 12 of the Employment Tax Incentive Act, 2013:

“**12.** An employer may not receive the employment tax incentive after [**1 January 2017**] 28 February 2019.”

(2) Subsection (1) is deemed to have come into operation on 1 October 2016.