GRIESEL NEL
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REGISTERED ACCOUNTANTS AND AUDITORS

2016 TAX RELATED BUDGET PROPOSALS

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2016 TAX RELATED BUDGET PROPOSALS

Contents

1. INTRODUCTION

The following is a summary of the tax related budget proposals announced by the Minister of Finance on 24 February 2016.

2. BUDGET HIGHLIGHTS

The main tax proposals include the following:

- A two year postponement of the annuitisation requirement for provident funds and tax-free transfers from pension to provident funds.
- An enhanced SARS and SARB Voluntary Disclosure Programme in respect of offshore assets and income, applicable for the period 1 October 2016 to 31 March 2017.
- The capital gains tax inclusion rate for individuals, special trusts and insurers' individual policyholder funds increases from 33.3% to 40%. For other taxpayers, the inclusion rate increases from 66.6% to 80%.
- Measures to prevent tax avoidance through trusts – assets transferred via loans to a trust to be included in the estate of the founder (assumed to mean donor/lender) on death and interest-free loans to be categorised as donations.
- Increase in transfer duty rate from 11% to 13% in respect of property sales greater than R10 million.
- The general fuel levy will increase by 30 cents per litre on 6 April 2016.
- A 6% to 8.5%increase in excise duties on alcoholic beverages and tobacco products.
- A tyre levy at R2.30 per kilogram is to be introduced on 1 October 2016 and a tax on sugar-sweetened beverages on 1 April 2017.

3. INDIVIDUALS AND TRUSTS

Relief for individuals

Personal income tax

To reduce the impact of inflation on lower- and middle-income earners, the primary rebate and the bottom three income brackets will be adjusted by 1.8% and 3.4% respectively. The tax-free threshold for individual taxpayers below 65 years will increase from R73 650 to R75 000.

Exemption for interest and dividend income

The annual exemption on interest earned by individuals younger than 65 years (R23 800) for individuals 65 years and older (R34 500) remains the same.

Contributions

Medical tax credits

Monthly medical scheme fee tax credit will from, 1 March 2016 be increased from R270 to R286 per month for the first two beneficiaries. For each additional beneficiary, the increase will be from R181 to R192.

Other tax proposals affecting individuals

Retirement reforms

Allowable deduction for fringe benefit of employer contributions to defined pension funds: Section 11(k)(iii) of the Income Tax Act (the Act) inadvertently limited the allowable deduction for the fringe benefit of employer contributions to retirement funds to the actual value of the employer contribution. However, the fringe benefit value for defined benefit pension funds is determined by a formula per the Seventh Schedule to the Act and may exceed the actual employer contribution.

In this case, the available deduction would not be aligned with the employer contribution's fringe benefit value and any excess amount would become taxable. This was not the original intention and with effect from 1 March 2016, an amendment will be made to allow a deduction up to the full value of the employer contribution fringe benefit, if valued according to paragraph 12D of the Seventh Schedule to the Act.

Passive income deduction: Before 1 March 2016, taxpayers were able to deduct retirement annuity contributions against their passive or non-trading income up to a certain limit. The current wording of section 11(k) of the Act does not allow this set off. It is proposed that section 11(k) of the Act be amended to allow for retirement contributions to be deducted against passive income, subject to the available limits.

Rollover of excess contributions prior to 1 March 2016: It is proposed that section 11(k) of the Act be amended to allow for the rollover of excess contributions to retirement annuity funds and pension funds accumulated up to 29 February 2016.

Order of allowable deductions: To correct the ordering rule for calculating allowable deductions in the determination of taxable income, it is proposed that the allowable section 11(k) deduction of the Act be determined before the allowable section 18A deduction.

Removal of the requirement for a tax directive to effect tax-free transfers from pension funds to provident funds: The 2015 retirement reforms made provision for tax-free transfers from pension funds to provident funds. Before this amendment, tax-free transfers from pension funds to provident funds required a tax directive from SARS. It is proposed that this requirement for a tax directive be removed because it is no longer applicable to these transfers.

Valuation of contributions made to defined benefit pension funds: Paragraph 12D of the Seventh Schedule only makes provision for contributions actually made by the employer or employee to certain retirement funds, and excludes contributions made on behalf of the employer or employee (for example, by the retirement fund). It is proposed that paragraph 12D of the Seventh Schedule be amended to include all contributions made for the member's benefit.

Other technical amendments to paragraph 12D are also proposed.

Vested rights for provident fund members – divorce order settlements: To allocate vested rights (i.e. contributions made pre-1 March 2016) fairly in the case of a divorce, it is proposed that the withdrawal of retirement benefits arising from divorce order settlements be proportionally attributed as a reduction against both the vested right and non-vested right portions of the retirement fund savings.

Vested rights for provident fund members – mandatory transfer: From 1 March 2016, provident fund members over 55 years may continue contributing to that provident fund without being required to purchase an annuity on retirement. However, if they transfer to another retirement fund, any future contributions to that fund would not be exempt from annuitisation.

