

The impact of IFRS 17 transition mechanisms legislated by
tax authorities on the GloBE effective tax rate of South
Africa headquartered insurers.

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April 2025

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ABSTRACT

During 2021 the Organization for Economic and Cooperative Development ('OECD') released the Global Anti-Base Erosion Rules ('GloBE Rules') as part of a two-pillar solution to address the challenges identified regarding the digitization of the economy. This significant development was preceded by the release of IFRS 17 Insurance Contracts in the same year and is issued by the International Accounting Standards Board. IFRS 17 is the culmination of a multi-year two-phase project aimed at developing what is considered the first truly international insurance contract standard. The combination of the implementation of these two key developments and the practical impact of them on long-term insurers has not yet been fully ascertained. The research conducted seeks to determine the extent to which the transition mechanism legislated by tax authorities in response to and in preparation for the transition to IFRS 17 may impact the effective tax rate computed under the GloBE Rules. In addressing the research problem a two-pronged approach was taken, the first being a comparative analysis between the transition mechanisms opted for by tax authorities in South Africa and the United Kingdom, and the second being a case study using Discovery Limited, a South Africa headquartered MNE Group as the subject to illustrate the potential impact of the former, on the effective tax rate in the jurisdictions it operates in. The research indicated that the tax transition approach may have a significant impact on the effective tax rate of long-term insurers headquartered in South Africa resulting in the liability for top-up taxes.

LIST OF ABBREVIATIONS

CF	Corporate Fund
CPF	Corporate Policyholder Fund
CSM	Contractual Service Margin
CTA 2009	Corporation Tax Act 2009
CTA 2010	Corporation Tax Act 2010
DPFs	Direct Participation Feature
ETR	Effective Tax Rate
FCF	Fulfilment Cash Flows
FA 2012	Finance Act 2012
FA 2023	Finance (No. 2) Act 2023
FSLI	Financial Statement Line Item
FSMA	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
GAAP	Generally Accepted Accounting Practices
GloBE	Global Anti-Base Erosion
HMRC	Her Majesty's Revenue and Customs
IASB	International Accounting Standards Board
IFRS	International Accounting Standards
IFRS 4	International Accounting Standards: Insurance Contracts
IFRS 9	International Accounting Standards: Financial Instruments
IFRS 17	International Accounting Standards: Insurance Contracts
IPF	Individual Policyholder Fund
IIR	Income Inclusion Rule
ITA	Income Tax Act No. 58 of 1962
LAT	Liability Adequacy Test

LIC	Liability for Incurred Claims
MNE	Multinational Entity
OCI	Other Comprehensive Income
OECD	Organisation for Economic Cooperation and Development
QDMTT	Qualified Domestic Minimum Top-up Tax
RA	Risk Adjustment
RPF	Risk Policy Fund
SARS	South African Revenue Services
SFP	Statement of Financial Position
SI2022/1165	Insurance Contracts (Tax) (Change in Accounting Standards) Regulations 2022
SPLOCI	Statement of Profit or Loss and Other Comprehensive Income
UK	United Kingdom
UPF	Untaxed Policyholder Fund
UTPR	Undertaxed Profits Rule

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1 CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

1.1.1 OVERVIEW

IFRS 17: Insurance contracts ('IFRS 17') is the new international financial reporting standard ('the standard' or 'IFRS standard') issued by the International Accounting Standards Board ('IASB'). The standard is effective for years beginning on or after 1 January 2023 (IASB,2021).

The IASB had intended for IFRS 4: Insurance Contracts ('IFRS 4'), the predecessor to IFRS 17 to be an interim standard providing guidance with respect to the accounting treatment of insurance contracts whilst the IASB completed a project aimed at developing a comprehensive standard that would address the accounting treatment of insurance contracts (IASB, 2023). IFRS 4 presented its own challenges which included the provision of various options to companies regarding the measurement and reporting of insurance contracts. This resulted in different manners of reporting across both companies and jurisdictions (Grant Thornton, 2023).

The core motivations for the implementation of IFRS 17 are to enhance the comparability of results between insurers applying IFRS as a reporting framework and to enhance the usefulness of the information being reported to the users of financial statements. This is particularly relevant as the consistency of reporting and comparability of financial results has become increasingly important to various stakeholders (IASB, 2017). The concept of comparability of financial statements is one of the qualitative characteristics of useful information detailed in the Conceptual Framework, which is the bedrock of the financial reporting standards (IASB, 2023: Conceptual Framework for Financial Reporting, para. 2.24-2.29).

During December 2021 the Organization for Economic and Cooperative Development ('OECD') released the Global Anti-Base Erosion Rules ('GloBE Rules' or 'the Rules') as part of the two-pillar solution to deal with the challenges identified regarding the digitization of the economy. The GloBE Rules are aimed at ensuring that multinational entities ('MNEs') pay a minimum effective tax rate ('ETR') of 15 percent in the jurisdictions they operate in. The Rules are intended to apply to MNE groups with consolidated revenue exceeding EUR 750 million (OECD,2023). From a long-term insurer's perspective, this may be considered a second significant transition in a short period which will impact financial and tax reporting considerations.

1.1.2 IFRS 4 VS IFRS 17

The two standards are considered fundamentally different with some of these differences reflected below:

Table 1 Key differences between IFRS 4 and IFRS 17 (International Accounting Standards Board [IASB], 2021)

Aspect	IFRS 4	IFRS 17
Scope	Interim standard providing temporary guidance to insurers.	Comprehensive standard for accounting for insurance contracts.
Measurement	No requirement to consider the time value of money. Permissibility of measuring insurance contracts based on the value of investment portfolios.	Requirement to consider the time value of money. Contract measurement is based on the obligations that the respective contracts create.
Contract Groups	Grouping contracts based on similar characteristics.	Granular separation of contracts based on cash flows, risks, and margins.
Presentation & Disclosure	Limited disclosures required.	Extensive disclosures on risks, assumptions, and sensitivity mandated.
Profitability Reporting	Inconsistent disclosure of sources of profits from insurance contracts.	Various components of current and future profits arising from insurance contracts required to be identified and disclosed.

1.1.3 TAX IMPACTS

Sections 28 and 29A of the Income Tax Act No.58 of 1962 (ITA) provide specific methods to be applied in arriving at the taxable income of Short-Term and Long-Term insurers respectively (Income Tax Act 58 of 1962, 2024: s28 and s29A). Whilst the ITA is applicable in its entirety for insurers, Sections 28 and 29A were drafted with insurers in mind given the complexity of insurance products. The need for the development of specific legislation applicable to insurers was highlighted several years ago by the Jacobs Committee (Botha, 2005:19). Section 29B accompanies section 29A and applies to Long-Term insurers in respect to the mark-to-market determination of asset values disposed of in policyholder funds.

The implementation of IFRS 17 prompted National Treasury (through consultation with South African Insurers) to consider the practical tax impacts of the implementation of the standard. On 26 October 2022 National Treasury published the *Taxation Laws Amendment Bill* (Taxation Laws

Amendment Bill, *B26-2022, 2022*) which was then promulgated on 5 January 2023, as the *Taxation Laws Amendment Act (Act 20 of 2022)*. Following this, on 16 January 2023, the '*Explanatory Memorandum on the Taxation Laws Amendment Bill, 2022*' was published (*Explanatory Memorandum on the Taxation Laws Amendment Bill, 2023*).

The changes made to the ITA are intended to align the terminology in the ITA with that used in IFRS 17, and to take into consideration the anticipated tax impact on insurers as a result of the transition to the new standard. The definitions of "valuation of liabilities" and "adjusted IFRS value" were amended and have incorporated the use of new terms found in IFRS 17 such as "liability for incurred claims" and "insurance contract assets" among others.

The second key change to the legislation is with respect to the transition to IFRS 17. IFRS 17 requires that insurers retrospectively apply the standard which means financial results are to be reflected as though the standard had always been applied. In order to do this, historically reported results are restated to reflect the transition from IFRS 4 to IFRS 17.

Given that historical results (and by implication historical profits) would have been subject to assessment for income tax in prior periods of assessment, these would also require re-evaluation. Within the South African context, this does not require the reopening of previous assessments for tax but has resulted in National Treasury including sections 29A (14) and 29A (15) to address this aspect of the transition. The ITA requires the determination of what is referred to as a "phasing-in amount" defined in section 29A (15). The "phasing-in amount" in summary, is the difference between the adjusted IFRS value under IFRS 4 and the adjusted IFRS value under IFRS 17 as at the end of tax years of assessment commencing on or after 1 January 2022 but before 1 January 2023 (Income Tax Act No.58 of 1962:s29A(15)(b). The "phasing-in amount" is payable or deductible over a six-year period from the year of assessment commencing on or after 1 January 2023. Whilst the "phasing-in amount" is determined at a point in time, it will have an impact on the total tax payable or receivable for future periods of assessment (referring to periods beyond which IFRS 17 was implemented).

Similar approaches have been adopted in other jurisdictions such as the United Kingdom ('UK') and Canada. This particular approach has been widely debated globally by insurers and tax authorities in preparation for the transition concerning whether such a phase-in period for the initial impact is necessary, and if so, what the appropriate period is. Her Majesty's Revenue and Customs ('HMRC') has determined that an equivalent period of 10 years will apply for insurers in the UK (HMRC, 2019: LAM16010). As part of the HMRC's determination of the impact of IFRS17, it was anticipated that the transition to the standard could have significant cash flow implications for insurers and may impact the regulatory landscape (HMRC, 2019: LAM16010). In contrast, the Government of Canada has opted for a shorter period of five years (Government of Canada, 2020).

The Explanatory Memorandum published by the South African National Treasury cited several reasons for the change to the legislation for Long-Term insurers which include (*Explanatory Memorandum on the Taxation Laws Amendment Bill 2022, 2023:23*):

1. The expectation for the liquidity of insurers to be significantly impacted.
2. The expectation for the taxable income of insurers to increase after the transition.
3. The impending change in terminology.

1.2 RESEARCH QUESTION/RESEARCH PROBLEM

This research seeks to determine whether, and to what extent the transition mechanism legislated by tax authorities may impact the ETR computed under the GloBE Rules. With IFRS 17 being effective for reporting periods beginning on or after 1 January 2023, and domestic legislation regarding the global minimum tax rate being communicated by both the UK and South Africa in 2023 and 2024 respectively, it is evident that these are two new significant transitions whose interaction may not have yet been fully evaluated.

The impact of the approach to the IFRS 17 transition on an MNE groups effective tax rate ('ETR') under the GloBE Rules is not fully known at this stage and such impact is inevitable. This research will culminate in an assessment to evaluate the potential impact.

1.3 RESEARCH METHOD

The primary research method will be a doctrinal research approach and will include the completion of a comparative analysis and a case study.

The research will take place in three major parts, the first will be a deep dive and analysis of IFRS 17 (including key changes from IFRS 4) and the amendments made to section 29A of the ITA. The second part will take the form of a comparative analysis, contrasting South Africa and the UK's approaches to the transition to IFRS 17. The final part is the case study, which will make use of a South Africa headquartered MNE with substantial operations within the insurance sector as the subject.

The following will form part of the sources of data:

- IFRS standards and discussion papers as published by the IASB.
- Relevant South African Legislation.
- HMRC published discussion documents.
- Relevant UK Legislation relevant to Long-term insurers.
- OECD Publications with respect to the taxation of insurers.
- GloBE Rules and commentaries.
- Published journal papers.
- Publications by reputable organizations that customarily engage in the subject matter and insurance industry (e.g. Professional services firms).
- Published consolidated financial statements for the selected subject organization.

1.4 LIMITATION OF SCOPE

With the research problem articulated in section 1.2 of this chapter in mind, below are the scope inclusions, exclusions and limitations.

Scope Inclusions:

- Section 29A of the Income Tax Act and amendments thereto.
- The approach taken by the HMRC in preparing for the transition to IFRS 17 for long-term insurers operating in the UK.
- An understanding of and analysis of the specific legislation enacted by the UK to support the completion of the comparative analysis.
- Legislation proposed or enacted by South Africa and the UK to bring into effect aspects included in the GloBE Rules.

Scope Exclusions:

- Analysis of S29B with respect to mark-to-market taxation in respect of long-term insurers.
- Related impacts of the transition to IFRS 17 where the requirements of IFRS 9 must be considered.
- The impact of the transition to IFRS 17 on the presentation of the Statement of Financial Position ('SFP') and the Statement of Profit or Loss and Other Comprehensive Income ('SPLOCI').
- The determination of the top-up tax amounts (including the QDMTT) under the GloBE Rules.

1.5 STRUCTURE OF THE RESEARCH

The research will consist of 6 chapters with Chapter 1 being the introduction. The remainder of the chapters will be as follows:

Chapter 2 will evaluate the purpose of IFRS 17 and the core differences between the two insurance accounting standards. There will be a high-level consideration of changes or additions to key definitions in the standards to the extent that they impact the amounts recognized in either the SFP or the SPLOCI. This will establish a foundation for a deeper understanding of the two accounting standards and will support the chapters that follow.

Chapter 3 will assess the taxation of long-term insurers in South Africa under IFRS 4 and IFRS 17 including a discussion of the purpose of section 29A as well as an in-depth discussion of the structure section before and after the amendments effected by National Treasury in January 2022 (Explanatory Memorandum on the Taxation Laws Amendment Bill, 2022, 2023:19-25).

Chapter 4 will entail a comparative analysis. The analysis will contrast the approach adopted by the UK in preparation for the transition to IFRS 17, to that of South Africa. This will include an evaluation of any transition provisions implemented and amendments made to legislation by the HMRC.

Chapter 5 will provide an overview of the GloBE Rules and legislation proposed or enacted in South Africa and the UK in this regard. In addition, an illustrative ETR calculation will be performed with Discovery Limited as the subject to assess the potential impact of the tax approach to the transition to IFRS 17 on an MNE groups' anticipated ETR.

Chapter 6 will summarise the research conducted and conclusions reached in preceding chapters as part of evaluating the body of work in response to the research problem identified in section 1.2 of this chapter.

2 CHAPTER 2: THE PURPOSE OF IFRS 17 AND DIFFERENCES BETWEEN IFRS 4 AND IFRS 17

This chapter will consider the purpose of IFRS 17 and the introduction and evolution of several key concepts that have impacted the accounting for insurance contracts. In addition, key definitional aspects will be briefly discussed.

2.1 PURPOSE OF IFRS 17

2.1.1 OVERVIEW

IFRS 17 represents the culmination of a multi-year two-phase project conducted by the IASB with the aim of developing a comprehensive standard to account for insurance contracts. The first phase concluded with the issuing of IFRS 4 which was completed in 2004, followed by IFRS 17 which is effective from 1 January 2023 and was completed in 2017.

The end goals of IFRS 17 included developing an accounting standard that would result in transparent financial reporting by insurers, with useful, comparable, and consistent information being presented and disclosed which would include enhanced reporting on the profitability of insurance contracts. IFRS 17 is considered by the IASB to be the first “truly international IFRS standard for insurance contracts” (IASB,2017).

2.1.2 THE USE OF JUDGEMENT

One of the notable changes was regarding the concept of the use of judgement. IFRS 4 did not have a clear and explicitly required approach for the recognition of insurance contracts. It refers preparers of financial statements to a section in IAS 8 (*Accounting Policies, Changes in Accounting Estimates and Errors*) (‘IAS 8’) which outlines the approach an entity is required to take when developing an accounting policy in the instance where no specific IFRS standard applies (i.e. when the transaction being dealt with does not clearly fall within the scope of an existing standard) (IASB, 2023: IAS8:10-12).

