

## SAIT Compendium of Tax Legislation 2019

Dear Reader,

As indicated in the *Juta Law Editors' Note* the *SAIT Compendium 2019* publication was compiled in November 2018 using the text appearing in the annual tax Bills. This *modus operandi* was necessary because the (three) Bills had not yet been agreed to by both Houses of Parliament at the date of signing off the *SAIT Compendium* to go to print, ie 1 December 2018. The three Bills were finally agreed to by Parliament on 4 December and were assented to by the President on 16 January 2019 and promulgated in the *Government Gazette* on 17 January 2019.

The changes or corrections indicated in the table below mainly arise from differences between the text of the final versions of the Bills and the Acts as promulgated in the *Gazette*.

Many of the corrections or oversights referred to below were already foreseen and/or highlighted in the printed publication, inter alia by using footnotes, and are now provided for clarification.

Page	Changes
38	<p>Pendlex box:</p> <ul style="list-style-type: none"> <li>• '(iii)[sic]' replaced by '(C)'</li> <li>• paras. (c) and (d): '[that]' deleted.</li> </ul>
58	<p>Section 6 (6) (a): 'the natural person' replaced by 'a natural person'.</p> <p>Section 6A (2) (b): replace the annotation and two Prelex boxes with</p> <p>[Sub-paras. (i) and (ii), (previously, before 1 March 2018, sub-paras. (i), (ii) and (iii)), substituted by s. 3 (1) of Act 13 of 2012, by s. 5 (1) of Act 23 of 2013, by s. 4 (1) of Act 42 of 2014, by s. 5 (1) of Act 13 of 2015, by s. 6 (1) of Act 13 of 2016, by s. 5 (1) of Act 14 of 2017 (<i>date of commencement deemed 1 March 2017</i>), by s. 4 (1) of Act 21 of 2018 and by s. 5 (1) (c) of Act 23 of 2018<sup>1</sup> – <i>dates of commencement of both s. 4 (1) and s. 5 (1) (c) deemed to have been 1 March 2018; the substituted subparagraphs apply iro years of assessment commencing on or after that date.</i>]</p> <div style="background-color: #e0e0e0; padding: 5px;"> <p><b>Prelex</b>  <b>Wording of sub-paras. (i), (ii) and (iii) in force from 1 March 2017 until their retrospective substitution by s. 4 (1) of Act 21 of 2018, as well as s. 5 (1) (c) of Act 23 of 2018, wef 1 March 2018</b></p> <ul style="list-style-type: none"> <li>(i) R303, in respect of benefits to the person;</li> <li>(ii) R606, in respect of benefits to the person and one dependant; or</li> <li>(iii) R606, in respect of benefits to the person and one dependant, plus R204, in respect of benefits to each additional dependant,</li> </ul> </div> <p><sup>1</sup>The footnote published on page 58 explains the situation before the publication of the 2018 Acts.</p>
59	Section 6A (5) (a): 'the natural person' replaced by 'a natural person'.
60	Section 6B (5) (a): 'the natural person' replaced by 'a natural person'.
94–6	<p>Section 9D (9A) (a) (i), 9D (9A) (a) (iA), 9D (9A) (b) (i) and 9D (9A) (b) (ii):</p> <p>There are no changes to or discrepancies iro the <b>text</b> of the above-mentioned provisions, only competing interpretations iro their <b>dates of commencement</b>, which of course affect the wording of the respective annotations following these provisions.</p> <p>Section 104 (1) of Act 23 of 2018 substitutes the date of commencement of the amendments to the above-mentioned paras. (a) and (b) of s. 9D (9A) of the Income Tax Act made by the whole (ie paras. (a)–(d)) of s. 13 (1) of Act 25 of 2015. Section 104 (1) reads:</p> <p style="padding-left: 40px;"><b>'104 (1) Section 13 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (2) of the following subsection:</b>  <b>"(2) Subsection (1) is deemed to have come into operation on 1 July 2018."'</b></p>