It is proposed that forced transfers (through the closure of a retirement fund) will not affect the member's ability to make further contributions, which can be taken as a lump sum. Further technical corrections are required to effect this.

Foreign pension contributions, annuities and payouts: Treatment of contributions to foreign funds and the taxation of payments from foreign funds, will be reviewed, taking into account the tax policy for South African retirement funds. This is a positive move, given the submissions SAICA has made to National Treasury in the past regarding this issue.

Sugar tax

Obesity stemming from overconsumption of sugar is a global concern and South Africa is no exception. Following global trends, government proposes to introduce a tax on sugar-sweetened beverages, with effect from 1 April 2017 to help reduce excessive sugar intake.

Fringe benefits

Clarification regarding raising an assessment for re-calculating fringe benefit: Paragraph 3(2) of the Seventh Schedule to the Act allows SARS Commissioner to re-determine the cash equivalent of a fringe benefit and assess either the employer or the employee, in certain circumstances. Uncertainty exists as to the circumstances which would trigger this. To provide clarity, it is proposed that the paragraph 3(2) of the Seventh Schedule be aligned with the wording in paragraph 5(2) of the Fourth Schedule.

Alignment of the definition of private travel: The concept of private travel has been difficult for employers to apply in practice. The difference in the wording of the definition of private travel in section 8 and the Seventh Schedule of the Act adds to the confusion. To correct this, it is proposed that the wording of the two provisions be aligned.

Increasing the incentive for employers to provide bursaries: it is proposed that the income eligibility threshold for employees to access the fringe benefit tax exemption in respect of employer-granted bursaries will increase from R250 000 to R400 000 and there will be an increase in the value of qualifying bursaries, from R10 000 to R15 000 for NQF levels 1 – 4 and from R30 000 to R40 000 for NQF levels 5 to 10.

Tax-free investments

Alignment of estate duty treatment: Tax-free investments were introduced from 1 March 2015 to encourage individuals to save. Government has become aware of this benefit being misused to avoid estate duty and anti-avoidance legislation is proposed to address specific issues identified.

Dividends tax returns in the context of tax-free investments: Investors receiving dividends from tax-free investments are required to submit an exempt dividends tax return to SARS on receipt of dividend payments. It is proposed that an amendment be made to remove this requirement.

Transfers between service providers: The implementation date to allow transfers of tax-free investments between service providers will be postponed from 1 March 2016 to 1 November 2016 to allow further time for service providers to finalise the administrative processes required for these transfers.

Employee share-based incentive schemes

Removal of possible double taxation: If a taxpayer receives a restricted equity instrument having a value, it falls within gross income in year 1, despite the restrictions. Upon vesting, the gain on the instrument needs to be included in gross income in the year of vesting, according to paragraph (n) of the gross income definition read with section 8C. This could result double taxation and it is proposed that the acquisition of shares subject to the provisions of section 8C of the Act be specifically excluded from paragraph (c) of the definition of gross income.

Addressing circumvention of section 8C rules: Whilst section 8C addresses some tax avoidance identified, the current rules do not deal adequately with some schemes where restricted shares held by employees are liquidated in return for an amount qualifying as a dividend. It is proposed that the current rules be reviewed to deal with this.

Inclusion of certain dividends in the definition of remuneration: Certain dividends received from restricted equity instruments do not qualify for an income tax exemption and are taxable on assessment of the directors and employees. It is proposed that these taxable dividends be specifically included in the definition of remuneration for employees' tax purposes.

Employees of foreign employers in South Africa designated as provisional taxpayers

If foreign employers in South Africa do not deduct employees 'tax, local employees should pay provisional tax in terms of the Fourth Schedule to the Act. It is proposed that the Commissioner (SARS) notify them of their status through a public notice, instead of issuing individual notices.

Directives to be sought for all employment lump sums

There are exceptions to the rule that employers must ascertain from the Commissioner the correct amount in employees' tax to be withheld from lump-sum payments before payment is made. It is proposed that the provision for exceptions be removed.

Removal of exclusion from penalty calculation

The penalty for underpaying provisional tax is based on a percentage of normal tax payable after taking into account rebates and tax already paid. Certain once-off amounts, such as retirement lump-sum and severance-benefit payments, are excluded from the calculation of the penalty because they are taxed separately, upfront. Taxpayers are required to pay provisional tax on the other amounts listed in paragraph (d) of the definition of gross income, because these amounts are not taxed under the lump-sum tax tables. However, by excluding these amounts from the penalty calculation, taxpayers are not penalised if they fail to pay the required provisional tax. To correct this, it is proposed that the penalty calculation's exclusion of the amounts in paragraph (d) not taxed in terms of the special tables be removed.

Date on which estimate for second provisional tax payment must be submitted

A provisional taxpayer is not subject to the underpayment penalty if an estimate for the second provisional tax period is submitted before the due date of the subsequent provisional tax payment. It is proposed that this window period be closed on the date of assessment of the relevant year.