In developing such a policy, the preparers of financial statements needed to apply their judgement. In an Agenda Paper presented at an IFRS Advisory Council meeting held in 2014 where the *Use of Judgement in Financial Reporting* was discussed, the following was highlighted (Shields & Macek,2014):

- IFRS standards are principle-based and are underpinned by sufficient guidance to enable preparers of financial statements to achieve their objectives.
- Any such guidance provided by the standards is thus required to be sufficient to ensure that where needed, preparers are able to exercise “appropriate judgement” and that resultant diversity in practice is minimised.
- Notwithstanding the ability to make judgements, there should be a similar understanding of the economic reality of similar transactions and events.

- Judgement was defined as “the process of reaching a decision where there are a number of possible decisions.” and that any such judgement applied is to be “good judgement” which was defined as (Shields & Macek,2014:11):

“ A “good” judgement is:

- Made in good faith and unbiased;
- Taken with due care
- Based on sufficient evidence; and
- Reasonable given the circumstances at the time the judgement is made.”

In this presentation the IASB went on to highlight that there may be instances where a diversity of practice arises due to judgements applied. In such cases, the expectation is that the economic impact of the specific events or transactions are understood in a similar way by the users of the financial statements (Shields & Macek,2014:13).

The inability to compare insurers’ financial statements within and across jurisdictions under the IFRS 4 regime is a clear indication that IFRS 4 did not provide sufficient guidance. This was further exacerbated by the users need to make use of local generally accepted accounting practices (‘GAAP’) in response to being directed to IAS8 and as part of applying such judgement.

IFRS 17 no longer directs preparers of financial statements to IAS8 and has instead included extensive guidance regarding how to account for insurance contracts, which is an indication that there is sufficient guidance to develop accounting policies. The use of judgements is now specific to what are referred to as significant judgements that may have been made in applying IFR 17, which generally relate to specific inputs that were used in arriving at certain amounts and have clear disclosure requirements (IASB, 2021: IFRS 17,117-120).

Given the increase in guidance provided in IFRS 17 and the elimination of the need to develop an accounting policy based on the judgement applied by preparers and guidance from local GAAP, it is reasonable to anticipate that there will be an increase in the consistency of reporting. In addition, the required disclosures regarding the significant judgements made will support increased transparency of reporting.

2.1.3 ONEROUS CONTRACTS

The second notable change is regarding the treatment of onerous contracts which has evolved under IFRS 17. The general definition of an “onerous contract” within IFRS is (IASB, 2021: IAS37:10):

“a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it.”

IFRS 4 previously required the performance of the liability adequacy test (LAT) at the end of each reporting period. The intention of the LAT was to ensure that the insurance liability presented and disclosed in the financial statements is reflective of the future cash outflows expected as it relates to insurance contracts.

The performance of the LAT required the use of current estimates, with any inadequacy of the insurance liability identified being recognised in the SPLOCI within the profit or loss section. The recognition of the loss could be reflected at a product or legal entity level. In practice, it is noted that some South African insurers recognised such loss at a business unit level (Old Mutual Limited, 2022) or portfolio level (Momentum Metropolitan Holdings, 2022).

The LAT has been removed and has been replaced with comprehensive guidance regarding the treatment of onerous contracts. In the context of IFRS 17, an insurance contract is considered onerous if “the fulfilment cash flows allocated to the contract, any previously recognised insurance acquisition cash flows and any cash flows arising from the contract at the date of initial recognition in total are a net outflow” (IASB, 2021: IFRS 17:47). In simple terms, this would be an insurance contract that is loss-making at initial recognition, which would be the point at which the recognition criteria have been met (IASB, 2021: IFRS 17:25-28).

At initial recognition of a group of insurance contracts, an entity is expected to have three broad categories within which groups of contracts would be classified. The broad groups are onerous contracts, contracts that do not have a significant probability of becoming onerous and any other remaining contracts (Ernst & Young Inc, 2021). The groupings made at initial recognition do not change subsequently and the amounts relating to the groups of insurance contracts that are onerous contracts are recognised and presented separately. As the grouping of onerous contracts takes place at initial recognition, so does the recognition of such loss in the SPLOCI within the profit or loss section. There was no such initial recognition of losses under IFRS 4 as a result of performing the LAT.

The implication of this change is that the profit or loss for an entity issuing insurance contracts is likely to be lower under the IFRS 17 regime due to any initial loss quantified for a group of contracts initially recognised in a given year as well as increased losses quantified for previously recognised contracts (depending on the size of the cohorts). These contracts can, in a less formal sense, be viewed as contracts with a negative contractual service margin (‘CSM’). The CSM is a critical new measure that reflects the profit anticipated to be earned from a group of insurance contracts. Furthermore, the requirement to recognise onerous contracts separately from other insurance contracts aligns to the objective of achieving more transparent reporting for insurance contracts.

2.1.4 UNIT OF ACCOUNT

Another notable change is regarding the unit of account, which refers to the level of aggregation at which an asset or liability is to be accounted for in the context of financial reporting. The unit of account under IFRS 4 was not explicit. This left the decision to the preparers of financial statements, likely guided by their local GAAP. Some of South Africa's Johannesburg Stock Exchange listed long-term insurance groups referred to the measurement of 'contracts' (Sanlam Limited (Sanlam Limited, 2023) and Discovery Limited (Discovery Limited, 2022)).

For IFRS 17 purposes, there is now a granular separation of contracts based on cash flows, risks, and margins. This happens through the use of portfolios of insurance contracts, with portfolios containing specific groups of contracts (IASB,2021: IFRS 17:14-24). A portfolio of insurance contracts would include contracts that are exposed to risks of a similar nature, and would consequently be measured together. The unit of account for IFRS 17 is a "group of insurance contracts". The expected profit from an insurance contract would then be measured at the level of the unit of account.

The requirement for the use of a clearly articulated unit of account further enhances the consistency of reporting, as well as the lens through which not only preparers of financial statements but users alike are able to view financial information. The determination of the appropriate level of aggregation for insurance contracts was important when developing IFRS 17 as it impacts the allocation of the CSM and the level at which onerous contracts would be identified.

2.2 KEY DEFINITIONS

IFRS 17 has introduced several new definitions such as "contractual service margin", "risk adjustment" and "liability for incurred claims", which will see the inclusion of additional financial statement line items ('FSLI'). The consideration of these FSLIs and some of their related definitions are relevant in the context of this research as these line items would form part of the derivation of taxable income for the purpose of determining tax payable, some of which are woven into the amended tax legislation in section 29A.

Having said this, it is noted that the definition of an insurance contract has fundamentally remained the same as it was under IFRS 4. This means that in most cases, contracts that would have constituted insurance contracts under IFRS 4 would continue to be classified as such for IFRS 17 purposes. Definitions not discussed or included herein are either unchanged or are not considered critical to this research. The new key definitions have been included in Annexure A

2.3 CONCLUSION

The extent of amendments reflected in IFRS 17 are a reflection of the IASBs intention to move to a global standard for insurance contracts. The removal of the need to use judgement and the application of local GAAP addresses the shortcoming of IFRS 4 that resulted in different accounting policies applied to insurance contracts within jurisdictions and globally. This aligns with the IASBs objective of enhancing comparability and consistency between the financial statements of insurers across jurisdictions.

3 CHAPTER 3: TAXATION OF LIFE INSURERS IN SOUTH AFRICA UNDER IFRS 4 AND IFRS 17

3.1 GENERAL PRINCIPLES REGARDING THE TAXATION OF LIFE INSURERS IN SOUTH AFRICA

This chapter discusses the evolution of the taxation of life insurers in South Africa and will include a discussion regarding the requirements of section 29A of the ITA as well as an evaluation of the most recent amendments made thereto.

3.2 SECTION 29A PROVISIONS

3.2.1 PURPOSE AND HISTORY

The taxation of long-term insurers has evolved considerably over the last 30 years. Whilst the ITA applies in its entirety to long-term insurers, section 29A of the ITA includes specific provisions that take into consideration complexities that arise in the long-term insurance sector.

The ITA defines an ‘insurer’ as:

“a company that is licensed under the Insurance Act and is conducting life insurance business as defined in that Act, other than a foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of that Act;” (Income Tax Act 58 of 1962, 2024: s29A(1))

Section 29 was introduced in the ITA in 1999 after the Sixth Schedule was repealed. The provisions at the time included a simplified formula for the determination of taxable income, which at a high level was determined as the gross investment income (including interest, rental income and a third of dividend income received), less 55 percent of expenses (Explanatory Memorandum on the Revenue Laws Amendment Bill, 1999:3). In 1999 extensive amendments were made to the section which saw the introduction of the concept of the four-funds approach. The four-funds approach was built on the foundation of the trustee principle and formed part of the recommendations presented by the Jacobs Committee. This principle considered the fact that insurers held and administered assets on behalf of several categories of policyholders (Explanatory Memorandum on the Revenue Laws Amendment Bill, 1999:3).

The four defined funds at the time were the Untaxed Policyholder Fund (‘UPF’), ‘Individual Policyholder fund’ (‘IPF’), Company Policyholder Fund (‘CPF’) and Corporate Fund (‘CF’), with each being treated a separate taxpayer. The naming thereof speaks to the nature of the policyholder itself, with the exception of the CF, which represents the insurer itself and would include the excess assets after aligning the value of assets and liabilities in the policyholder funds (i.e. the residual). Following these changes, certain shortcomings in the provisions became evident.

These included:

1. A trending decrease in the income tax determined for insurers, which contradicted the increase in profits generated by these businesses at the time.
2. Misalignment in the manner in which the transfer of assets and between funds was taxed (between transferor and transferee funds)
3. The impact of the deductibility of allocated expenses on the taxable income of the respective fund. Expenses incurred in the process of conducting business which could not be clearly associated to a specific fund were allocated to the three policyholder funds in proportion to the fund's contribution. In many cases, the allocated expenses were deductible against the investment income of a policyholder fund. This had the effect of drastically reducing the taxable income in each fund.

Section 29A has since replaced section 29, with several of the above issues being addressed through specific amendments. Two significant changes took place prior to the transition to the IFRS 17 regime. The first is concerning the four-funds approach.

The Risk Policy Fund ('RPF'), a fifth fund was introduced in response to concerns that the taxation of insurers using the four-funds approach does not delineate between risk and investment business (Explanatory Memorandum on the Taxation Laws Amendment Bill, 2014:30).

The second is concerning the valuation approach for insurance liabilities. The valuation method for liabilities has evolved. The valuation method was previously the Financial Soundness Valuation ('FSV') method as was prescribed by the Chief Actuary of the Financial Services Conduct Authority ('FSCA' and formerly the Financial Services Board) before amendments communicated in the Tax Laws Amendment Act, 2016 required that the method of valuation be changed as a result of the change in regulatory reporting that led to the Solvency Assessment and Management Framework ('SAM Framework') being implemented and anticipated changes to IFRS requirements (regarding what was then referred to as phase 2 of IFRS 4 and what we now refer to as IFRS 17) (Explanatory Memorandum on the Taxation Laws Amendment Bill 17B of 2016,2016:34).

This change saw the introduction of the concept of the adjusted IFRS value and its accompanying formula. It was also in this amendment where the definition of "value of liabilities" was amended to ensure its applicability to the UPF, IPF, CPF and RPF (Explanatory Memorandum on the Taxation Laws Amendment Bill 17B of 2016:34-35). Further refinements followed the 2016 amendments in order to clarify concerns raised about the inclusions to the adjusted IFRS value formula and transfers between funds (Explanatory Memorandum on the Taxation Laws Amendment Bill, 2017:58).

The next development was seen on 5 January 2023, when National Treasury published the Taxation Laws Amendment Bill, 2022. Following this, on 16 January 2023, the Explanatory Memorandum on the Taxation Laws Amendment Bill, 2022 was published (Explanatory Memorandum on the Taxation Laws Amendment Bill, 2023).

3.2.2 STRUCTURE OF AND AMENDMENTS TO SECTION 29A

As of 16 January 2023, the broad structure of section 29A includes 16 subsections which prescribe the requirements for long-term insurers. These have been summarized below, with Annexure A including the full writing of the most recent section 29A.

(a) Extent of application of the ITA to long-term insurers.

The ITA, in its full form is applicable to long-term insurers, with section 29A including specific provisions. The application of this section is however subject to section 29B which addresses the mark-to-market taxation of long-term insurers (Income Tax Act 58 of 1962, 2024: s29A(2)). Broadly speaking, the section serves to address the treatment of capital gains on the assets of insurers prior to 1 March 2016, which coincides with key changes within the Capital Gains Tax requirements at the time. This subsection has remained unchanged since the published 2023 and 2024 versions of the ITA.

(b) Adherence to the five-fund approach.

The establishment of the four-fund approach and the addition of the fifth fund was discussed earlier in this chapter. An insurer is required to establish five funds ((Income Tax Act 58 of 1962, 2024: s29A(3)) which are to have their tax determined separately and are considered to be connected persons in relation to one another (Income Tax Act 58 of 1962, 2024: s29A(10)). The naming of each fund gives an indication of either the nature of the policyholders or the nature of the policies managed therein. For example, the IPF includes the assets and liabilities with respect to policies where individual persons are the policyholders. Similarly, the CPF includes the assets and liabilities with respect to policies where corporates are the policyholders. The RPF differs slightly in this regard and includes policies that meet the definition of a risk policy per the ITA.

As each funds' tax is determined as though they were separate taxpayers, different rates of tax are applied to each. The CPF rate is the prevailing corporate tax rate of 27% (as with the CF and RPF), the IPF is taxed at 30% and the UPF at 0% (PricewaterhouseCoopers, 2003). It is worth highlighting that although the five funds are treated as separate taxpayers, this approach is only applicable for the purpose of determining income tax liability and does not impact the legal entity under which the funds are established. The recommendations included in the report issued by the Jacobs Committee, which Treasury took on board and implemented in 1999 also included further details about how the then four-funds were to be managed. These

requirements included establishing separate accounting records, segregating assets and the management of the transfers between funds (Botha, 2005:29).

The transition to IFRS 17 and amendments to the legislation that took place in January 2023 did not impact the operation of the five-fund approach.

(c) Transfers between Funds.

Transfers between funds must be managed according to the need or event arising. These transfers generally take place within three months of the end of the year of assessment once the value of liabilities has been determined or when specific changes impacting the ownership, owner of a policy or annuities becoming payable for a policy fund (Income Tax Act 58 of 1962, 2024: s29A(6)). These requirements have not changed with the 2023 and 2024 amendments to section 29A of the ITA.

(d) The value of liabilities.

The value of liabilities must be redetermined within three months following the end of each year of assessment (Income Tax Act 58 of 1962, 2024: s29A(7)). Depending on the results of the exercise, transfers either to or from the corporate fund may be required.

If the market value of the assets in a respective policy fund exceeds the value of the liabilities determined for that fund, the excess must be transferred to the corporate fund. Where the opposite is true, a transfer from the corporate fund will be required. This approach continues to be aligned to the recommendations provided by the Davis Committee which included the requirement for the assets and liabilities in a policyholder fund to equal one another (Botha,2005:29). These requirements have not changed with the 2023 and 2024 amendments to section 29A of the ITA.

(e) The deductibility of expenses within the various policyholder funds.

Expenses taken into account within the policy funds are considered to fall within one of two categories, direct or indirect. Direct expenses are those that can clearly be attributed to or be determined as having arisen as a result of generating and maintaining business within a particular fund. For example, the commissions paid to agents that have sold policies to individuals can be said to be a direct expense which is to be attributed to the IPF. Section 29A(12)(a) thus requires that such direct expenses be allocated to the fund to which they relate.