94–6 (cont.)	<p>However, the change of date of commencement seems to be inconsistent with the intention of the said s. 104 (1). The problem involves s. 104 (1)'s wording. Prior to this amendment, only s. 13 (1) (a) of Act 25 of 2015 was put into operation by subsection (2):</p> <p style="padding-left: 40px;">‘(2) <b>Paragraph (a)</b> of subsection (1) comes into operation on the date on which the Insurance Act, 2016, comes into operation.’</p> <p>The commencement of s. 13 (1) (b)–(d) of Act 25 of 2015 was provided for separately in s. 13 (3) of Act 25 of 2015. Subsection (3) has neither been deleted nor amended and is therefore still in operation:</p> <p style="padding-left: 40px;">‘(3) <b>Paragraphs (b), (c) and (d)</b> of subsection (1) come into operation on 1 January 2016 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.’</p> <p>It is suggested that the words ‘Paragraph (a) of’, which were present in s. 13 (2) of Act 25 of 2015 prior to its being substituted, were incorrectly omitted in s. 104 (1) of Act 23 of 2018 before the words ‘Subsection (1)’. The omission of these words in the s. 104 (1) amendment now creates a discrepancy between s. 13 (2) and (3) of Act 25 of 2015, and results in two competing dates of commencement.</p> <p>Amendments by s. 13 (1) (b)–(d) of Act 25 of 2015 are now deemed to have come into operation on both: <b>1 July 2018</b> by s. 13 (2) of Act 25 of 2015 and <b>1 January 2016</b> by s. 13 (3) of Act 25 of 2015.</p> <p>The first interpretation (<i>date of commencement: 1 January 2016</i>) is found in the annotations in <i>Compendium 2019</i> on pages 94–96. The second interpretation (<i>date of commencement: 1 July 2018</i>) is reproduced below:</p> <p><b>Page 94</b> [Sub-para. (i) substituted by s. 13 (1) (b) of Act 25 of 2015 – <i>date of commencement: 1 July 2018</i> (<i>date of commencement ‘1 January 2016’ retrospectively replaced by ‘1 July 2018’ by s. 104 (1) of Act 23 of 2018 wef 8 January 2016</i>).]</p> <p><b>Page 95</b> [Sub-para. (iA) inserted by s. 13 (1) (c) of Act 25 of 2015 – <i>date of commencement: 1 July 2018</i> (<i>date of commencement ‘1 January 2016’ retrospectively replaced by ‘1 July 2018’ by s. 104 (1) of Act 23 of 2018 wef 8 January 2016</i>).]</p> <p><b>Page 96</b> [Sub-paras. (i) and (ii) deleted by s. 13 (1) (d) of Act 25 of 2015 – <i>date of commencement: 1 July 2018</i> (<i>date of commencement ‘1 January 2016’ retrospectively replaced by ‘1 July 2018’ by s. 104 (1) of Act 23 of 2018 wef 8 January 2016</i>).]</p> <p>It is likely that the legislature will rectify these competing commencement dates at the next opportunity.</p>
148	Section 12J (1) definition of ‘qualifying company’ para. (f) (i): ‘during any year of assessment’ has been deleted after ‘derived by that company’ – see footnote on page 148.
236–7	Section 29A (14) (a)–(e): the words ‘which will be’ deleted in all five paragraphs.
379	<p>Eighth Schedule, para. 12A (4): replace sub-para. (4), Prelex box and corresponding footnote with</p> <p style="padding-left: 40px;">‘(4) Where—</p> <p style="padding-left: 80px;">(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subparagraph (2); and</p> <p style="padding-left: 80px;">(b) the amount of that debt is owed in respect of or was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an asset that was disposed of in a year of assessment prior to that in which that debt benefit arises, that person must if the amount determined in respect of that disposal as—</p> <p style="padding-left: 120px;">(i) a capital gain; or</p> <p style="padding-left: 120px;">(ii) a capital loss,</p> <p style="padding-left: 80px;">differs from the amount that would have been determined, whether as a capital gain or as a capital loss, in respect of that disposal had that debt benefit been taken into account in the year of the disposal of that asset, treat that absolute difference as a capital gain to be taken into account in respect of the year of</p>

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(cont.)

assessment in which the debt benefit arises: Provided that in taking that debt benefit into account in respect of the year of disposal of that asset that person must take into account the extent to which the expenditure in respect of that asset has been reduced by any other debt benefit taken into account, in terms of this subparagraph, in respect of that disposal.

**Prelex**

**Item (b), and words in sub-para. (4) following item (b), in force from 1 January 2018 until its substitution wef 1 January 2019**

(b) the amount of that debt was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an asset (other than an allowance asset) that is—

(i) held by that person at the time the debt benefit arises and subparagraph (3) has been applied to reduce any expenditure in respect of that asset to the full extent of that expenditure; or

(ii) no longer held by that person at the time the debt benefit arises, the<sup>1</sup> debt benefit in respect of that debt, less any amount that has been applied to reduce any amount of expenditure as contemplated in subparagraph (3), must be applied to reduce any assessed capital loss of that person for the year of assessment in which the debt benefit arises.

[Item (b), and words in sub-para. (4) following item (b), substituted by s. 77 (1) (g) of Act 23 of 2018 – *date of commencement: 1 January 2019; the substituted item applies iro years of assessment commencing on or after that date.*]

<sup>1</sup> The words in sub-para. (4) following item (b) have been deleted by s. 77 (1) (g) of Act 23 of 2018. The deletion of these words is problematic as it would appear that it leaves item (a) incomplete. It is therefore submitted that s. 77 (1) (g) of Act 23 of 2018 is still, despite the changes made to the final version of the Bill in the Act as promulgated, not entirely correct and needs further improvement. It is not clear what the intention of the legislature really is and what the substituted sub-para. (4) will look like after the wording of the said para. (g) has been improved. It is likely this oversight will be corrected by the legislature when the next opportunity arises.

We trust you will find the information communicated in this document useful. Should you have any suggestions or enquiries, please do not hesitate to contact us at (021) 659 2300/lspreeh@juta.co.za

Sincerely,

**The Juta Law Editors**

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