Measures to prevent tax avoidance through trusts

It has been noted that some taxpayers use trusts to avoid paying estate duty and donations tax. For example, if the founder of a trust sells his or her assets to the trust, and grants the trust an interest-free loan as payment, donations tax is not triggered and the assets are not included in his or her estate at death. To limit taxpayers' ability to transfer wealth without being taxed, government proposes to ensure that the assets transferred through a loan to a trust are included in the estate of the founder (we assume this to mean the lender/donor) at death, and to categorise interest-free loans to trusts as donations. Further measures to limit the use of discretionary trusts for income-splitting and other tax benefits will also be considered.

4. COMPANIES

Corporate tax rates

No change is proposed to corporate tax rates.

Hybrid debt instruments

It is proposed that a concession be made to exclude debt instruments subject to a subordination agreement from being regarded as section 8F hybrid debt instruments.

Asset-for-share transactions for natural persons employed by a company

Asset-for-share transactions do not trigger a capital-gains event when the transaction is between a person and a company, and the person either holds a qualifying interest in the company or is a natural person working full time for the company. The qualifying conditions were put in place to ensure that only substantial and long-term transfers of assets for shares benefit from the exemption, and to support the incorporation of professional service firms. However, because some taxpayers have indicated that the limits to the conditions are unclear, it is proposed that section 42 of the Act be amended for clarity.

Avoidance schemes in respect of share disposals

One of the schemes used to avoid the tax consequences of share disposals involves the company buying back the shares from the seller and issuing new shares to the buyer. The seller receives payment in the form of dividends, which may be exempt from normal tax and dividends tax, and the amount paid by the buyer may qualify as contributed tax capital. Such a transaction is, in substance, a share sale that should be subject to tax. The wide-spread use of these arrangements merits a review to determine if additional countermeasures are required.

Tax implications of securities lending arrangements

As a result of a 2015 amendment, there are no income tax and securities transfer tax implications if a listed share is transferred as collateral in a lending arrangement for a limited period of 12 months. Although the tax relief is welcomed, concerns have been raised that the 12-month limitation rule is too restrictive. This condition will be reviewed together with other aspects.

Refinement of third-party-backed share provisions

Pre-2012 legitimate transactions: In 2012, government introduced new rules to deal with avoidance concerns regarding transactions and arrangements that involve preference shares with dividend yields backed by third parties. These dividend yields, under the new rules, are treated as ordinary revenue. Because the rules may affect some legitimate transactions and arrangements, government will consider relaxing them in relation only to those entered into before 2012.

Further, additional measures will be considered to stop the circumvention of anti-avoidance measures which has come to light subsequent to the 2012 amendments.

Transitional tax issues resulting from regulation of hedge funds

There are certain scenarios where the tax relief provided in the Taxation Laws Amendment Act (2015) to assist the hedge fund industry's transition to a new regulated tax regime is limited and inapplicable to certain hedge fund's trust structures. This is the case with the tax relief for asset-for-share and amalgamation transactions. It is proposed that provision be made to address these scenarios.

Taxation of real estate investment trusts

Qualifying distribution rule: Because recoupments such as building allowances previously claimed are included in the definition of gross income in the Act, they could affect the 75 per cent rental-income analysis used to determine qualifying distribution applicable to real estate investment trusts (REITs). It is proposed that the provisions relating to the qualifying distribution rule in section 25BB of the Act be reviewed to remove this anomaly.

Interaction between REITs and section 9C: The current provisions of section 9C of the Act are inappropriate for REITs, as dividends received from REITs are taxable, but expenditure incurred to produce these taxable dividends is not deductible. To resolve this anomaly, it is proposed that section 9C(5) be amended to exclude shares in REITs.

Solvency assessment and management framework for long-term insurers

The Insurance Bill, which gives effect to the Financial Services Board's solvency assessment and management (SAM) framework for long-term and short-term insurers, is likely to come into operation in 2017. As a result, Parliament has proposed that the changes to align the tax valuation method for long-term insurers with SAM that were part of the 2015 Tax Laws Amendment Bill be further considered in 2016.

Venture capital funding for small businesses

Funding remains one of the biggest challenges for small businesses. To encourage equity funders to invest in small businesses, the venture capital company regime was introduced in 2008. Currently, 31 venture capital companies are registered. Government is aware that the application of certain provisions on these companies may result in potential investors abandoning plans to take up this incentive. Measures to mitigate this unintended consequence will be explored.

Urban development zones

The urban development zone (UDZ) tax incentive has been successful in promoting urban renewal and therefore, it is proposed that the UDZ tax incentive be made available to more municipalities, subject to the application of a set of strict criteria.

Small business corporations (SBCs) in special economic zones (SEZ)

When the SEZ tax incentive was introduced in 2013, no clarity was provided regarding the tax treatment of SBCs located in SEZs. It is proposed that the legislation be amended to make it clear that SBCs in SEZ are subject to corporate income tax at either the applicable graduated rate or 15%, whichever is lower. To be eligible for the 15% rate, the SBC will still need to comply with the provisions of section 12R of the Act.