It follows then, that indirect costs would be those that have been incurred in carrying the business of long-term insurance but cannot easily be attributed or connected to the business of one specific fund. Examples of these would include general overhead costs and marketing costs and audit fees. In this instance, section 29A(12)(b) requires that the

indirect costs be apportioned to each fund in accordance with the formula provided in section 29A(11).

The attribution of expenses to policy funds has historically been inconsistent, with SARS issuing Binding General Ruling 30, which has been applied since it was first issued on 7 January 2016 (SARS, BGR30 Issue 2). Expense attribution requirements were not impacted via the 2023 amendments to section 29A of the ITA.

(f) Classifications of risk policies and the taxable income of the Risk Policy Fund.

Subsection 13B provides requirements and guidance regarding the classification of policies as risk policies as of 1 January 2016. This inclusion of the provision in the ITA was announced in December 2015 following the introduction of the RPF (Explanatory Memorandum on the Revenue Laws Amendment Bill, 2015: s3.11 p35). SARS issued Interpretation Note 102 (Issue 2) which provides extensive guidance for how to classify a policy as a 'risk policy'. The fifth fund was introduced in response to concerns raised at the time regarding the ability of insurers to distinguish between risk and investment business (SARS, IN102 (Issue 2)). Subsection 13A allows as a deduction, the value of liabilities from the income within the RPF. It is noted further that this is subject to the provisions of section 23(e) of the ITA (Income Tax Act 58 of 1962, 2024: s29A(13A)). These subsections have remained unchanged in the 2023 and 2024 amendments to the ITA.

(g) Transition Provisions.

Prior to the amendments to section 29A announced in 2023, the transition provisions which stipulated a phasing in amount and period issued in 2016, had the purpose of minimizing the impact of the change in the method for the valuation of liabilities upon the introduction of the SAM Framework and the Insurance Act of 2016. SARS had provided for a phase-in period of six years, with the intention of "stabilizing tax collections" as a result of these changes (Explanatory Memorandum on the Taxation Laws Amendment Bill 17B of 2016). This introduced subsections 14, 15 and 16 into section 29A of the ITA.

Whilst these subsections are still in existence, they have taken on a different meaning. The transition provisions (which encompass phasing in amount and phase-in period), are now there with the purpose of facilitating a less burdensome transition to IFRS 17 by reducing the magnitude of the income tax adjustment in a given year of assessment, thereby supporting insurers from a cash flow perspective during this period.

The wording of the amended subsection 15 requires consideration of the amounts of policy liabilities as determined in accordance with IFRS rules (IFRS 4 and IFRS 17), as well as the amended adjusted IFRS value and "value of liabilities", which have now embedded IFRS 17 terms.

Furthermore, the determination of the phasing in amount accounts for the manner in which premium debtors (receivables) and policy loans were accounted for under IFRS 4. Under IFRS 4, these were often considered assets and could be seen reflected separately to insurance liabilities in the financial statements. IFRS 17 however, calls for these to be recognized as part of insurance contract liabilities.

In addition to the above, with the implementation of IFRS 17, key definitions were amended in the process, in order to achieve the outcome intended by National Treasury. These definitions are critical inputs in the determination of taxable income under section 29A, the amendments to which alter the computation of income tax payable under the provisions of the ITA.

The following key definitions were updated in the 2023 amendments to section 29A:

- **Adjusted IFRS Value**

Adjusted IFRS value as determined by the formula in section 29A(1), the intention of which is to ensure that liabilities recognised in an insurer's financial statements with respect to insurance policies is not negative. The former definition made a general reference to insurance liabilities, whilst the current definition notes each specific insurance liability and insurance asset. This change aligns with the requirements in IFRS 17:78.

In addition, the formula now includes an additional input for the "liability for incurred claims" ('LIC'), which is drawn directly from IFRS 17 and is defined by the ITA as follows:

"'LIC' represents the amount of the liability for incurred claims determined in accordance with IFRS 17 in respect of the policies of the insurer, net of amounts recognised in reinsurance contracts for liabilities for incurred claims, which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of policies allocated to that fund;"

- **Value of liabilities**

The value of liabilities definition has been amended to include all other liabilities not taken into account in the adjusted IFRS value. Previously, the determination of the value of liabilities called for an addition of the adjusted IFRS value and the expenses allocated to the fund which had not yet been taken into account. The change was made with the intention of reflecting the fact that the LIC would be classified under insurance contract liabilities, and not current liabilities as it was under IFRS 4 (Explanatory Memorandum on the Taxation Laws Amendment Bill, 2022:23).

3.2.3 INTERACTION OF SECTION 29A AMENDMENTS WITH IFRS 17

As discussed above, the key amendments made in 2023 to section 29A of the ITA were:

- a) The definition of adjusted IFRS value which was amended to incorporate terms and treatment of items such as the LIC and to be more specific with respect to the liabilities to be incorporated.
- b) The definition of value of liabilities, which was amended to take into account the treatment of the LIC under IFRS 17. Noting further, that the abovementioned adjusted IFRS value is a key input into the value of liabilities.
- c) Amendments to the phasing in provisions, which no longer cater to the change in the method of valuation for insurance liabilities that was amended to align with the SAM Framework and the introduction of the Insurance Act of 2016. These now provide reprieve to long-term insurers on whom the transition to IFRS 17 is anticipated to have a large impact.

The consideration and action via the amendments by National Treasury of the treatment of specific liabilities and newly defined terms in IFRS 17 into the recently amended section 29A, demonstrates an alignment to the IFRS standard. Such consideration will likely reduce inconsistency in the income tax returns submitted by long-term insurers which can arise from different interpretations of the stated requirements and any additional adjustments required by companies submitting tax returns. Such alignment may enable more stable (particularly in the initial years following transition to the standard) and predictable revenue collection by SARS. It is noted further that the key intention National Treasury had with these amendments was to achieve alignment to IFRS 17, as stated in the published Explanatory Memoranda to the Taxation Laws Amendment Bills of 2022 and 2023.

It is worth noting that from an IFRS perspective, the 'at transition' adjustment which restates the historical financial results, is accounted for within equity, which from the review of long-term insurers' financial statements mostly relates to releases of reserves not permitted under IFRS 17 (e.g. pandemic reserves and discretionary reserves). This equity adjustment is in addition to the restatement and derecognition of insurance-related assets or liabilities (together with their associated deferred tax impact). These adjustments effectively take place at a point in time. From the transition date going forward, all insurance-related amounts in the annual financial statements are on an IFRS 17 basis.

3.3 CONCLUSION

There have been several significant amendments to the legislation regarding the taxation of long-term insurers in South Africa via the Income Tax Act since the pre-1999 days, where

minimal provisions were in place, to 2024 where key changes such as the introduction of the five-fund model, changes to the methodology for the valuation of liabilities and ultimately efforts to align IFRS 17 to section 29A have since taken place.

The recent amendments to section 29A were made with IFRS 17 in mind and key definitional aspects of formulae used in section 29A were revised to align with the new standard. The use of the mechanism of the phasing-in period and its impact on the application of the GloBE Rules is currently unknown and could not have reasonably been a consideration for tax authorities given the timing of the IFRS 17 transition and the release of the GloBE Rules.

4 CHAPTER 4: UNITED KINGDOM APPROACH TO THE TAXATION OF CORPORATIONS AND LIFE INSURANCE BUSINESS, AND THE IFRS 17 TRANSITION APPROACH

4.1 OVERVIEW OF TAXATION OF CORPORATIONS

4.1.1 TAXATION OF CORPORATIONS

The taxation of corporations in the United Kingdom ('UK') is governed by several acts, with the Taxation of Chargeable Gains Act 1992 ('TCGA'), Corporation Tax Act 2010 ('CTA 2010'), and the Corporation Tax Act 2009 ('CTA 2009') containing the core provisions. Corporations are taxed over an accounting period which although is not defined, Chapter 2 of the Corporation Tax Act 2009 defines what constituted the beginning and end of such period (Corporation Tax Act 2009: ch2). Such taxation is based on worldwide income for UK resident companies and on a source basis for non-resident companies.

Taxation is based on profits which require the use of the financial statements as a starting point, along with any other adjustments. The profits referred to encompass income and chargeable gains (Corporation Tax Act 2009:s2). In addition, there are provisions addressing deductions and allowances permitted in the CTA 2009, CTA 2010 and Finance Act, 2012 ('FA 2012'). The main rate of tax applied to corporations for the accounting period beginning 1 April 2024 is 25% (HMRC, 2024). In addition to the above there are special rules designed to address specific industries such as oil and long-term insurance. The latter is relevant to this research and will be discussed in the section to follow.

4.2 TAXATION OF LONG-TERM INSURANCE BUSINESS IN THE UNITED KINGDOM

4.2.1 OVERVIEW

The long-term insurance regime was introduced in the UK in 2012 via the FA 2012, with an effective date of 1 January 2013. In the context of the taxation of long-term insurance business, it noted that the terms "life insurance" and "life assurance" are often used interchangeably (HMRC, Life Assurance Manual – LAM01010).

Throughout this chapter, the term "long-term insurance business" will be used and encompasses the defined term for "long-term business" in the FA 2012 which states (*Finance Act 2012*, s63):

"63 Meaning of "long-term business" and "PHI business"

(1)For the purposes of this Part "long-term business" means—

(a)life assurance business, or

(b) other business which consists of the effecting or carrying out of contracts of long-term insurance.

(2) For the purposes of this Part “PHI business” means the other business mentioned in subsection (1)(b).”

As well as “life assurance business” as included in the definition of long-term business is defined as (*Finance Act 2012, s56*):

“56 Meaning of “life assurance business”

(1) This section defines for the purposes of this Part what is meant by “life assurance business”.

(2) Business is “life assurance business” if—

(a) it consists of the effecting or carrying out of contracts of insurance which fall within paragraph I, II, III or VII(b) of Part 2 of Schedule 1 to the FISMA (Regulated Activities) Order 2001, or

(b) it is capital redemption business (see subsection (3)).

(3) Business is “capital redemption business” if it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum of a specified amount (or a series of sums of a specified amount) become payable at a future time or over a period.”

For clarity, the contracts of insurance referred to in section 56 (2)(a) of FA 2012 are (*Financial Services and Markets Act 2000:Part 2 ,sch1*):

- a. Life and annuity.
- b. Marriage and birth.
- c. Linked long-term.
- d. Pension fund contracts that include an insurance contract component that covers the payment of a minimum amount of interest or the covers the conservation of capital.

The taxation of long-term insurance business is, at its core, driven by the nature of the insurance product. Other aspects that have shaped the evolution of this tax regime include regulatory requirements (specifically Solvency II Directives) and prevailing accounting rules. As the HMRC developed the regime, one of the key intentions was the ability to tax the profits of the company as well as any investment returns that have arisen within the company and earned on behalf of policyholders for certain products (HMRC,2019:LAM01060).

4.2.2 TAXATION MECHANISMS

The taxation of long-term insurance business is grouped into two separate trades, namely Basic Life Assurance and General Annuity Business ('BLAGAB') and non-BLAGAB business, which are taxed on a different basis and for tax purposes are considered separate businesses (*Finance Act 2012*, s66).

BLAGAB is taxed on the profit derived by determining the result of the net of investment income and expenses ('I-E basis'). This approach allows the HMRC to achieve one of the key intentions mentioned in the previous section which essentially allows for the taxation of the shareholder profits and policyholder investment return (HMRC,2019: LAM01160).

The I-E Basis of Taxation (BLAGAB)

Section 73 of the FA 2012 details the various steps required to determine the I-E profit, with section 68 stipulating the taxation of BLAGAB on this basis. The I-E profit determined as legislated, is taxed at the corporation and policyholder rate (*Finance Act 2012*:s102). In other words, there may be a combined rate applied. The HMRC has set in place a minimum amount of tax to be imposed (unless there is a BLAGAB loss for the accounting period in question), which then requires the application of the 'minimum profits test' (*Finance Act 2012*:s93).

The minimum profits test requires the determination of an adjusted BLAGAB trade profit, which will then be compared to an adjusted I-E profit. In the event that the adjusted BLAGAB profit exceeds the I-E adjusted profit, the excess is deemed to be an I-E receipt and will be carried forward as an expense into the next accounting period (*Finance Act 2012*:s93).

It is to be noted that the adjusted BLAGAB profit is the BLAGAB trade profit, reduced by trade losses carried forward (*Finance Act 2012*:s93).

Taxation of Non-BLAGAB

Non-BLAGAB is taxed at the corporation tax rate and is covered by section 35 of the Corporation Tax Act 2009, as stipulated by section 71 of FA 2012. The basis of taxation for non-BLAGB is no different to the taxation of other corporations.

4.3 TACKLING IFRS 17

4.3.1 TRANSITION MECHANISMS EMPLOYED BY THE UK

In tackling the challenge of transitioning to IFRS 17, the HMRC engaged in a formal consultation process that included role players from insurance companies, accountancy firms and representative bodies within the industry. On 1 January 2023, the *Insurance Contracts (Tax) (Change in Accounting Standards) Regulations 2022* came into force as a statutory instrument specifically addressing matters relating to the tax issues regarding the transition to IFRS 17.

The transitional provisions only apply to those companies who were already applying IFRS 17 or are transitioning from applying UK GAAP to applying International Accounting Standards. A key consideration for the identification of in-scope businesses, the HMRC also considered the definitions of 'insurance company' and 'long-term business' as outlined in the FA 2012. Furthermore, it is to be noted that the transitional provisions did not extend to 'general insurers' given the short-term nature of the contracts and non-material impact on equity at the IFRS 17 transition point (HMRC, 2022:s2.15).

In addition to the legislative changes made to support the transition to IFRS 17, section 19 of the FA 2012 has been repealed. The provisions of this section allowed for life insurers to spread the acquisition costs of contracts over a period of seven years for tax purposes. The rationale for this repeal is the changing landscape of the insurance business such that this deferral is no longer as beneficial as it was initially, and the consideration of the compliance burden that would arise under the IFRS 17 regime of separately tracking and reporting such costs (HMRC,2022:s2.85).

The HMRC's motivations for opting for the selected transitional approach and adoption of an active consultative process with industry players include (HMRC, 2022:s1.6-1.7):

- Mitigating the impact of the large transition date adjustment anticipated.
- Demonstrating the support for the of the long-term stability of the insurance sector.
- Mitigating any potential impact on the Exchequer¹.
- Maintaining the UK's reputation as a leading financial services center.

4.3.2 DETERMINING THE TRANSITION AMOUNT

As with the determination of the liability for corporation tax, the starting point when determining the amount to be spread over the aforementioned 10-year period is the annual financial statements. In simple terms, the transitional amount is the retained earnings adjustment required at the transition date (i.e. the difference between, at the same date of the retained earnings on an IFRS 4 versus an IFRS 17 basis). The retained earnings impact arises due to the

¹ The 'Exchequer' is the United Kingdom's equivalent of the Treasury Department.

IFRS 17 requirement to retrospectively restate financial results, unless it is considered impracticable (IASB, IFRS17:C3).

The Life Assurance Manual as made available by the HMRC states that the transitional amount is to be determined as follows (HMRC,2019:LAM16020):

- “1. Both the closing balances of accumulated profits less accumulated losses in the first IFRS 17 balance sheet and pre-IFRS 17 balance sheet are subject to any adjustment in calculating the profits of a trade for corporation tax.
2. Following these adjustments, the pre-IFRS 17 closing balance is deducted from the IFRS 17 closing balance.
3. Amounts relating to the adoption of IFRS 9, or which do not solely relate to the adoption of IFRS 17, are excluded from the result.
4. The result is apportioned between the long-term and other business that the company is carrying on, on the date IFRS 17 is adopted. The apportionment follows the IFRS 17 disclosure requirements per the company’s accounts for the first accounting period in which IFRS 17 is used. Failing that the apportionment is made on a just and reasonable basis.
5. The “IFRS 17 tax transitional amount” is the amount allocated to the company’s long-term business.”