Tax treatment of National Housing Finance Corporation (NHFC)

The Department of Human Settlements is consolidating all of its human settlement development finance institutions into the NHFC. It is proposed that a special tax exemption similar to that provided to certain government entities be provided to the NHFC. Further amendments will be considered to ensure the transfer of assets from the department's current development finance institutions to the NHFC are tax neutral.

Tax treatment of land donated under land-reform initiatives

Currently, tax legislation provides tax relief for land donated for land reform. This tax relief does not extend to all government land-reform initiatives and it is proposed that the legislation be amended to cover those set out in the National Development Plan.

Clarifying the tax treatment of government grants

Government grants that are not listed in the Eleventh Schedule to the Act can still fall outside the definition of gross income if they are of a capital nature. It is proposed that all government grants be included in gross income and the Eleventh Schedule be the sole mechanism for determining whether they are taxable or not.

5. INTERNATIONAL

Withdrawal of withholding tax (WHT) on service fees

In an effort to resolve unforeseen issues, including uncertainty on the application of domestic tax law and taxing rights under tax treaties, it is proposed that the WHT on service fees be withdrawn from the Act and dealt with under the provisions of reportable arrangements in the Tax Administration Act.

Foreign companies and collective investment schemes

Section 9D taxes South African owners of foreign-owned entities on amounts equal to that entity's earned income. This has adverse consequences for collective investment schemes (CIS) that hold shares in foreign CIS'. There is uncertainty as to whether it is the local fund or the investor in the local fund that should be considered to be the holder of the participation rights in the foreign collective investment scheme. For clarity, it is proposed that CIS' be excluded from applying section 9D to investments made in foreign companies.

Bad debt deduction

Section 11(i) provides for a deduction of any debt owing to the taxpayer that has gone bad during the year, provided that this amount is or was included in the taxpayer's income. Where a taxpayer, not being a money-lender, lends an amount denominated in a foreign currency to another person, any exchange differences arising on such a loan are taken into account in the determination of taxable income as an inclusion in or deduction from income, as the case may be.

However, where such a loan becomes bad, no deduction is available under section 11(a) regarding any exchange gains included in income and the taxpayer is not entitled to tax relief. Amendments to section 11(i) are proposed to address this.

Interest WHT where interest is written off

The Act requires that tax be withheld from interest paid to a foreign person. Interest is deemed to be paid on the date on which the interest becomes due and payable. In situations where interest WHT is paid on interest that becomes due and payable, but the interest is subsequently written off as irrecoverable, there is no mechanism for a refund of interest withholding tax already paid. It is proposed that a mechanism be developed to allow for a refund of interest withholding tax paid.

Tax base protection and hypothetical foreign tax payable due to foreign group tax losses

In 2009, a high-tax exemption was introduced for controlled foreign companies (CFC). As a result, all CFC income is exempt from tax in South Africa in cases where the CFC pays an amount of foreign tax equal to at least 75 per cent of the tax that would have been due and payable in South Africa, had the CFC been a South African tax resident. The high-tax exemption is based on a calculation of hypothetical amount of foreign taxes, by disregarding foreign group company losses.

Government is aware that in applying this calculation, an exemption is granted in situations where no foreign tax is actually payable. In addition, in the absence of the high-tax exemption, no foreign tax rebates would have been granted in this regard to avoid economic double taxation. In order to address the unintended anomaly, it is proposed that the adjustment for foreign group losses in the calculation for high-tax exemption be deleted.

6. ENVIRONMENTAL TAXES

Carbon Tax

The draft carbon tax bill was published in November 2015, with 90 comments received to date. The draft bill will be revised, taking into account public comments and further consultation.

Tyre levy

The tyre levy proposed in the 2015 Budget is intended to reduce waste, while encouraging reuse, recycling and recovery, and discouraging disposal into landfills. This levy will be implemented at a rate of R2.30/kg of tyre, effective 1 October 2016. The levy will replace the current fee arrangements for tyres, as regulated by the Department of Environmental Affairs.

Incandescent globe tax

An environmental levy on incandescent light bulbs was introduced in 2009 to encourage the use of more efficient compact fluorescent bulbs and reduce electricity demand. This levy was last increased in 2013. To take account of inflation, it is proposed that the levy be increased from R4 to R6 per globe, effective 1 April 2016.

Plastic bag levy

This levy, in place for 10 years, aims to counter the dispersion of plastic bags that end up as wind-blown litter or in waste facilities. Overall, it has helped to reduce the production and import of plastic bags. This levy was last increased in 2013. Government proposes to increase the levy from 6 cents to 8 cents per bag, effective 1 April 2016, to account for inflation.

Motor vehicle emissions tax

The motor vehicle emissions tax aims to encourage consumers to use more fuel-efficient, low-carbon-emitting vehicles, and manufacturers to improve fuel efficiency. To maintain this strategy, government proposes that a combined inflationary adjustment based on the 2013–2015 period be implemented, effective 1 April 2016. For passenger vehicles, this will increase the tax rate from R90 to R100 for every gram of emissions/km above 120 gCO2/km and, for double cabs, from R125 to R140 for every gram of emissions/km in excess of 175 gCO2/km.

Encouraging sustainable practices for a cleaner environment

To encourage taxpayers top make more environmentally friendly decisions, capital allowances will be adjusted in certain instances, specifically in relation to refinery upgrades and renewable energy incentives.

7. INDIRECT TAXES

Value-added tax (VAT)

Notional input tax on goods containing gold

In 2014, changes were made in the VAT Act to exclude goods containing gold from the definition of second-hand goods. It has come to government's attention that the exclusion of goods containing gold from this definition is too restrictive, especially in situations where the gold content of such goods is minimal or inconsequential. It is proposed that the 2014 amendment be revised to eliminate this anomaly.

Taxation of non-executive directors' fees

Under the Income Tax Act and the VAT Act, a non-executive director's fees may be subject to both employees' tax and VAT. Views differ on whether to deduct employees' tax from these fees or if the director should register as a VAT vendor. It is proposed that these issues be investigated to provide clarity.

Grants from the National Skills Fund and sector education and training authorities

The VAT Act zero-rates grants allocated through sector education and training authorities (SETAs), but does not specifically mention those allocated through the National Skills Fund. Aligning the VAT treatment of these two grant allocations will be considered.

Loyalty programmes

There are no provisions in the VAT Act dealing with loyalty programmes and the VAT implications of redeeming loyalty points. It is proposed that loyalty programmes be analysed and legislative amendments be considered to provide clarity on their VAT treatment. The provisions relating to vouchers will also be reviewed to determine if they require amendments.

Determined value of company cars

VAT Regulation 2835 specifies a method for establishing the determined value of a company car for output tax purposes. This method differs from the method prescribed in paragraph 7(1) of the Seventh Schedule of the Income Tax Act. These differences have resulted in employers and payroll managers calculating the determined value of company cars using two methods and maintaining two sets of records, which creates an administrative burden. It is proposed that the provisions of the VAT Regulation 2835 be aligned with the provisions of the Seventh Schedule of the Income Tax Act.

Waivers and cancellations of debt

Waivers and cancellations are not included in the definition of financial services. Vendors who waive or cancel debts provide a service through the surrender of a right. Debts that are waived or cancelled between connected persons would trigger an output tax liability calculated on the open market value of the amount waived, even though no consideration will be received. Surrendering the right to receive money (surrendering of a debt security) could also be perceived to be a separate supply. It is proposed that the tax implications relating to these supplies be analysed to determine if a legislative amendment is required.

Alignment of prescription periods

A person may deduct an amount from output tax attributable to a later tax period, provided this later period falls within five years from the date of certain events, for example, the date a tax invoice should have been issued. It is proposed that an input tax deduction be limited in certain instances to the tax period in which the time of supply occurred. In addition, it is proposed that the time limit for the payment of refunds be clarified.

Indirect exports

In terms of the VAT Act, a vendor that elected to supply goods at the zero rate for an indirect export may in certain instances be required to account for output tax if the relevant documentary requirements of Regulation 2761 (R 2761) are not met. Provision is made in R 2761 for the vendor to claim an input tax deduction where the relevant documents are subsequently obtained within certain time periods. This section of the VAT Act, however, does not refer to the input tax deduction allowed in R 2761. It is therefore proposed that this right to a deduction be referred to in the act to align it with R 2761.

Alignment of VAT and customs schedules

Schedule 1 of the VAT Act contains items that are exempt from VAT on importation. According to the Customs and Excise Act, items that are exempt from VAT on importation are identified by heading numbers or rebate items and descriptions as contemplated in schedules 1 and 4 of the Customs and Excise Act. It is proposed that the notes to the item numbers in schedule 1 of the VAT Act be aligned with the notes to the item numbers in schedules 1 and 4 of the Customs and Excise Act.

Goods lost, destroyed or damaged

The VAT Act was amended to include item number 412.07 to exempt goods from VAT on importation if they are unconditionally abandoned to the commissioner or destroyed with the commissioner's permission. No similar exemption exists for goods proved to have been lost, destroyed or damaged through, for example, natural disasters or such circumstances that the commissioner deems exceptional. It is therefore proposed that the legislation be amended to exempt the above-mentioned goods from VAT.

Payments basis

The VAT Act provides for public authorities and municipalities as defined in section 1 to be registered on the payments basis. In turn, section 15(2A) requires vendors who are registered on the payments basis to issue a tax invoice for any one supply that exceeds R100 000. However, public authorities and municipalities do not have to meet this requirement. This dispensation is not extended to municipal entities. It is proposed that a similar dispensation be granted to municipal entities.