Further to the above, it is noted that there may be a chance that a company in the long-term insurance business also has a retained earnings transition impact that is not related to IFRS 17. This is because the IASB had previously provided companies reporting on an IFRS basis an opportunity to defer the transition to *IFRS 9: Financial Instruments* (‘IFRS 9’). This would then enable companies impacted by both IFRS 9 and IFRS 17 the opportunity to deal with one accounting standard transition at the point when IFRS 17 became effective.

Having considered this, the HMRC has excluded the application of the abovementioned transition provisions, any portion of the retained earnings adjustment relating to the transition to IFRS 9 (HMRC,2019: SI2022/1165,s3). Once the transitional amount is determined, it is to be spread over a 10-year period, on a straight-line basis (HMRC, 2022:s1.8).

In the instance a company’s long-term insurance business consists of both BLAGAB and non-BLAGAB, the transition amount that has been determined will be apportioned according to each businesses’ trade profit contribution, based on the financial statements that precede the transition to IFRS 17 (HMRC, 2019:SI2022/1165,s4). As previously noted, BLAGAB and non-BLAGAB business are considered separate trades, hence profits referred to here would be those

based on (as a starting point) the financial statements, on which accounting principles would have been applied (CTA 2009: s46(1)).

The transitional amount determined will be treated as an income (receipt) or an expense for tax purposes, depending on the figures applicable to the specific company (HMRC,2019: SI2022/1165,s5).

4.4 COMPARATIVE ANALYSIS

This comparative analysis will include South Africa and the UK and evaluate specific aspects which include each country's approach to the transition to IFRS 17 from a tax perspective. The analysis will be underpinned by considerations regarding the motivation for the selection of the UK as a comparative country and the corporate tax systems in each jurisdiction with a focus on the taxation of long-term insurers.

4.4.1 COMPARISON COUNTRY

The UK has been selected given the historical connections between the two countries, with South Africa having been a British Colony until 1961 (Olivier & Olivier, 2017). The colonization of South Africa by the UK has had an impact on aspects of the South African judicial system, which saw "British-style courts" being established from around 1827, which were at the time staffed by British Judges (Hattingh, 2010). These early connections have also seen the adoption of similar approaches with respect to approaches regarding decisions made by the courts, where 'stare decisis' and 'ratio decidendi' have been adopted.

4.4.2 IFRS 17 TRANSITION DATE MECHANISMS

The transition mechanisms will be contrasted within two broad groupings, namely transition date provisions and subsequent or other provisions. Within these groupings, the analysis will consider specific criteria on which to analyse the approaches taken. In identifying such criteria, consideration was given to what may be relevant when designing tax policy. In their first report on the South African tax system and inclusive growth, the Davis Tax Committee highlighted specific principles to be considered with respect to the design of tax policy, with the below being adopted for this analysis (Davis Tax Committee, 2014:13):

- Efficiency.
- Simplicity.
- Transparency and certainty.

The above will be considered in addition to the sector-specific nuance of contract duration. A key point to note is that the equivalent term to the “phasing in amount” as included in the Income Tax Act 1962 by South Africa, is the “transitional amount” in the UK (as referred to in the *Insurance Contracts (Tax) (Change in Accounting Standards) Regulations 2022*).

4.4.3 TRANSITION DATE PROVISIONS (INCLUDING CONTRACT DURATION)

South Africa and the UK have both adopted what may be considered a similar approach to their transition provisions with respect to IFRS 17. Both have implemented the phasing in period, with South Africa opting for 6 years and the UK, 10 years. The question to consider in this regard is the length of time chosen by each country and whether, given the nature of the long-term insurance sector, either may be more beneficial.

South Africa’s National Treasury has indicated their reasons for effecting amendments to the tax legislation given the effective date for the application of IFRS 17, there is limited to no insight as to the substantiation for the selection of the six-year period. The UK on the other hand, has published insights following the consultation period with participants in the insurance industry who indicated that on the basis of commercial data provided through this process and consideration made to the range of contract lengths that may be expected, that the 10-year transition period was in fact reasonable (HMRC, 2022: s2.49-2.52). The Centre for Insurance Policy and Research has indicated that such contracts may have a duration of anything between ten to thirty years depending on the terms and benefits of the contract itself (on the higher end where the duration is linked to the life of the policyholder) (National Association of Insurance Commissioners, 2024).

The matter of contract duration is relevant when one of the goals of the legislative amendments takes into consideration what the reduced impact on insurers might be. Matching (or closely matching) the average duration of the contract (i.e. the period over which revenue on such contract is expected to be earned) and the duration of the phasing in or transition period allows for a portion of the revenue earned in the particular year to be applied to settling the liability for tax arising at the transition date. This provides long-term insurance businesses with the ability to generate more stable profits (which will likely translate to tax revenue for tax authorities) in the years following a significant transition such as the one to IFRS 17 and continue to contribute to the fiscus.

This might not be the case where there are no transition measures such as the phasing in or transition period (and related amount) implemented, which may give rise to situations where any transition amount determined creates a large liability for tax, creating losses that would be carried forward to subsequent tax years of assessment, thereby impacting tax authorities ability to estimate expected and collect tax revenues in the years following the transition.

Having said this, given the evident substantiation by the HMRC of their selection of the transition period and such periods alignment to a minimum duration for a long-term insurance contract, the selection of 10 years appears more reasonable.

Efficiency

The administrative mechanisms adopted by both countries are similar and are in general aimed at minimizing what was commonly anticipated to be large transition date adjustments, that would be best approached with the application of a phase-in period. This may not come as a surprise given the historical connections between the two jurisdictions and the inheritance of some elements by South Africa. Other common outcomes for both governments were the maintaining stability of the insurance sector, guarding against approaches that would be administratively burdensome, would have adverse impacts on the cash flow position of insurers, or would cause revenue collection to be unstable.

Efficiency in the essence that was communicated by the Davis Tax Committee takes into account the ability of a tax system to generate enough income. In this instance, consideration is given to what has previously been stated in this research to be one of the overall impacts of IFRS 17, this being that whilst the pattern of revenue recognition will change (i.e. the revenue recognized in the financial statements for any given year will vary in comparison to what it was under the IFRS 4 regime), it is anticipated to remain stable overall and over the contract period. There is currently no objective evidence to indicate that either country's transition date approach is more efficient than the other.

Simplicity

The UK approach to the transition which in simple terms requires the use of what will be the already prepared financial statements to determine the transition amount, requiring minimal adjustments can be considered to be simpler than the South African approach. The other notable adjustment to be made is the apportionment of the transitional amount to BLAGAB and non-BLAGAB business.

Given the embedded use of formulae (adjusted IFRS amount and apportionment rules), the amendments made to the legislation in South Africa are considerably more complex. In this case, this is further demonstrated by the fact that once the phasing in amount per section 29A(15) has been determined, it cannot simply be straight-lined and added to the tax computation, it must first be included in the adjusted IFRS value formula and is furthermore determined separately for the risk policy fund and each policyholder fund. Whilst based on the same principles, this results in the preparation of multiple calculations for each legal entity carrying on long-term insurance business in South Africa.

4.4.4 POST-TRANSITION PROVISIONS

The comparison of the subsequent or post-transition date provisions cannot be considered in isolation to the general structure or regime established in each country for the taxation of long-term insurance business and will thus be taken into account.

Efficiency

As previously noted, the UK issued a specific statutory instrument in the form of the *Insurance Contracts (Tax) (Change in Accounting Standards) Regulations 2022* which addresses matters that have arisen as a result of the transition to IFRS 17. Statutory Instruments are considered a form of secondary legislation that allows for the implementation of legislative measures without the need to pass a new Act (House of Commons Information Office, 2008:1). The contents of such instruments are thus focussed solely on the matter which they are meant to address. This also allows for the existing legislation to remain intact to extent required (unchanged with the exception of other non-instrument related issues).

The instrument (particularly in this instance) is of course not read in isolation and must be read in conjunction with the Acts noted as being core to the determination of corporation tax which were the CT2009, CTA2010 and the TGCA. It may be considered that having the issue at hand (tax measures addressing the transition to IFRS 17) being addressed in a separate document may remove the question of where old provisions begin and end, as well as the extent to which new measures may impact the operation of old ones. They are essentially a clear additional layer of legislation. Having said this, the UK has several Acts and instruments that are to be read together as it pertains to taxation of corporations, which notwithstanding the skill level of a legal professional, tax practitioner or other preparer of the corporation tax computation, may reasonably lead to an incomplete reading of the requirements for a specific issue.

South Africa on the other hand has one Act which may be considered to be the equivalent of the three aforementioned acts in the UK, as well as Acts such as the Income and Corporation Taxes Act 1988 in the UK. It thus provides a central source that is to be complied with when determining the income. Amendments made to the Income Tax Act 1962 are communicated through the Tax Laws Amendments but do not require the promulgation of new Income Tax Acts.

Simplicity

It is first worth stating that neither of the long-term insurance taxation regimes can be considered simple given the inherent complexity of the sector and the contracts entered into by

virtue of the products created. On the face of it ‘however, it appears that relative to each other, the UK approach is simpler – particularly with respect to the transition to IFRS 17.

Beyond the issuing of the previously mentioned statutory instrument and repealing of section 29 and Schedule 5 of the Finance Act 2022 in the UK, there are no other changes to the taxation regime since the IFRS 17 transition date. In South Africa however, several of the provisions within section 29A of the ITA have been impacted. This excludes the provisions addressing the transition date impact. The amendments to the “adjusted IFRS amount” (changes to several of the inputs as detailed in Chapter two), reach beyond the six-year phasing-in period. As long-term insurers have their understanding of the new standard anchored over the next few years, any potential errors made in calculations of IFRS-related amounts (which form part of the base for the determination of taxable income for insurers) may be anticipated to impact the outcome of provisional tax assessments and final year-end assessments made for tax, potentially creating lumpy revenue collection.

In adding to the principle of simplicity in a tax system, it is stated in an OECD publication that (Skipper, 2001):

“a tax system can be considered simple if it is not complex administratively, its costs of collection are low, it is not easily evaded, and taxpayers can comply with the law without undue expenditure of time and money.”

Whilst it may be argued that by the end of the phasing-in period, insurers would have likely grounded themselves in the requirements from an IFRS 17 perspective (which impact the determination of taxable income in South Africa), there is complexity inherent in the long-term insurance tax regime which merely extends itself in the additional provisions.

Transparency and Certainty

The analysis of the transparency and certainty of the IFRS 17 transition measures implemented will consider both the transition date and post-transition period mechanisms. When referring to transparency and certainty, the Davis Tax Committee considered that this would encompass transparency concerning the rules applied and the consistency of such application. In addition, the calculation and collection of taxes should be certain (Davis Tax Committee, 2014:13).

With this in mind it can be said that the UK and South Africa are on an equal footing in this regard. Both countries have previously made public draft versions of the legislation prior to its implementation available and allowed for a period of engagement and receipt of commentary from key industry participants. The feedback received from these engagements was taken into consideration when finalizing the legislative matters. Such measures contribute to enhancing transparency regarding the new legislation to be expected.

The measures in both countries require the calculation of specific amounts, the structure of which was included as part of the consultation process. In the UK for example, commentary from industry participants voiced over feedback on each aspect which was included in the statutory instrument and included feedback on the transition period and straight-lining of the transition amount determined (HMRC, 2022:s2.49-2.52). This increases the certainty associated with the determination of taxation.

Whilst there have not been similar documents published reflecting the industry participant views for South Africa, the language used in explanatory memoranda published subsequent to the Taxation Laws Amendment Bill, 2022, suggests that there may have been input and commentary received which was then taken into consideration for subsequent years (Taxation Laws Amendment Bill, 2023). Language such as “it has come to the Government’s attention” may be an indicator of this. On this basis, it may be concluded that the legislative tax changes made in relation to the IFRS 17 transition promote transparency and certainty.

4.5 CONCLUSION

The taxation of long-term insurance business in South Africa and the UK takes place on different bases, with South Africa’s approach primarily making use of the nature of the policyholder and application of the trustee principle. The UK’s approach focuses on the nature of the insurance product resulting in two groups of long-term insurance business, BLAGAB and non-BLAGAB.

The IFRS 17 measures implemented in the UK and South Africa were compared on the basis of efficiency, simplicity, transparency and certainty. This was in addition to the matter of contract duration regarding transition date measures. Whilst both were found to be on an equal footing regarding transparency and certainty, the HMRCs measures employed better enhance efficiency and are demonstratively simpler.

5 CHAPTER 5: GLOBE RULES AND THEIR INTERACTION WITH IFRS 17 AND THE LONG-TERM INSURANCE INDUSTRY

This chapter will consider the interaction of the transition to IFRS 17 and the implementation of the Global Anti-Base Erosion Rules ('GloBE Rules') from the perspective of long-term insurers headquartered in South Africa. This will be done through a case study with Discovery Limited as the subject and will be preceded by an overview of the GloBE Rules and elected legislative approaches in South Africa and the UK.

5.1 BACKGROUND TO GLOBE RULES

The GloBE Rules are a product of the Base Erosion Profit Shifting ('BEPS') project initiated by the OECD and are aimed at addressing the challenges that have arisen over time as a result of the increase of digitisation in the global economy (OECD,2023:1). The efforts of the OECD and its collaboration with the G20 Inclusive Framework saw the issuing of a two-pillar solution that would ensure that multi-national entities ('MNEs') are paying their fair share of taxes wherever in the world they were doing business (OECD,2023:1).

The GloBE rules contain ten chapters (comprising of articles) and are accompanied by commentaries which provide the appropriate additional guidance to assist in their application. The core provisions are contained at chapters two to five, with chapters one and 10 addressing scoping and definitional aspects respectively. The key definitions used throughout the GloBE Rules and relevant to this research are included in Annexure A.

The GloBE rules apply to MNE groups with annual revenues (as per their consolidated financial statements) that are equal or greater than EUR 750 million (OECD, 2021:art1.1), in two of four fiscal years immediately preceding the fiscal year being tested. In simple terms, the GloBE Rules aim to identify the jurisdictions where CEs have an effective tax rate (ETR') that is below 15 percent which is indicative that insufficient levels of tax have been levied, and to impose a top-up tax which would ensure that across the MNE group (including the jurisdiction where the CE with a low ETR) all CEs are being charged at least an effective rate of tax of 15 percent. Which jurisdiction has the right to collect the top-up tax will depend on the extent to which the collection mechanisms presented in the GloBE Rules have been adopted (i.e. legislated).

A constituent entity is defined as (OECD,2021:art 1.3):

- “(a) any Entity that is included in a Group; and*
- (b) any Permanent Establishment of a Main Entity that is within paragraph (a).”*

The ETR is computed annually on a jurisdictional basis, and where it is found to be below 15 percent within a particular jurisdiction, the following collection mechanisms will be utilized to collect the tax shortfall (OECD, 2021:ch2). The details of the operation of these rules will be reflected in conducting the case study.

5.1.1 INCOME INCLUSION RULE (IIR)

The IIR is considered the primary rule and would require the top-up tax to be collected in the jurisdiction of the ultimate parent entity (‘UPE’) or intermediate parent entity (‘IPE’) of the MNE group (OECD, 2022:34).

A UPE is defined as (OECD, 2021:art1.2)

- “(a) an Entity that:*
 - i. owns directly or indirectly a Controlling Interest in any other Entity; and*
 - ii. is not owned, with a Controlling Interest, directly or indirectly by another Entity; or*
- (b) the Main Entity of a Group that is within Article 1.2.3.”*

The IIR will apply in instances where the UPE has a direct or indirect ownership interest in a CE with an ETR below 15 percent. The amount of such tax collected would be based on the parent entity’s ownership percentage and would be the difference between the minimum tax rate and the ETR. It must be noted that the top-up tax would only be able to be collected in the UPE jurisdiction if the IIR has been included in the domestic law of that jurisdiction and would be referred to as a qualified IIR (OECD, 2022:64).