Alternative documentary proof

Section 16(2)(g) of the VAT Act determines that a deduction may be allowed where a vendor is in possession of alternative documentary proof that is acceptable to the Commissioner. The Commissioner's discretion is limited to circumstances where the vendor is unable to obtain the documents prescribed in section 16(2)(a) to (f). It is proposed that scope be provided for the Commissioner to take other considerations into account in accepting alternative documentary proof.

Removal of goods from a customs controlled area located in a SEZ

Businesses that are located in a customs-controlled area (CCA) within a SEZ enjoy certain VAT cash-flow benefits when importing goods into the CCA. To further support the benefits of investing in special economic zones, an amendment is proposed to allow for the VAT-free movement of goods that are imported into a SEZs CCA to a manufacturing duty rebate user, provided there is a sale subject to VAT.

8. TAX ADMINISTRATION

Extension of objection and condonation periods

The current period for lodging an objection under the Tax Administration Act (TAA) is 30 business days from the date of assessment. This has been shown to be too short in practice, particularly in complex matters, resulting in a large number of applications for condonation. It is therefore proposed that a longer period for lodging an objection and condonation be considered. Amendments to the dispute resolution rules will also be required to give effect to this proposal, which could result in a change to the rules for failing to comply within the prescribed time periods.

Commercial member to assist presiding officer in tax court

The TAA provides that if a tax appeal relates to the business of mining, the commercial member must be a registered engineer with experience in that field, or a sworn appraiser if it involves the valuation of assets. Because other matters of a technical nature may also require a commercial member with expertise in the relevant field, it is proposed that an amendment be considered to include a more generic provision for this purpose.

Understatement penalty provisions

Amendments to the understatement penalty system of the TAA to enhance clarity with regard to general anti-avoidance matters will be considered.

Voluntary disclosure programme

A person who is aware of a pending audit or investigation may not apply for voluntary disclosure relief. It is proposed that an amendment be considered to clarify what is meant by pending audit or investigation.

TAX GUIDE (including tables)

Individuals and trusts

Income tax rates for natural persons and special trusts **Year of assessment ending 28 February 2017**	
Taxable income (R)	**Taxable rates**
0 – 188 000	18% of each R1
188 001 – 293 600	33 840 + 26% of the amount above 188 000
293 601 – 406 400	61 296 + 31% of the amount above 293 600
406 401 – 550 100	96 264 + 36% of the amount above 406 400
550 101– 701 300	149 619 + 39% of the amount above 550 100
701 301 and above	206 964 + 41% of the amount above 701 300

Natural persons

Tax thresholds		
	2015/16	**2016/17**
	R	**R**
Below 65 years of age	73 650	75 000
Aged 65 and below 75	114 800	116 150
Aged 75 and over	128 500	129 850

Tax rebates		
	2015/16	**2016/17**
	R	**R**
Primary – all natural persons	13 257	13 500
Secondary – persons aged 65 and below 75	7 407	7 407
Secondary – persons aged 75 above	2 466	2 466

Trusts

The tax rate on trusts (other than special trusts which are taxed at rates applicable to individuals) will remain at 41%.

Retirement fund lump sum withdrawal benefits

Taxable income	Rate of tax
R	**R**
0 – 25 000	0% of taxable income
25 001 - 660 000	18% of taxable income above 25 000
660 001 - 990 000	114 300 + 27% of taxable income above 660 000
990 001 and above	203 400 + 36% of taxable income above 990 000

Retirement fund lump sum withdrawal benefits consist of lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund on withdrawal (including assignment in terms of a divorce order).

Tax on a specific retirement fund lump sum withdrawal benefit (lump sum X) is equal to –

- the tax determined by the application of the tax table to the aggregate of lump sum X plus all other retirement fund lump sum withdrawal benefits accruing from March 2009, all retirement fund lump sum benefits accruing from October 2007 and all severance benefits accruing from March 2011; less

- the tax determined by the application of the tax table to the aggregate of all retirement fund lump sum withdrawal benefits accruing before lump sum X from March 2009, all retirement fund lump sum benefits accruing from October 2007 and all severance benefits accruing from March 2011.

Retirement fund lump sum benefits

Taxable income	Rate of tax
R	**R**
0 – 500 000	0% of taxable income
500 001 - 700 000	18% of taxable income above 500 000
700 001 – 1 050 000	36 000 + 27% of taxable income above 700 000
1 050 001 and above	130 500 + 36% of taxable income above 1 050 000

Retirement fund lump sum benefits consist of lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund on death, retirement or termination of employment due to redundancy or termination of the employer's trade.

Severance benefits consist of lump sums from or by arrangement with an employer due to relinquishment, termination, loss, repudiation, cancellation or variation of a person's office or employment.

Tax on a specific retirement fund lump sum benefit or a severance benefit (lump sum or severance benefit Y) is equal to –

- the tax determined by the application of the tax table to the aggregate of amount Y, plus all other retirement fund lump sum benefits accruing from October 2007 and all retirement fund lump sum withdrawal benefits accruing from March 2009 and all other severance benefits accruing from March 2011; less

- the tax determined by the application of the tax table to the aggregate of all retirement fund lump sum benefits accruing before lump sum Y from October 2007 and all retirement fund lump sum withdrawal benefits accruing from March 2009 and all severance benefits accruing before severance benefit Y from March 2011.

Foreign Dividends

Most foreign dividends received by individuals from foreign companies (shareholding of less than 10% in the foreign company) are taxable at a maximum effective rate of 15%. No deductions are allowed for expenditure to produce foreign dividends.

Exemptions

Interest

Interest from a South African source earned by any natural person under 65 years of age, up to R23 800 per annum, and persons 65 and older, up to R34 500 per annum, is exempt from taxation.

Interest is exempt where earned by non-residents who are physically absent from South Africa for at least 182 days (or 183 days in a leap year) during the 12 month period before the interest accrues and the debt from which the interest arises is not effectively connected to a fixed place of business in South Africa of that non-resident.

Deductions

Pension, provident and retirement annuity fund contributions

Amounts contributed to pension, provident and retirement annuity funds during a tax year are deductible by members of those funds. Amounts contributed by employers and taxed as fringe benefits are treated as contributions by the individual employee. The deduction is limited to 27.5% of the greater of remuneration for PAYE purposes or taxable income (both excluding retirement fund lump sums and severance benefits).

Furthermore, the deduction is limited to a maximum of R350 000. Any contributions exceeding the limitations are carried forward to the next tax year and are deemed to be contributed in that following year. The amounts carried forward are reduced by contributions set off when determining taxable retirement fund lump sums or retirement annuities.

Donations

Deductions in respect of donations to certain public benefit organisations are limited to 10% of taxable income (excluding retirement fund lump sums and severance benefits). The amount of donations exceeding 10% of the taxable income is treated as a donation to qualifying public benefit organisations in the following tax year.

Allowances

Subsistence allowances and advances

Where the recipient is obliged to spend at least one night away from his or her usual place of residence on business and the accommodation to which that allowance or advance relates is in the Republic of South Africa and the allowance or advance is granted to pay for—

- meals and incidental costs, an amount of R372 per day is deemed to have been expended;
- incidental costs only, an amount of R115 for each day which falls within the period is deemed to have been expended.

Where the accommodation to which that allowance or advance relates is outside the Republic of South Africa, a specific amount per country is deemed to have been expended. Details of these amounts are published on the SARS website under Legal & Policy / Secondary Legislation / Income Tax Notices / 2016.

Travelling allowance

Rates per kilometre which may be used in determining the allowable deduction for business travel, where no records of actual costs are kept are determined by using the following table.

Value of the vehicle (including VAT)	Fixed cost	Fuel cost	Maintenance cost
R	**R per annum**	**c per km**	**c per km**
0 – 80 000	26 675	82.4	30.8
80 001 – 160 000	47 644	92.0	38.6
160 001 – 240 000	68 684	100.0	42.5
240 001 – 320 000	87 223	107.5	46.4
320 001 – 400 000	105 822	115.0	54.5
400 001 – 480 000	125 303	132.0	64.0
480 001 – 560 000	144 784	136.5	79.5
Exceeding 560 000	144 784	136.5	79.5

Note:

- 80% of the travelling allowance must be included in the employee's remuneration for the purposes of calculating PAYE. The percentage is reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes.
- No fuel cost may be claimed if the employee has not borne the full cost of fuel used in the vehicle and no maintenance cost may be claimed if the employee has not borne the full cost of maintaining the vehicle (e.g. if the vehicle is the subject of a maintenance plan).

- The fixed cost must be reduced on a pro-rata basis if the vehicle is used for business purposes for less than a full year.

- The actual distance travelled during a tax year and the distance travelled for business purposes substantiated by a log book are used to determine the costs which may be claimed against a travelling allowance.

Alternatively:

- Where the distance travelled for business purposes does not exceed 8 000 kilometers per annum, no tax is payable on an allowance paid by an employer to an employee up to the rate of 329 cents per kilometer, regardless of the value of the vehicle.

- However, this alternative is not available if other compensation in the form of an allowance or reimbursement (other than for parking or toll fees) is received from the employer in respect of the vehicle.

Other deductions

Other than the deductions set out above an individual may only claim deductions against employment income or allowances in limited specified situations.

Fringe Benefits

Employer contributions to retirement funds for employees' benefit

- The taxable fringe benefit is equal to the actual contribution where the benefits payable to the employee consists solely of defined contribution components.

- Where the benefits payable to the employee do not consist of defined contribution components, the taxable fringe benefit is calculated in terms of a formula.

Employer-owned vehicles

- The taxable value is 3,5% of the determined value (the cash cost including VAT) per month of each vehicle. Where the vehicle is–

    - the subject of a maintenance plan when the employer acquired the vehicle the taxable value is 3,25% of the determined value; or

    - acquired by the employer under an operating lease the taxable value is the cost incurred by the employer under the operating lease plus the cost of fuel.