Where there is no qualified IIR in the UPE jurisdiction, then a top-down approach (with reference to the ownership structures of the MNE group) would be applied and would require the next parent entity (i.e. IPE) to collect the tax in its jurisdiction (OECD, 2022:35).

The amount of tax payable by the UPE or IPE is dependent on the percentage interest held and will be allocated accordingly (OECD,2023:art 2.2).

5.1.2 UNDERTAXED PROFITS RULE (UTPR)²

The UTPR provisions are outlined in Articles 2.4 to 2.6 and are intended to work together with the IIR as a “backstop” rule particularly due to the administrative burden that the UTPR poses (OECD Commentaries, 2023:34). In simple terms this rule is intended to subject to tax, the top-up tax amount that has not had the qualified IIR applied to it (OECD, 2022:47). The UTPR is allocated using the formula provided in Article 2.6.1.

5.1.3 QUALIFIED DOMESTIC MINIMUM TOP-UP TAX (‘QDMTT’)

The GloBE Rules do not list the QDMTT as one of the core mechanisms for the collection of top-up taxes, however the principles of what a QDMTT is, are outlined in the OECD commentaries to the GloBE rules. Furthermore, the QDMTT is defined in the GloBE Rules as (OECD,2021:art10.1):

“A minimum tax that is included in the domestic law of a jurisdiction and that:

(a) determines the Excess Profits of the Constituent Entities located in the jurisdiction (domestic Excess Profits) in a manner that is equivalent to the GloBE Rules;

(b) operates to increase domestic tax liability with respect to domestic Excess Profits to the Minimum Rate for the jurisdiction and Constituent Entities for a Fiscal Year; and

(c) is implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Rules and the Commentary, provided that such jurisdiction does not provide any benefits that are related to such rules.”

The QDMTT is akin to a top-up tax and aims to tax the excess profits of domestic constituent entities such that the ETR would be equal to the minimum tax rate of 15 percent (OECD,2022:256). In applying any rules regarding the QDMTT, consistency with the provisions in the GloBE Rules must be kept and ought to function in the same way with the exception of specific matters such as the treatment of joint ventures (‘JVs’).

In reading the commentary provided by the OECD for Chapter 10 of the Model Rules, it is evident that although the QDMTT is not one of the core mechanisms outlined, it provides jurisdictions with the ability to better tailor this mechanism in a way that aligns with its local tax legislation and protects the jurisdictions right to tax top-up tax amounts arising from constituent entities in its jurisdiction.

² The abbreviation UTPR was historically used for the term “undertaxed payments rule”. However, as the design of the UTPR has now deviated from the originally envisaged concept of focusing on the deduction of business expenses to a top-up tax that is apportioned among the countries in which the constituent entities are located, the meaning of UTPR has transitioned to an abbreviation for the term “ Under Taxed Profits Rule”.

In the instance a jurisdiction has opted to institute a QDMTT, the IIR and UTPR may still be applied in the same order as required in the GloBE rules, however the QDMTT outcome must be taken into account when applying these provisions.

5.1.4 TAXING RIGHTS

The GloBE rules are not currently included in double tax agreements, and the extent to which a jurisdiction may claim that any amount of top-up tax is due to them depends on the extent to which the abovementioned GloBE Rules have been enacted into domestic legislation. Such enactment into domestic legislation may protect a jurisdictions' right to collect the top-up tax if the UPE is located in their jurisdiction. Where for example the UPEs jurisdiction has not enacted any legislation in this regard, a low tax jurisdiction may claim its right to collect such tax under the subject-to-tax rule before having to apply the QDMTT, IIR or UTPR.

The subject-to-tax rule ('STTR') is a key ongoing development, which will take the form of a treaty-based rule that will operate together with the IIR and the UTPR and will enable jurisdictions to collect tax on intra-group amounts referred to as covered income in instances where the recipient of such income is subject to a statutory or nominal tax rate below 9 percent. The rule is intended to protect the rights of developing nations that are part of the inclusive framework. The STTR will be brought into effect through the use of a multilateral instrument ('MLI')(OECD,2023:3).

In completing the case study, the focus will be on the steps required to determine the ETR to the extent that the potential impact on long-term insurers can be demonstrated. The key steps in reaching this stage are outlined by the OECD as below (OECD, 2023:5), although not all of these may be applicable depending on the components of the GloBE rules legislated in South Africa and the UK:

1. Determine whether an MNE group is in scope and identify its CEs.
2. Compute the GloBE income for each CE.
3. Compute the covered taxes attributable to each CE.
4. On a jurisdictional basis, calculate the ETR.

5.2 PILLAR TWO ENACTED LEGISLATION IN SOUTH AFRICA AND THE UNITED KINGDOM

5.2.1 SOUTH AFRICA

In response to the issuing of the GloBE Rules by the OECD, South Africa has incorporated the GloBE Rules into legislation via way of the Global Minimum Tax Bill (published in draft form on 21 February 2024 at the time of writing) through an ambulatory approach which will see the most recent version of the OECD commentaries to the Model Rules applying and will ensure consistent alignment (National Treasury, 2024:6).

The Global Minimum Tax Bill (which will in time be promulgated as the Global Minimum Tax Act), follows the GloBE Rules and its accompanying commentaries and will allow South Africa to impose a minimum top-up tax at the rate of 15 percent on the excess profits of MNE groups within the scope through the imposition of the IIR and DMTT from fiscal years beginning on or after 1 January 2024 (Global Minimum Tax Bill, 2024:s23).

The mechanisms being applied by South Africa are the QDMTT and IIR, in a manner that is consistent with the requirements and commentaries of the GloBE Rules. The UTPR does not apply for UPEs in South Africa (through the operation of the anticipated legislation), and consequently, all mention of this in the GloBE Rules does not apply in the South African context.

National Treasury has indicated that there are specific parts of the GloBE Rules that do not apply in the South African context, which include the definition of a QDMTT outlined in Article 10.1 of the GloBE Rules and QDMTT safe harbour rules (Global Minimum Tax Bill, 2024: s10-s11).

The Bill requires the minimum top-up tax to be determined using the same formula (Global Minimum Tax Bill, 2024:s16), outlined by the OECD (OECD, 2021:ch 10, para 118.35). The current draft bill published by National Treasury is not detailed beyond the above and a few other salient points, but guides readers to the GloBE Rules.

5.2.2 UNITED KINGDOM

The HMRC has implemented two measures for fiscal years beginning on or after 31 December 2023, namely the minimum top-up tax (aligned with the IIR as defined in the GloBE Rules) and domestic top-up tax (the QDMTT as outlined in the OECD commentaries to the GloBE Rules), with the UTPR being implemented at a later date (HMRC, 2023). The aforementioned rules were implemented in Part 3 and 4 of the Finance (No. 2) Act 2023 ('FA2023').

The FA2023 amendments align fundamentally to the GloBE Rules, with certain additions specific to the UK such as administrative issues. In comparison to the currently proposed Global Minimum Tax Bill in South Africa, the FA2023 is far more comprehensive. An example of this is the inclusion of the requirements of article 3.2.1(h) which refers to adjustments made for prior period accounting errors and changes to accounting principles in determining the GloBE income or loss. The HMRC has outlined the required adjustment per the abovementioned requirement through the title of section 146 and has leveraged on the detail provided in the OECD commentaries to clarify the requirements in section 146(a) and (b) (Finance (No.2) Act 2023, 2023: s146).

5.3 CASE STUDY: ILLUSTRATIVE IMPACT ON THE EFFECTIVE TAX RATE OF THE IFRS 17 TRANSITION APPROACH

5.3.1 DISCOVERY LIMITED COMPANY OVERVIEW

Discovery Limited ('Discovery' or 'the Group') is a diversified financial services group listed on the Johannesburg Stock Exchange ('JSE') offering health insurance, life insurance, investments, savings, banking and short-term insurance products (Discovery Ltd, 2023).

The Group operates primarily in South Africa and the United Kingdom with most of its subsidiaries being located in these jurisdictions. In addition, the Group operates in other jurisdictions including Mauritius, Singapore, Australia, Hong Kong, China, United States, Nigeria, Democratic Republic of Congo and Swaziland (Discovery Ltd, 2023).

5.3.2 CASE STUDY: ILLUSTRATIVE APPLICATION OF THE GLOBE RULES TO DISCOVERY LIMITED

In light of the guidance provided by National Treasury, the fiscal year for Discovery ends on 30 June each year, aligning with the financial period covered by the consolidated financial statements (Global Minimum Tax Bill 2024:s1.2).

The UK is the earliest adopting/enacting jurisdiction in which Discovery operates (Appendix C) and based on the Global Minimum Tax Bill will serve as the proxy starting date. In this case, its fiscal year beginning 1 July 2024 (Global Minimum Tax Bill, 2024: s17 & s18). In the event that South Africa has not enacted the current draft legislation, the HMRC in the UK, would be able to collect the top-up tax.

The computations performed in ascertaining the interaction of IFRS 17 and the GloBE Rules are illustrative and the following assumptions and limitations must be considered:

- The financial information used is limited to the information made publicly available by Discovery on the company website.
- Where the financial results of Discovery need to be translated to Euros, this will be at the average translation rate for the respective financial year (for the SPLOCI) or the closing rate on 30 June (for the SFP) as published by the South African Reserve Bank.
- Where a specific amount is required in the computations outlined in the GloBE Rules, but is not separately identifiable in the AFS, such amount will not be adjusted for unless it is practicable to make an apportionment based on available information.
- The GloBE Rules are assumed to be applicable as of the fiscal year beginning 1 July 2022, along with the legislation in South Africa and the UK at its current status of enactment.
- Parts of the GloBE Rules stated as not applicable in the South African context based on the Draft Global Minimum Tax Bill will accordingly not be applied in the computation.

- The top-up tax arising with respect to minority-owned, joint venture, and investment entities will not be computed separately given the impracticality of the exercise with the limited available information.
- The computation is intended to focus on the resultant effective tax rate and will not extend to the determination of the top-up tax amount itself or the reporting thereon.

Step 1: Determine whether an MNE group is in scope and identify its CEs.

This step requires ascertaining whether Discovery would be in-scope by confirming whether the consolidated revenue exceeds EUR 750 million for at least two of the four preceding fiscal years (OECD,2021: art 1.1).

The table below reflects the revenue of the Group in Euros for the preceding four fiscal years and indicates that the revenue threshold is met for at least two of these.

Table 2 Article 1.1 Scoping Assessment

Year end: 30 June	4	3	2	1	Latest year
EUR 'millions	2019	2020	2021	2022	2023
Net Income	3,566	3,639	4,238	3,985	4,594

In reviewing the publicly available consolidated financial statements of the Group it is noted that the financial information for the separate companies within the group are not available. This information would typically be used as the CE information for the purposes of applying the GloBE Rules. As a result, for the purposes of this research, the analysis will be performed using the segmental information reported in the consolidated financial statements. The segmental information is financial information included in consolidated financial statements in alignment with IFRS requirements outlined in IFRS 8: Operating Segments ('IFRS 8').

IFRS 8 defines an operating segment as (IFRS8: Appendix A):

“A component of an entity:

- that engages in business activities from which it may earn revenues and incur expenses (including revenues and expenses relating to transactions with other components of the same entity),
- whose operating results are regularly reviewed by the entity’s chief operating decision maker to make decisions about resources to be allocated to the segment and assess its performance, and
- for which discrete financial information is available.”

For the purposes of this research, each segment as reported by Discovery is considered a constituent entity.

Step 2: Compute the GloBE income or loss for each CE.

Chapter 3 outlines rules to be applied in determining the GloBE income or loss for each constituent entity. The outcome of the application of the rules for Discovery are reflected in Table 3.

Table 3 Discovery Ltd GloBE Income/(Loss)

ZAR 'millions

Segment	SA Health	SA Life	SA Invest	SA Insure	SA Bank	UK Health	UK Life	Other
Globe Income/(Loss)	3,436	4,452	1,424	38	(767)	626	787	(865)

In calculating the above consideration was given to the impact of the selected approach to the transition to IFRS 17 from a tax perspective. Whilst the results used are the restated results and reflect the IFRS 17 view, it is unlikely that there would be an impact on the GloBE income or loss as the inclusion of the particular years' phase-in of the transition amount would be included in applying Article 3.1.1 and reversed out in applying Article 3.2.1(a). This is because Article 3.1.1 would in this instance be the profit or loss for the period (which is below the tax line), and Article 3.2.1 (a) is the 'net tax expense' (which would include the particular years' transition amount) and is required to be adjusted for in applying Article 3.1.1. In this instance, the above calculation would be impacted by the application of article 3.2.1(h) which requires adjustments for prior period accounting errors and changes in accounting policy. For the 2023 fiscal year, Discovery had both adjustments. Table 4 reflects the impact of the removal of these adjustments on GloBE income or loss, the impact of which is an increase for the segments which were impacted by these adjustments.

Table 4 Discovery Ltd GloBE Income/(Loss) excl. Article 3.2.1(h) adjustment

ZAR 'millions

Segment	SA Health	SA Life	SA Invest	SA Insure	SA Bank	UK Health	UK Life	Other
Globe Income/(Loss)	3,477	10,757	3,449	38	(776)	2,170	787	(1,385)

In determining the income or loss, the below were found to be aspects that were unclear with respect to the required treatment in the GloBE Rules and the accompanying commentaries:

- Losses on dilution of holdings in equity-accounted investments.
- Adjustments relating to provident fund contributions.

Step 3: Compute the covered taxes attributable to each CE.

Covered taxes are determined in accordance with the rules in Chapter 4. The results of the computation of the estimated covered taxes for Discovery are included in Table 5. As noted previously, the results used already include the effects of IFRS 17, Table 6 reflects the estimated covered tax in the first year after the end of the phasing in or transition period as legislated by South Africa (six years) and the UK (10 years) respectively. The impact, similar to the GloBE income or loss, is a reduction however the tax reduction is larger given the quantum of the transition amount.

Table 5 Discovery Ltd Adjusted covered taxes(during phasing-in period)

ZAR 'millions

Segment	SA Health	SA Life	SA Invest	SA Insure	SA Bank	UK Health	UK Life	Other
Adj. Covered Taxes	463	595	189	6	(106)	79	84	(73)

Table 6 Discovery Ltd Adjusted covered taxes post phasing-in period

ZAR 'millions

Segment	SA Health	SA Life	SA Invest	SA Insure	SA Bank	UK Health	UK Life	Other
Adj. Covered Taxes	248	314	99	6	(106)	54	49	(73)

The above scenarios have not taken into account the potential deferred tax impact of the transition to IFRS 17 under the SARS and HMRC approaches. During the phasing-in period, the incorporation of the deferred tax balance that would have been recorded to account for the full phasing-in amount would be an 'in and out' effect (i.e. nil) in the SLPOCI as the inclusion in the current tax amount due to or from the revenue authority would be cancelled out by the movement in deferred tax balances which forms part of income tax through the SPLOCI. This would make the overall income tax adjustment nil. In the periods subsequent to the phasing in period, the impact is also nil within the overall computation under the GloBE rules. The potential impact of current tax has been taken into account in the scenarios within the tables provided.

Step 4: On a jurisdictional basis, calculate the ETR.

The estimated ETR was calculated in accordance with the rules in Article 5.1.1, with the results reflected in Table 7. The combined effects of the results reflected in Tables 4 and 6 on the ETR are reflected in Table 8, which indicate that there may be a large decrease in the ETR, exposing the MNE to a greater liability for top-up tax. The decrease is exacerbated by the decrease in the adjusted covered taxes because of the removal of the current tax expense (by almost half) and an increase in GloBE income.

Table 7 Discovery Ltd Effective tax rate (during phasing-in period)

Jurisdiction	South Africa	UK	Other
Effective Tax rate	13%	12%	5%
Minimum rate	15%	15%	15%
Top up tax percentage	2%	3%	10%

Table 8 Effective tax rate post-phasing-in/transition period

Jurisdiction	South Africa	UK	Other
Effective Tax rate	3%	4%	5%
Minimum rate	15%	15%	15%
Top up tax percentage	12%	11%	10%

The loss in Other regions remains, however the top-up tax percentage in both South Africa and the UK would require a determination of a jurisdictional top-up tax under Article 5.2.3. It should be noted that the quantification of the jurisdictional top-up tax would be reduced by the amount of the QDMTT per Article 5.2.3(d), which is a mechanism chosen by both jurisdictions. The inverse would take place for an entity whose transition results yielded a tax receivable (current tax income). The covered taxes would be higher.

In addition, consideration was given to the impact of removing the Art 3.2.1(h) adjustments from GloBE Income or Loss as reflected in Table 4 on the ETR. Such removal would result in ETRs lower than those reflected in Table 7 for all jurisdictions (the loss in 'other' regions being consistent).

5.4 CONCLUSION

The case study completed reflected that the approach chosen for the transition to IFRS 17 may have a material impact on the ETR of MNEs where such mechanism includes a period over which the impact of the transition to IFRS 17 is phased. Whilst the Discovery calculation above included adjustments to the GloBE income or loss for prior period accounting errors and changes in accounting policy, this is an unlikely adjustment for MNEs that are long-term insurers or that have significant life insurance operations. This is because, outside of this illustrative example, such adjustments would have taken place in fiscal periods prior to the effective date of the GloBE Rules, meaning they would be excluded from the computation of GloBE income (OECD,2022:76).

In addition, long-term insurers particularly, are likely to be impacted from an ETR perspective by deferred tax adjustments (where tax and accounting treatment deviate particularly as it pertains to the valuation of insurance contracts) and adjustments to covered taxes for insurance reserves. From the determination of the illustrative calculation, these have the potential to be large adjustments. The adjustment under article 4.4.5(g) regarding deferred acquisition costs will be immaterial over time as IFRS 17 has done away with this concept.

In determining the ETR it was evident that the process is complex and would be made simpler by robust reporting systems to make the retrieval of information seamless. There are also some aspects which are unclear in the OECD commentaries such as the approach taken for losses on dilution of holdings in equity-accounted investments adjustments relating to provident fund contributions which may be potential areas of refinement going forward.

6 CHAPTER 6: CONCLUSION

6.1 FINDINGS

This research sought to determine the potential impact of the IFRS 17 transition approach from a tax legislation perspective on the computed ETR per the GloBE Rules for long-term insurers.

6.1.1 TAXATION OF LONG-TERM INSURERS IN SOUTH AFRICA AND THE UK (INCLUDING TRANSITION MECHANISMS)

The assessment of the transition approaches opted for by both jurisdictions is underpinned by an overview of the taxation of long-term insurers in the UK and South Africa. The UK's approach to the taxation of long-term insurers emphasizes the nature of the insurance policy whilst South Africa emphasises the nature of the taxpayer and application of the trustee principle. This understanding provided the foundation for the research that followed.

In reviewing the changes made by the IASB to the insurance contracts standard, it was noted that there are three critical areas of change. These are the elimination of the preparers of financial statements ability to use judgment in determining the accounting treatment of insurance contracts, the treatment of onerous contracts and the unit of account applied to insurance contracts. The core purpose for issuing IFRS 17 was to have a robust international standard for the accounting treatment of insurance contracts that would enhance the comparability of financial statements of insurers globally. The increase in guidance provided by the IASB has left minimal room for the use of judgment. This alone is indicative of the fact that the standard may in fact achieve what the IASB intended for it to. Furthermore, onerous contracts are reflected separately and will have their losses recognized upfront, with the unit of account clearly becoming a 'group' of insurance contracts based on certain criteria.

Having said this, it was identified that whilst there were significant changes made in IFRS 17, the qualitative impact in financial statements will not be the profit recognized over the duration of an insurance contract, but rather the pattern of profit recognition, which may essentially be considered a timing issue.

6.1.2 COMPARATIVE ANALYSIS

The transition approaches taken by South Africa and the UK were compared on the basis of efficiency, simplicity, transparency and certainty. Notwithstanding the fact that taxation of long-term insurance business takes place on different bases as previously noted, the general mechanisms employed such as the use of consultative processes with industry participants and the use of phasing-in provisions that have the objective of easing what were anticipated to be large transition date adjustments on both insurers and revenue authorities (particularly from the perspective of revenue collection) were utilized.

Both South Africa and the UK made use of the phasing-in amount or transition amount (respectively) in effecting the transition date adjustments, albeit over varying periods. Where the UK was concerned, the rationale for the selection of the ten-year duration over which the transition amount would impact the tax computations of companies conducting long-term insurance business was made more explicit in documents published by the HMRC following the extensive consultation process. No such insight was apparent for South Africa's selection of the six-year phasing-in period.

The UK's approach to the transition was found to be superior on the basis of simplicity and efficiency and was on par with South Africa's approach when considering the matters of transparency and certainty. Specific aspects that set the UK apart included the extent of modification of the figures contained in the financial statements in getting to the point where a computation could be undertaken, the ability to use the financial statement numbers for insurers without the introduction of additional long-term insurance tax specific terms and the extent of modification required to already enacted tax legislation.

6.1.3 CASE STUDY RESULTS

An overview of the GloBE Rules provided context and outlined the guiding principles to the computation. There are two key charging mechanisms implemented by the OECD which are the IIR and UTPR. The QDMTT was also highlighted, and although it is not considered one of the GloBE Rules key charging mechanisms, it is a domestically legislated rule that may be implemented to enable the protection of taxing rights in respect of top-up taxes arising in a specific jurisdiction. Both South Africa and the UK have opted to make use of the QDMTT and IIR, with the UK also selecting the UTPR although the effective date is in a later year.

The ETR computation made use of the publicly available financial information of Discovery Limited with the OECD commentaries to the GloBE Rules providing guidance. One of the key assumptions made for the purposes of the case study was that the GloBE Rules were applicable for Discovery's fiscal year beginning 1 July 2022.

The key inputs required in the ETR calculation, namely the 'GloBE income or loss' and the 'adjusted covered taxes' were determined under two scenarios. The first is using the restated AFS for the year ended 30 June 2023 (which include the IFRS 17 impact). The second served as a sensitivity assessment to demonstrate what the impact on the ETR would be in the fiscal year immediately following the end of the phasing-in period.

During the phasing-in period, MNEs in South Africa and the UK would have an additional current tax charge or income (depending on the outcome and direction of the opening equity adjustment following the retrospective restatement of the AFS). The current tax amount is taken into account in both the key inputs of the ETR as per Article 5.1.1 of the GloBE Rules.

It was found in the case of Discovery, that the tax transition approach would likely not have an impact on the GloBE income or loss. This ignores the impact of prior period error adjustments or changes in accounting policies that from an IFRS 17 perspective, the latter of which would have

been material at the transition date. These are unlikely to be accounted for by the time Discovery is required to apply the GloBE Rules as these adjustments would have impacted a prior periods GloBE income or loss.

In the computation of the adjusted covered taxes, consideration of the transition amount as legislated would have a material impact on Discovery in the post-transition year. In this case, the impact was a large reduction in the adjusted covered taxes.

In determining the ETR for Discovery under both scenarios it was found that during the phasing-in period (i.e. the period where higher adjusted covered taxes arise), the ETR for each jurisdiction (South Africa, the UK and Other for Discovery) is higher than in the post-transition period year. In addition, there may be a need to determine jurisdictional top-up taxes for at least one jurisdiction as a result of ETRs in South Africa and the UK being below the minimum rate. South Africa and the UK would make use of the QDMTT mechanism for collection, and this amount would be adjusted for in the computation of the jurisdictional top-up taxes.

Given the timing of the two transitions (IFRS 17 and GloBE Rules), it would have been impossible for insurers to fully consider the impact of one on the other. Additionally, where scenarios such as that of Discovery arise, (where an additional tax charge arises in applying section 29A and top-up taxes arise in both the pre and post-transition period), SARS and the HMRC may consider this an opportunity to collect higher revenues even though the MNE would consider this an adverse outcome.

Having said this, the preparation of the computation indicated that the GloBE Rules are complex and require a great level reporting detail to be on hand by the MNEs. There were also aspects present in the Discovery Limited results that did not appear to have the requisite guidance per the GloBE Rules such as the treatment of the contribution to provident funds.

6.2 AREAS FOR FUTURE RESEARCH

Whilst the research conducted herein included an in-depth analysis of the taxation of life insurers in South Africa, IFRS 17, the taxation of long-term insurance business in the UK and a comparison of each country's approach to the transition to IFRS 17, this work is only scratching the surface given the infancy of the GloBE Rules within the international tax landscape. With that said, the below has been identified as future areas of research where the work completed to date may form the foundation:

- The intersection of Environmental, Social and Governance (ESG) reporting and IFRS 17 disclosures as enablers for enhanced transparency and enablers for Country-by-Country reporting.
- The impact of the implementation of GloBE Model Rules on MNE Group restructuring activities.
- The implementation of the GloBE Rules as an accelerator of digital transformation in MNE Groups.

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8 ANNEXURES

ANNEXURE A : KEY DEFINITIONS

8.1.1 IFRS 17 DEFINITIONS

Term	Definition
Contractual Service Margin ('CSM')	A component of the carrying amount of the asset or liability for a group of insurance contracts representing the unearned profit the entity will recognise as it provides insurance contract services under the insurance contracts in the group.
Coverage Period	The period during which the entity provides insurance contract services. This period includes the insurance contract services that relate to all premiums within the boundary of the insurance contract.
Fulfilment Cash Flows ('FCF')	An explicit, unbiased and probability-weighted estimate (i.e., expected value) of the present value of the future cash outflows minus the present value of the future cash inflows that will arise as the entity fulfils insurance contracts, including a risk adjustment for non-financial risk.
Group of Insurance Contracts	A set of insurance contracts resulting from the division of a portfolio of insurance contracts into, at a minimum, contracts issued within a period of no longer than one year and that, at initial recognition: <ul style="list-style-type: none"> a. are onerous, if any; b. have no significant possibility of becoming onerous subsequently, if any; or c. do not fall into either (a) or (b), if any.
Insurance contract	A contract under which one party (the issuer) accepts significant insurance risk from another party (the policyholder) by agreeing to compensate the policyholder if a specified uncertain future event (the insured event) adversely affects the policyholder.
Insurance Revenue	for a group of insurance contracts is the consideration for the contracts, i.e. the amount of premiums paid to the entity: <ul style="list-style-type: none"> a. adjusted for a financing effect; and b. excluding any investment components.
Liability for Incurred Claims	An entity's obligation to: <ul style="list-style-type: none"> a. Investigate and pay valid claims for insured events that have already occurred, including events that have occurred but for which claims have not been reported, and other incurred insurance expenses b. Pay amounts that are not included in (a) and that relate to: <ul style="list-style-type: none"> (i) insurance contract services that have already been provided Or (ii) Any investment components or other amounts that are not related to the provision of insurance contract services and that are not in the liability for remaining coverage.

Liability for Remaining Coverage ('LFRC')	An entity's obligation to: <ul style="list-style-type: none"> a. Investigate and pay valid claims under existing insurance contracts for insured events that have not yet occurred (i.e., the obligation that relates to the unexpired portion of the insurance coverage) b. Pay amounts under existing insurance contracts that are not included in (a) and that relate to: <ul style="list-style-type: none"> (i) Insurance contract services not yet provided (i.e., the obligations that relate to future provision of insurance contract services) Or <ul style="list-style-type: none"> (ii) Any investment components or other amounts that are not related to the provision of insurance contract services and that have not been transferred to the liability for incurred claims.
Policyholder	A party that has a right to compensation under an insurance contract if an insured event occurs.
Portfolio of Insurance Contracts	Insurance contracts subject to similar risks and managed together.
Risk Adjustment ('RA') for non financial risk	The compensation an entity requires for bearing the uncertainty about the amount and timing of the cash flows that arises from non-financial risk as the entity fulfils insurance contracts.
Onerous Contract	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it.

8.1.2 GLOBE MODEL RULES DEFINITIONS

Term	Definition
MNE Group	Any Group that includes at least one Entity or Permanent Establishment that is not located in the jurisdiction of the Ultimate Parent Entity.
Covered Taxes	<p>(a) Taxes recorded in the financial accounts of a Constituent Entity with respect to its income or profits or its share of the income or profits of a Constituent Entity in which it owns an Ownership Interest;</p> <p>(b) Taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an Eligible Distribution Tax System;</p> <p>(c) Taxes imposed in lieu of a generally applicable corporate income tax; and</p> <p>(d) Taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity.</p> <p>And does not include:</p> <p>(a) Top-up Tax accrued by a Parent Entity under a Qualified IIR;</p> <p>(b) Top-up Tax accrued by a Constituent Entity under a Qualified Domestic Minimum Top-Up Tax;</p> <p>(c) Taxes attributable to an adjustment made by a Constituent Entity as a result of the application of a Qualified UTPR;</p> <p>(d) A Disqualified Refundable Imputation Tax;</p> <p>(e) Taxes paid by an insurance company in respect of returns to policyholders.</p>
Group	A collection of Entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of those Entities:
Excluded Entity	(a) a Governmental Entity;

	<p>(b) an International Organisation;</p> <p>(c) a Non-profit Organisation;</p> <p>(d) a Pension Fund;</p> <p>(e) an Investment Fund that is an Ultimate Parent Entity; or</p> <p>(f) a Real Estate Investment Vehicle that is an Ultimate Parent Entity.</p>
Excluded Dividends	<p>Dividends or other distributions received or accrued in respect of an Ownership Interest, except for:</p> <p>(a) a Short-term Portfolio Shareholding, and</p> <p>(b) an Ownership Interest in an Investment Entity that is subject to an election under Article 7.6.</p>
Excluded Equity Gain or Losses	<p>the gain, profit or loss included in the Financial Accounting Net Income or Loss of the Constituent Entity arising from:</p> <p>(a) gains and losses from changes in fair value of an Ownership Interest, except for a Portfolio Shareholding;</p> <p>(b) profit or loss in respect of an Ownership Interest included under the equity method of accounting; and</p> <p>(c) gains and losses from disposition of an Ownership Interest, except for a disposition of a Portfolio Shareholding.</p>
Asymmetric Foreign Currency Gain or Loss	<p>Foreign currency gains or losses of an entity whose accounting and tax functional currencies are different and that are:</p> <p>(a) included in the computation of a Constituent Entity's taxable income or loss and attributable to fluctuations in the exchange rate between its accounting functional currency and its tax functional currency;</p> <p>(b) included in the computation of a Constituent Entity's Financial Accounting Net Income or Loss and attributable to fluctuations in the exchange rate between its tax functional currency and its accounting functional currency;</p> <p>(c) included in the computation of a Constituent Entity's Financial Accounting Net Income or Loss and attributable to fluctuations in the exchange rate between a third foreign currency and its accounting functional currency; and</p> <p>(d) attributable to fluctuations in the exchange rate between a third foreign currency and its tax functional currency, whether or not such foreign currency gain or loss is included in taxable income.</p> <p>The tax functional currency is the functional currency used to determine the Constituent Entity's taxable income or loss for a Covered Tax in the jurisdiction in which it is located. The accounting functional currency is the functional currency used to determine the Constituent Entity's Financial Accounting Net Income or Loss. A third foreign currency is a currency that is not the Constituent Entity's tax functional currency or accounting functional currency.</p>