- 80% of the fringe benefit must be included in the employee's remuneration for the purposes of calculating PAYE. The percentage is reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes;

- On assessment the fringe benefit for the tax year is reduced by the ratio of the distance travelled for business purposes substantiated by a log book divided by the actual distance travelled during the tax year;

- On assessment further relief is available for the cost of licence, insurance, maintenance and fuel for private travel, if the full cost thereof has been borne by the employee and if the distance travelled for private purposes is substantiated by a log book.

Interest-free or low-interest loans

The difference between interest charged at the official rate and the actual amount of interest charged, is to be included in gross income.

Residential accommodation

The fringe benefit to be included in gross income is the lower of the benefit calculated by applying a prescribed formula or the cost to the employer. The formula will apply if the accommodation is owned by the employer, by an associated institution in relation to the employer, or under certain limited circumstances where it is not owned by the employer.

9. CORPORATE TAX RATES

YEARS OF ASSESSMENT ENDING BETWEEN 1 APRIL 2015 AND 31 MARCH 2016		
Normal tax		
Companies and close corporations	Basic rate	28%
Personal service provider companies	Basic rate	28%
Foreign resident companies which earn income from a SA source	Basic rate	28%

10. SMALL BUSINESS CORPORATIONS

Financial years ending on any date between 1 April 2016 and 31 March 2017

Taxable income	Rate of tax
R	R
0 – 75 000	0% of taxable income
75 001 – 365 000	7% of taxable income above 75 000
365 001 – 550 000	20 300 + 21% of taxable income above 365 000
550 001 and above	59 150 + 28% of the amount above 550 000

11. MICRO BUSINESSES

Financial years ending on any date between 1 March 2016 and 28 February 2017

Taxable turnover	Rate of tax
R	R
0 – 335 000	0% of taxable turnover
335 001 – 500 000	1% of taxable turnover above 335 000
500 001 – 750 000	1 650 + 2% of taxable turnover above 500 000
750 001 and above	6 650 + 3% of taxable turnover above 750 000

12. EFFECTIVE CAPITAL GAINS TAX (CGT) RATES

Capital gains on the disposal of assets are included in taxable income.

Maximum effective rate of tax

Individuals and special trusts	16.4%
Companies	22.4%
Other trusts	32.8%

13. OTHER TAXES, DUTIES AND LEVIES

Value-added Tax (VAT)

VAT is levied at the standard rate of 14% on the supply of goods and services by registered vendors.

A vendor making taxable supplies of more than R1 million per annum must register for VAT. A vendor making taxable supplies of more than R50 000 but not more than R1 million per annum may apply for voluntary registration. Certain supplies are subject to a zero rate or are exempt from VAT.

Transfer duty

Transfer duty is payable at the following rates on transactions in respect of acquisition of property on or after 1 March 2016 which are not subject to VAT.

Value of property	Rate
R	
0 – 750 000	0%
750 001 – 1 250 000	3% of the value above 750 000
1 250 001 – 1 750 000	15 000 + 6% of the value above 1 250 000
1 750 001 – 2 250 00	45 000 + 8% of the value above 1 750 000
2 250 001 – 10 000 000	85 000 + 11% of the value above 2 250 000
10 000 001 and above	937 500 + 13% of the value above 10 000 000

Estate duty

Estate duty is levied at a flat rate of 20% on property of residents and South African property of non-residents. A basic deduction of R3.5 million is allowed in the determination of an estate's liability for estate duty as well as deductions for liabilities, bequests to public benefit organisations and property accruing to surviving spouses.

Donations tax

- Donations tax is levied at a flat rate of 20% on the value of property donated;
- The first R100 000 of property donated in each year by a natural person is exempt from donations tax;
- In the case of a taxpayer who is not a natural person, the exempt donations are limited to casual gifts not exceeding R10 000 per annum in total;
- Dispositions between spouses and South African group companies and donations to certain public benefit organisations are exempt from donations tax.

Securities transfer tax

The tax is imposed at a rate of 0.25 of a per cent on the transfer of listed or unlisted securities. Securities consist of shares in companies or member's interests in close corporations.

Tax on International Air Travel

The tax amounts to R190 per passenger departing on international flights, excluding flights to Botswana, Lesotho, Namibia and Swaziland, in which case the tax is R100 per passenger.

Skills Development Levy

A skills development levy (SDL) is payable by employers at a rate of 1% of the total remuneration paid to employees. Employers paying annual remuneration of less than R500 000 are exempt from the paying the levy.

Unemployment Insurance Contributions

Unemployment insurance contributions are payable monthly to SARS by employers on the basis of a contribution of 1% by employers and 1% by employees, based on employees' remuneration below a certain amount. Employers not registered for PAYE or SDL purposes must pay the contributions to the Unemployment Insurance Commissioner.

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