9 ANNEXURE B: SECTION 29A OF THE INCOME TAX ACT NO. 58 OF 1962

29A. Taxation of long-term insurers.—(1) For the purposes of this section—

“adjusted IFRS value”, in respect of a policyholder fund or the risk policy fund, means an amount, which may not be less than zero, and which must be calculated in accordance with the formula—

$$I = (L + LIC + DL + PF) - PT - DC + DR$$

in which formula—

- (a) “I” represents the amount to be determined;
- (b) “L” represents, in respect of policies of the insurer, the aggregate amounts of—
 - (i) insurance contract liabilities;
 - (ii) investment contract liabilities; and
 - (iii) reinsurance contract liabilities,reduced by—
 - (aa) insurance contract assets;
 - (bb) reinsurance contract assets, and
 - (cc) liability for incurred claims contemplated in paragraph (c),

the amounts of which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements: Provided that any amount that is payable to or receivable from a cell owner, referred to in the definition of “cell structure” in section 1 of the Insurance Act, in respect of “third party risks” as defined in that section of that Act, must be disregarded: Provided further that the amount may not be less than zero;

[Para. (b) amended by s. 32 (1) (a) of Act No. 17 of 2023 deemed to have come into operation on 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

- (c) “LIC” represents the amount of the liability for incurred claims determined in accordance with IFRS 17 in respect of the policies of the insurer, net of amounts recognised in reinsurance contracts for liabilities for incurred claims, which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of policies allocated to that fund;
- (d) “DL” represents for a policyholder fund the amount of deferred tax liabilities, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of assets allocated to that policyholder fund;

- (e) “PF” represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15) (a);
- (f) “PT” represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15) (b);
- (g) “DC” represents for a policyholder fund the amount of deferred acquisition costs determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements; and
- (h) “DR” represents for a policyholder fund the amount of deferred revenue determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements;

[Definition of “adjusted IFRS value” (Editorial Note: insertion by s. 47 (1) (a) of Act No. 43 of 2014 deleted by s. 101 (1) (a) of Act No. 15 of 2016) inserted by s. 50 (1) (a) of Act No. 15 of 2016 and substituted by s. 46 (1) (a) of Act No. 17 of 2017 and by s. 15 (1) (a) of Act No. 20 of 2022 with effect from 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

“business” means any long-term insurance business as defined in section 1 of the Long-term Insurance Act;

“insurer” means a company that is licensed under the Insurance Act and is conducting life insurance business as defined in that Act, other than a foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of that Act;

[Definition of “insurer” substituted by s. 34 (a) of Act No. 34 of 2019 and by s. 22 (a) of Act No. 20 of 2021.]

“Long-term Insurance Act”

[Definition of “Long-term Insurance Act” deleted by s. 77 (1) (a) of Act No. 31 of 2013.]

“market value”, in relation to any asset, means—

- (a) the amount which a person having the right freely to dispose of such asset might reasonably expect to obtain from a sale of such asset in the open market; or
- (b) where an asset cannot be sold in the open market, an amount equal to the value at which that asset is recognised in the audited annual financial statements of the insurer;

[Definition of “market value” substituted by s. 30 of Act No. 23 of 2020.]

“negative liability”, in respect of a long-term policy, means the amount by which the expected present value of future premiums exceeds the expected present value of future benefits to policyholders and expenses;

[Definition of “negative liability” inserted by s. 53 (1) (a) of Act No. 25 of 2015 and substituted by s. 46 (1) (b) of Act No. 17 of 2017 both deemed to have come into operation on 1 July, 2018 and applicable in respect of years of assessment ending on or after that date (Editorial Note: effective date in s. 53 (2) of Act No. 25 of 2015 as substituted by s. 108 (1) of Act No. 23 of 2018 and effective date in s. 46 (2) of Act No. 17 of 2017 as substituted by s. 114 (1) (a) of Act No. 23 of 2018).]

“owner”, in relation to a policy, means the person who is entitled to enforce any benefit provided for in the policy: Provided that where a policy has been—

- (a) ceded or pledged solely for the purpose of providing security for the performance of any obligation, the owner shall be the person who retains the beneficial interest in such policy; or
- (b) reinsured by one insurer with another insurer, the reinsurance policy shall be deemed to be owned by the owner of the insurance policy so insured;

“policy” means a long-term policy as defined in section 1 of the Long-term Insurance Act, other than a policy issued by a foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of the Insurance Act;

[Definition of “policy” substituted by s. 34 (b) of Act No. 34 of 2019.]

“policyholder fund” means any fund contemplated in subsection (4) (a), (b) or (c);

“risk policy” means—

- (a) any policy issued by the insurer during any year of assessment of that insurer commencing on or after 1 January 2016 under which the benefits payable—
 - (i) cannot exceed the amount of premiums receivable, except where all or substantially the whole of the policy benefits are payable due to death, disablement, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid; or
 - (ii) other than benefits payable due to death, disablement, illness or unemployment, cannot exceed the amount of premiums receivable and excludes a contract of insurance in terms of which annuities are being paid; or

[Para. (a) substituted by s. 50 (1) (b) of Act No. 15 of 2016 deemed to have come into operation on 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(b) any policy in respect of which an election has been made as contemplated in subsection (13B);

[Definition of “risk policy” inserted by s. 47 (1) (b) of Act No. 43 of 2014 and substituted by s. 53 (1) (b) of Act No. 25 of 2015 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

“risk policy fund” means the fund contemplated in subsection 4 (e);

[Definition of “risk policy fund” inserted by s. 47 (1) (b) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

“value of liabilities” means, in respect of a policyholder fund and a risk policy fund the adjusted IFRS value plus so much of all other liabilities allocated to that fund that have not been taken into account in determining the adjusted IFRS value: Provided that any amount that is payable to or receivable from a cell owner, referred to in the definition of “cell structure” in section 1 of the Insurance Act, in respect of “third party risks”, as defined in that section of that Act, must be disregarded.

[Definition of “value of liabilities” substituted by s. 47 (1) (c) of Act No. 43 of 2014, by s. 50 (1) (c) of Act No. 15 of 2016, by s. 53 (1) (c) of Act No. 25 of 2015 (Editorial Note: effective date in s. 53 (2) of Act No. 25 of 2015 as substituted by s. 108 (1) of Act No. 23 of 2018) and by s. 15 (1) (b) of Act No. 20 of 2022 and amended by s. 32 (1) (b) of Act No. 17 of 2023 deemed to have come into operation on 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

(2) The taxable income derived by any insurer in respect of any year of assessment commencing on or after 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section and section 29B.

[Sub-s. (2) substituted by s. 62 (1) (a) of Act No. 22 of 2012 deemed to have come into operation on 29 February, 2012.]

(3) Every insurer shall establish five separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section and section 29B.

[Sub-s. (3) amended by s. 23 (a) of Act No. 20 of 2006 and substituted by s. 62 (1) (a) of Act No. 22 of 2012 and by s. 47 (1) (d) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(4) The funds referred to in subsection (3) shall be—

(a) a fund, to be known as the untaxed policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to—

(i) (aa) business other than business relating to a risk policy carried on by the insurer with; and

(bb) any policy other than a risk policy, of which the owner is,

any pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or benefit fund;

[Sub-para. (i) substituted by s. 21 of Act No. 3 of 2008 and by s. 47 (1) (e) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(ii) any policy, other than a risk policy, of which the owner is a person where any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or accrue to that person: Provided that an insurer shall not deal with a policy in terms of the provisions of this subparagraph unless it has satisfied itself beyond all reasonable doubt that the owner of such policy is such a person or body;

[Sub-para. (ii) amended by s. 16 of Act No. 16 of 2004 and by s. 47 (1) (f) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(iii) any annuity contracts entered into by it in respect of which annuities are being paid;

(iv) any policy that is a tax free investment as contemplated in section 12T.

[Sub-para. (iv) added by s. 47 (1) (g) of Act No. 43 of 2014 with effect from 1 March, 2015.]

(b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraphs (a) or (e)) of which the owner is any person other than a company;

[Para. (b) substituted by s. 47 (1) (h) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in paragraphs (a) or (e)) of which the owner is a company;

[Para. (c) substituted by s. 47 (1) (h) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(d) a fund, to be known as the corporate fund in which shall be placed all the assets held by the insurer and all liabilities owed by it, other than assets and liabilities contemplated in paragraph (a), (b), (c) and (e); and

[Para. (d) substituted by s. 47 (1) (h) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(e) a fund, to be known as a risk policy fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any risk policy

[Para. (e) added by s. 47 (1) (i) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(5) For the purposes of subsection (4), where the owner of a policy is the trustee of any trust or where two or more owners jointly own a policy—

(a) if all the beneficiaries in such trust or all such joint owners are funds, persons or bodies contemplated in subsection (4) (a), the owner of such policy shall be deemed to be such a fund, person or body, as the case may be; or

(b) where paragraph (a) is not applicable and all the beneficiaries in such trust or all such joint owners are persons other than a company, the owner of such policy shall be deemed to be a person other than a company; or

(c) where paragraphs (a) and (b) are not applicable, the owner of such policy shall be deemed to be a company.

(6) An insurer who becomes aware that, in consequence of—

(a) a change of ownership of any policy issued by it;

- (b) any change affecting the status of the owner of any policy; or
- (c) an annuity becoming payable in terms of a policy,

the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a fund other than the fund in which such assets are actually held, shall forthwith transfer from such last-mentioned fund to such first-mentioned fund assets having a market value equal to the value of liabilities determined on the date of such transfer in relation to the said policy.

[Sub-s. (6) substituted by s. 47 (1) (j) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

- (7) Every insurer shall within a period of three months after the end of every year of assessment redetermine the value of liabilities in relation to each of its policyholder funds and its risk policy fund as at the last day of that year of assessment, and—
 - (a) where the market value of the assets actually held by it in any such fund exceeds the value of liabilities in relation to such fund on such last day, it shall within that period transfer from such fund to its corporate fund assets having a market value equal to such excess; or
 - (b) where the market value of the assets actually held by it in any such fund is less than the value of liabilities in relation to such fund on such last day, it shall within that period transfer from its corporate fund to such fund assets having a market value equal to the shortfall,

and such transfer shall be made with effect from that day and for the purposes of this section be deemed to have been made on such last day.

[Sub-s. (7) amended by s. 62 (1) (b) of Act No. 22 of 2012 and substituted by s. 47 (1) (k) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

- (8) Any transfer of an asset effected by an insurer between one fund and another fund shall be effected by way of a disposal of such asset at the market value thereof and shall for the purposes of this Act be treated as an acquisition or disposal of such asset, as the case may be, in each such fund.

[Sub-s. (8) substituted by s. 15 (1) (a) of Act No. 5 of 2001 with effect from 1 October, 2001.]

- (9) Subject to the provisions of subsection (11) (d), there shall be exempt from tax any income received by or accrued to an insurer from assets held by it in, and business conducted by it in relation to, its untaxed policyholder fund.

(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund, its corporate fund and its risk policy fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund, corporate fund and its risk policy fund shall be deemed to be separate companies which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections 20, 24I, 24J, 24K, 24L, 26A and 29B and the Eighth Schedule to this Act.

[Sub-s. (10) substituted by s. 15 (1) (b) of Act No. 5 of 2001, by s. 39 (1) of Act No. 60 of 2001, by s. 62 (1) (c) of Act No. 22 of 2012 and by s. 47 (1) (l) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(11) In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund, its corporate fund and its risk policy fund in respect of any year of assessment—

(a) the amount of any expenses, allowances and transfers to be allowed as a deduction in the policyholder funds in terms of this Act shall be limited to the total of—

(i) the amount of expenses and allowances directly attributable to the income of such fund;

(ii) such percentage of the amount of—

(aa) all expenses allocated to such fund which are directly incurred during such year of assessment in respect of the selling and administration of policies; and

(bb) all expenses and allowances allocated to such fund which are not included in subparagraph (i), but excluding any expenses directly attributable to any amounts received or accrued which do not constitute income as defined in section 1,

which percentage shall be determined in accordance with the formula

$$Y = \frac{X + U}{Z}$$

in which formula—

(A)

“Y” represents the percentage to be applied to such amount;

(B)

“X” represents an amount which would have been equal to the taxable income calculated in respect of such fund in respect of such year of assessment before taking into account any deduction during such year of—

(AA) any amount incurred in respect of the selling and administration of policies;

(BB) any indirect expenses allocated to such fund;

(CC) the balance of assessed losses as contemplated in section 20 (1) (a); and

(DD) any amount determined in terms of subparagraph (iii);

(C) “U” represents the amount determined under subitem (DD) of item (D) multiplied by 0.4 in the case of the individual policyholder fund and 0.8 in the case of the company policyholder fund; and

[Item (C) substituted by s. 53 (1) (d) of Act No. 25 of 2015 and by s. 8 (1) of Act No. 13 of 2016 deemed to have come into operation on 1 March, 2016 and applicable in respect of years of assessment ending on or after that date.]

(D) “Z” represents an amount equal to the amount represented by X in the formula, plus—

(AA) the aggregate amount of all dividends that are exempt from normal tax and that are received in respect of such fund during such year;

(BB) the aggregate amount of all foreign dividends received in respect of such fund during such year, less any amount of that aggregate amount that is included in taxable income;

(CC) any portion of the aggregate capital gain in respect of such fund and in respect of such year that is not, by virtue of paragraph 10 of the Eighth Schedule, included in the taxable income in respect of such fund and in respect of such year; and

(DD) the aggregate amount of the differences between the market value as defined in section 29B and the expenditure incurred in respect of all assets allocated to the fund at the end of the year of assessment, reduced by the amount determined in terms of this subitem for the immediately preceding year of assessment: Provided that if the resultant aggregate amount is negative the amount shall be deemed to be nil; and

[Sub-para. (ii) amended by s. 15 (1) (d)-(f) of Act No. 5 of 2001, by s. 62 (1) (d) of Act No. 22 of 2012, by s. 77 (1) (c)-(f) of Act No. 31 of 2013 and by s. 47 (1) (n) of Act No. 43 of 2014 deemed to have come into operation on 1 January, 2013 and applicable in respect of years of assessment commencing on or after that date. Sub-item (DD) substituted by s. 22 (b) of Act No. 20 of 2021.]

(iii) such percentage, determined in accordance with the formula contemplated in subparagraph (ii), of 30 per cent of the amount transferred from the policyholder fund in terms of subsection (7) (a), to the extent that the amount of such transfer is required to be included in the income of the corporate fund during such year of assessment in terms of paragraph (d) (i) of this subsection: Provided that the amount of the deduction in terms of this subparagraph shall not exceed the taxable income of the policyholder fund before deducting an amount in terms of this subparagraph;

[Para. (a) amended by s. 15 (1) (c) of Act No. 5 of 2001 and by s. 77 (1) (b) of Act No. 31 of 2013 deemed to have come into operation on 1 January, 2013 and applicable in respect of years of assessment commencing on or after that date. Sub-para. (iii) amended by s. 62 (1) (e) of Act No. 22 of 2012 and by s. 50 (1) (d) of Act No. 15 of 2016 deemed to have come into operation on 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(b)

[Para. (b) deleted by s. 30 of Act No. 74 of 2002.]

(bA) a deduction is allowed in determining the taxable income of the risk policy fund of an amount equal to the taxable income before allowing a deduction under this paragraph: Provided that the risk policy fund is deemed not to have incurred any assessed loss during the year of assessment;

[Para. (bA) inserted by s. 47 (1) (o) of Act No. 43 of 2014 and substituted by s. 46 (1) (c) of Act No. 17 of 2017 deemed to have come into operation on 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date (Editorial Note: effective date in s. 46 (3) of Act No. 17 of 2017 as substituted by s. 114 (1) (b) of Act No. 23 of 2018).]

(c)

[Para. (c) deleted by s. 36 of Act No. 59 of 2000.]

(d) any amount required to be transferred—

(i) to the corporate fund in terms of the provisions of subsection (7) (a) shall be included in the income of the corporate fund; and

(ii) from the corporate fund in terms of the provisions of subsection (7) (b) shall not be deducted from the income of the corporate fund,

for purposes of determining the taxable income of such fund for the year of assessment in respect of which the value of liabilities in relation to its policyholder funds or risk policy fund was redetermined in terms of that subsection: Provided that where any amount is transferred from the corporate fund to any policyholder fund or risk policy fund as contemplated in subparagraph (ii), any subsequent transfers from the policyholder fund or risk policy fund to the corporate fund of any amounts which in the aggregate do not exceed the total amount of such transfer, shall not be included in the income of the corporate fund in terms of the provisions of subparagraph (i) of this paragraph;

[Para. (d) amended by s. 47 (1) (p) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(e) subject to the provisions of paragraphs (a) (iii) and (bA), no amount transferred to or from the corporate fund in terms of the provisions of subsection (7) shall be deducted from or included in the income of the policyholder fund or risk policy fund from or to which such amount was transferred, as the case may be;

[Para. (e) substituted by s. 47 (1) (q) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(f) the amount of any transfer contemplated in subsection (6) or (8) shall not be deducted from the income of the fund from which it is transferred and shall not be included in the income of the fund to which it is transferred;

[Para. (f) amended by s. 62 (1) (f) of Act No. 22 of 2012 with effect from 1 January, 2013 and applicable in respect of years of assessment commencing on or after that date.]

(g) (i) premiums and claims in respect of a policy entered into between that insurer and a person other than a resident other than premiums and claims in respect of a risk policy;

(ii) premiums and reinsurance claims received and claims and reinsurance premiums paid in respect of policies, other than policies contemplated in subparagraph (i) or risk policies;

shall be disregarded: Provided that where an amount in respect of a claim is received by or accrues to an insurer in respect of a policy (other than a policy that would have constituted a risk policy had that policy been concluded on 1 January 2016) entered into

between that insurer and a person other than a resident, there must be included in the gross income of the policyholder fund associated with that policy an amount equal to that claim less the aggregate amount of premiums incurred or paid in terms of that policy which relates to that claim;

[Para. (g) amended by s. 62 (1) (g) of Act No. 22 of 2012 and by s. 47 (1) (r) and (s) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date (Editorial Note: effective date in s. 47 (2) of Act No. 43 of 2014 as substituted by s. 152 (1) of Act No. 25 of 2015) and substituted by s. 53 (1) (e) of Act No. 25 of 2015 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(h) no amount may be deducted, other than in the corporate fund or risk policy fund, by way of an allowance in respect of an asset as defined in the Eighth Schedule other than a financial instrument.

[Sub-s. (11) amended by s. 47 (1) (m) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date. Para. (h) added by s. 62 (1) (h) of Act No. 22 of 2012 and substituted by s. 77 (1) (g) of Act No. 31 of 2013 and by s. 50 (1) (e) of Act No. 15 of 2016 deemed to have come into operation on 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(11A)

[Sub-s. (11A) inserted by s. 15 (1) (g) of Act No. 5 of 2001, substituted by s. 15 (1) of Act No. 19 of 2001 and deleted by s. 77 (1) (h) of Act No. 31 of 2013 deemed to have come into operation on 1 January, 2013 and applicable in respect of years of assessment commencing on or after that date.]

(11B)

[Sub-s. (11B) inserted by s. 15 (1) (g) of Act No. 5 of 2001 and deleted by s. 77 (1) (h) of Act No. 31 of 2013 deemed to have come into operation on 1 January, 2013 and applicable in respect of years of assessment commencing on or after that date.]

(11C)

[Sub-s. (11C) inserted by s. 15 (1) (g) of Act No. 5 of 2001 and deleted by s. 77 (1) (h) of Act No. 31 of 2013 deemed to have come into operation on 1 January, 2013 and applicable in respect of years of assessment commencing on or after that date.]

(12) In the allocation of any receipt, accrual, asset, expenditure, liability or payment to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter—

- (a) to the extent to which such receipt, accrual, asset, expenditure, liability or payment relates exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure, liability or payment to that fund; and
- (b) to the extent to which such receipt, accrual, asset, expenditure, liability or payment does not relate exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure, liability or payment in a manner which is consistent with and appropriate to the manner in which its business is conducted.

[Sub-s. (12) substituted by s. 47 (1) (t) of Act No. 43 of 2014 and by s. 50 (1) (f) of Act No. 15 of 2016 with effect from 1 January, 2017 and applicable in respect of years of assessment commencing on or after that date.]

(13)

[Sub-s. (13) deleted by s. 52 of Act No. 7 of 2010.]

(13A) (a) Notwithstanding section 23 (e), in the determination of the taxable income derived by an insurer in respect of its risk policy fund in respect of any year of assessment, there shall be allowed as a deduction from the income of the risk policy fund an amount equal to the value of liabilities for the year of assessment in respect of risk policies.

[Para. (a) substituted by s. 46 (1) (d) of Act No. 17 of 2017 deemed to have come into operation on 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(b) Any amount deducted in terms of paragraph (a) during any year of assessment shall be included in the income of the risk policy fund in the following year of assessment.

[Sub-s. (13A) added by s. 47 (1) (u) of Act No. 43 of 2014 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(13B) (a) An insurer may elect that all policies or one or more classes of policies that share substantially similar contractual rights and obligations that would have constituted risk policies under paragraph (a) of the definition of “risk policy” in subsection (1) had those policies been issued during any year of assessment commencing on or after

1 January 2016 be allocated to the risk policy fund with effect from the first day of the year of assessment commencing on or after 1 January 2016, which election—

- (i) is binding for the duration of the policies in respect of which the election is made; and
 - (ii) must be in a manner and form as the Commissioner may prescribe.
- (b) Assets with a value equal to the value of liabilities, as determined at the end of the previous year of assessment in respect of policies allocated to the risk policy fund in terms of paragraph (a), must be allocated to the risk policy fund with effect from the first day of the year of assessment commencing on or after 1 January 2016.
- (c) The amount of assets as contemplated in paragraph (b) shall not be deducted from the income of the policyholder fund from which it is transferred and shall not be included in the income of the risk policy fund to which it is transferred.
- (d) Where as a result of the election as contemplated in paragraph (a) an asset as defined in paragraph 1 of the Eighth Schedule, other than an asset that is trading stock, is disposed of by the policyholder fund to a risk policy fund—
- (i) the policyholder fund that disposes of that asset must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and
 - (ii) the policyholder fund that disposes of that asset and the risk policy fund that acquires that asset must, for purposes of determining any capital gain or capital loss by the risk policy fund that acquires that asset in respect of a disposal of that asset, be deemed to be one and the same person with respect to—
 - (aa) the date of acquisition of that asset by the policyholder fund that disposes of that asset and the amount and date of incurral of any expenditure by the policyholder fund that disposes of that asset in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
 - (bb) any valuation of that asset effected by the policyholder fund of that asset as contemplated in paragraph 29 (4) of the Eighth Schedule.

[Sub-para. (ii) amended by s. 50 (1) (g) of Act No. 15 of 2016.]

- (e) Where as a result of the election as contemplated in paragraph (a) a policyholder fund disposes of an asset that is held as trading stock to a risk policy fund that acquires that asset as trading stock—
- (i) that asset must be deemed to have been disposed of in an amount equal to the amount taken into account in terms of section 11 (a) or 22 (1) or (2) in respect of that asset by the policyholder fund; and

(ii) the policyholder fund and the risk policy fund must, for purposes of determining any taxable income derived by the risk policy fund, be deemed to be one and the same person with respect to the date of acquisition of that asset and the amount and date of incurral of any cost or expenditure incurred in respect of that asset as contemplated in section 11 (a) or 22 (1) or (2).

[Sub-s. (13B) inserted by s. 53 (1) (f) of Act No. 25 of 2015 with effect from 1 January, 2016 and applicable in respect of years of assessment commencing on or after that date.]

(14) The amount referred to in the definition of adjusted IFRS value in respect of the phasing-in amount is in respect of—

(a) the first year of assessment commencing on or after 1 January 2023, 83.3 per cent of the phasing-in amount;

[Para. (a) substituted by s. 15 (1) (c) of Act No. 20 of 2022 with effect from 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

(b) the second year of assessment commencing on or after 1 January 2023, 66.7 per cent of the phasing-in amount;

[Para. (b) substituted by s. 15 (1) (c) of Act No. 20 of 2022 with effect from 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

(c) the third year of assessment commencing on or after 1 January 2023, 50 per cent of the phasing-in amount;

[Para. (c) substituted by s. 15 (1) (c) of Act No. 20 of 2022 with effect from 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

(d) the fourth year of assessment commencing on or after 1 January 2023, 33.3 per cent of the phasing-in amount; and

[Para. (d) substituted by s. 15 (1) (c) of Act No. 20 of 2022 with effect from 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

(e) the fifth year of assessment commencing on or after 1 January 2023, 16.7 per cent of the phasing-in amount:

[Para. (e) substituted by s. 15 (1) (c) of Act No. 20 of 2022 with effect from 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

Provided where an insurer ceases to conduct business during any year of assessment contemplated in paragraphs (a) to (e), the amount referred to in the definition of “adjusted IFRS value” in respect of the phasing-in amount in respect of that year of assessment must be nil.

[Sub-s. (14) deleted by s. 52 of Act No. 7 of 2010, added by s. 50 (1) (h) of Act No. 15 of 2016 (Editorial Note: as amended by s. 113 (1) (a) of Act No. 23 of 2018) and amended by s. 34 (c) of Act No. 34 of 2019.]

(15) For the purposes of subsection (14) “phasing-in amount” in relation to a policyholder fund or a risk policy fund means—

(a) the amount by which the “value of liabilities” amount determined at the end of the latest year of assessment commencing on or after 1 January 2022, but before 1 January 2023, less the amounts for premium debtors and policy loans determined in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements at the end of that year of assessment, that reduce the amount of policy liabilities had IFRS 17 been applied, exceeds the “value of liabilities” amount had IFRS 17 and the definitions of “adjusted IFRS value” and “value of liabilities” as amended by the Taxation Laws Amendment Act, 2022, been applied at the end of that year of assessment; or

[Para. (a) substituted by s. 32 (1) (c) of Act No. 17 of 2023 deemed to have come into operation on 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

(b) the amount by which the “value of liabilities” amount had IFRS 17 and the definitions of “adjusted IFRS value” and “value of liabilities” as amended by the Taxation Laws Amendment Act, 2022, been applied at the end of the latest year of assessment commencing on or after 1 January 2022, but before 1 January 2023, plus the amounts for premium debtors and policy loans determined in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements at the end of that year of assessment, that reduce the amount of policy liabilities had IFRS 17 been applied, exceeds the “value of liabilities” amount determined at the end of that year of assessment:

[Para. (b) substituted by s. 32 (1) (c) of Act No. 17 of 2023 deemed to have come into operation on 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

Provided that for the purposes of determining the phasing-in amount in terms of this subsection, symbols “PF” and “PT” in the definition of “adjusted IFRS value” must be disregarded.

[Sub-s. (15) deleted by s. 23 (b) of Act No. 20 of 2006, added by s. 50 (1) (h) of Act No. 15 of 2016 (Editorial Note: as amended by s. 113 (1) (a) of Act No. 23 of 2018 effective date in s. 50 (2) of Act No. 15 of 2016 as substituted by s. 113 (1) (b) of Act No. 23 of 2018), substituted by s. 46 (1) (e) of Act No. 17 of 2017 (Editorial Note: effective date in s. 46 (2) of Act No. 17 of 2017 as substituted by s. 114 (1) (a) of Act No. 23 of 2018), amended by s. 51 of Act No. 23 of 2018 and substituted by s. 15 (1) (d) of Act No. 20 of 2022 with effect from 1 January, 2023 and applicable in respect of years of assessment commencing on or after that date.]

(16) For purposes of this section, other than for the purposes of subsection (15), “asset” excludes—

- (a) negative liabilities;
- (b) policies of reinsurance;
- (c) a deferred tax asset;

[Para. (c) amended by s. 46 (1) (f) of Act No. 17 of 2017 deemed to have come into operation on 1 July, 2018 and applicable in respect of years of assessment ending on or after that date (Editorial Note: effective date in s. 46 (2) of Act No. 17 of 2017 as substituted by s. 114 (1) (a) of Act No. 23 of 2018).]

- (d) goodwill; or

[Para. (d) amended by s. 46 (1) (f) of Act No. 17 of 2017 deemed to have come into operation on 1 July, 2018 and applicable in respect of years of assessment ending on or after that date (Editorial Note: effective date in s. 46 (2) of Act No. 17 of 2017 as substituted by s. 114 (1) (a) of Act No. 23 of 2018).]

- (e) any amount of deferred acquisition costs determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements,

[Para. (e) added by s. 46 (1) (f) of Act No. 17 of 2017 deemed to have come into operation on 1 July, 2018 and applicable in respect of years of assessment ending on or after that date (Editorial Note: effective date in s. 46 (2) of Act No. 17 of 2017 as substituted by s. 114 (1) (a) of Act No. 23 of 2018).]

recognised as an asset in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements.

[S. 29A inserted by s. 30 of Act No. 53 of 1999. Sub-s. (16) deleted by s. 23 (c) of Act No. 20 of 2006 and added by s. 50 (1) (h) of Act No. 15 of 2016 (Editorial Note: as amended by s. 113 (1) (a) of Act No. 23 of 2018) deemed to have come into operation on 1 July, 2018 and applicable in respect of years of assessment ending on or after that date (Editorial Note: effective date in s. 50 (2) of Act No. 15 of 2016 as substituted by s. 113 (1) (b) of Act No. 23 of 2018).]

10 ANNEXURE C: STATUS OF GLOBE RULE APPLICATION

Jurisdiction	Joined statement on P2 solution ³	IIR	IIR Date	UTPR	UTPR Date	QDMTT	QDMTT Date
South Africa	Yes	x	Draft Legislation – No date	-	-	x	Draft Legislation – No date
United Kingdom	Yes	x	31 December 2023	x	31 December 2024	x	31 December 2023
Mauritius	Yes	Unclear	-	-	Unclear	x	No date
Singapore	Yes	x	Consultation – No date	-	To be considered at a later stage	x	Consultation – No date
Australia	Yes	x	1 January 2024	x	After 2025	x	1 January 2024
Hong Kong	Yes	No announcement on dates – IIR and UTPR to be applied.					
China	Yes	No announcement on dates or extent of application.					
United States	Yes	No announcement on dates or extent of application.					
Nigeria	No	-					
Democratic Republic of Congo	Yes	No announcement on dates or extent of application.					
Isle of Man		Unclear	-	-	-	x	1 January 2025
Swaziland	No	-					

³ OECD, 2023. Members of the OECD/G20 Inclusive Framework on BEPS joining the October 2021 Statement on a Two-Pillar solution to address the tax challenges arising from the digitization of the economy as of 9 June 2023. <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/oecd-g20-inclusive-framework-members-joining-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-october-2021.pdf>. Accessed: July 2024.