KPMG

Tax Budget Guide 2021/2022

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For more information please email:

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Income Tax: Individuals and Special Trusts

Tax Rates (year of assessment ending 28 February 2022)

Taxable income	Rates of tax
R0 – R216 200	18% of each R1 of taxable income
R216 201 – R337 800	R38 916 + 26% of the amount above R216 200
R337 801 – R467 500	R70 532 + 31% of the amount above R337 800
R467 501 – R613 600	R110 739 + 36% of the amount above R467 500
R613 601 – R782 200	R163 335 + 39% of the amount above R613 600
R782 201 – R1 656 600	R229 089 + 41% of the amount above R782 200
R1 656 600 and above	R587 593 + 45% of the amount above R1 656 600

Tax Thresholds

Age	Threshold
Below age 65	R87 300
Age 65 to below 75	R135 150
Age 75 and older	R151 100

Trusts, other than special trusts, will be taxed at a flat rate of 45%.

Tax Rebates (natural persons)

- Primary rebate – R15 714
- Secondary rebate (age 65 to below 75) – R8 613
- Tertiary rebate (age 75 and older) – R2 871

Individuals who must submit tax returns

The Commissioner gives annual public notice of the persons who are required to submit tax returns for normal tax purposes. The relevant Government Gazette is expected to be issued in June 2021 in relation to the tax year ended 28 February 2021.

Capital Gains Tax ("CGT"): Individuals

Relevant rates

- Inclusion rate: 40%
- Statutory rate: 0% – 45%
- Effective rate: 0% – 18%

Exemptions / Exclusions from CGT

- The annual exclusion for individuals and special trusts is R40 000.
- The exclusion granted to individuals during the year of death is R300 000.
- The first R2 million of the capital gain or capital loss in respect of the disposal of a primary residence must be disregarded.
- A capital gain in relation to the disposal of a primary residence if the proceeds from the disposal of that primary residence does not exceed R2 million must be disregarded.
- The exclusion on the disposal of a small business for persons 55 years and older is R1.8 million, provided that the market value of the business does not exceed R10 million.

Allowances

Subsistence Allowances and Advances

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

- Meals and incidental costs, an amount of R452 per day is deemed to have been expended.
- Incidental costs only, an amount of R139 for each day which falls within the period is deemed to have been expended.

With effect from 1 March 2021, the above daily amounts will also apply where an employee is obliged to be away from the office on a day trip.

Overseas costs: The applicable rate per country is available on the SARS website at

.

Travel Allowance

A log book, confirming business kilometres travelled and total kilometres travelled during the tax year, must be maintained in order to claim a deduction against the travel allowance.

PAYE must be withheld by the employer on 80% of the allowance granted to the employee. The withholding percentage may be 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 and/or maintenance costs may be claimed if the employee has not borne the full cost thereof (e.g. if the vehicle is covered by 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.

Alternative simplified method:

Where an allowance or advance is based on the actual distance travelled by the employee for business purposes, no tax is payable on an allowance paid by an employer to an employee up to the rate of 382 cents per kilometre from 1 March 2021, 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.

Travel Table

Rates per kilometre, which may be used in determining the allowable deduction for business travel against an allowance or advance where actual costs are not claimed, are determined by using the following table:

Value of the vehicle (including VAT)	Fixed cost	Fuel cost	Maintenance cost
	R	c/km	c/km
R0 – R95 000	29 504	104.1	38.6
R95 001 – R190 000	52 226	116.2	48.3
R190 001 – R285 000	75 039	126.3	53.2
R285 001 – R380 000	94 871	135.8	58.1
R380 001 – R475 000	114 781	145.3	68.3
R475 001 – R570 000	135 746	166.7	80.2
R570 001 – R665 000	156 711	172.4	99.6
Exceeding R665 000	156 711	172.4	99.6

Fringe Benefits

Employer-provided 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 logbook, 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 logbook.

Employer-provided residential accommodation

In the case of employer-provided residential accommodation, where the employer-provided accommodation is leased by the employer from an unconnected third party, the value of the fringe benefit to be included in gross income is the lower of:

- the cost to the employer in providing the accommodation; and
- the amount calculated with reference to the formula.

The formula will apply if the accommodation is owned by the employee, but it does not apply to holiday accommodation hired by the employer from non-associated institutions.

Interest-free or low-interest loans

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

Exemptions

Interest and dividend income

- Under 65 years of age – The first R23 800 of interest income is exempt.
- 65 years of age and over – The first R34 500 of interest income is exempt.

Interest is exempt where earned by non-residents who are physically absent from South Africa for at least 183 days during the 12 month period before the interest accrues or the debt from which the interest arises is not effectively connected to a permanent establishment of that person in South Africa.

South African dividends are generally exempt after the withholding of dividends tax (except to the extent that anti-avoidance provisions have been triggered).

Foreign interest and dividends

There is no exemption in respect of foreign sourced interest income.

Where an individual holds less than 10% of the equity share capital of a foreign company which distributes a dividend, the dividend will be taxed at a maximum effective rate of 20%, as determined by a formula. No deductions are allowed for expenditure to produce foreign dividends.

Foreign remuneration exemption

Where an employee works abroad for more than 183 days and more than 60 consecutive days in a 12 month rolling period, that foreign remuneration is exempt from tax in South Africa.
From 1 March 2020 only the first R1.25 million of foreign remuneration will be exempt.

For the foreign remuneration exemption to be applied, an employee must be rendering services outside of South Africa for more than 183 days in a 12 month period and for more than 60 consecutive days in the same 12 month period.

Due to the COVID-19 pandemic and the restrictions on travel, the foreign remuneration exemption has been amended. The employee must be rendering services outside of South Africa for 117 full days in aggregate during any period of 12 months in respect of any year of assessment ending on or after 29 February 2020 but on or before 28 February 2021.

In an effort to reduce the cash flow burden on the employee, the South African employer may apply to SARS for a tax directive allowing Foreign Tax Credits (FTCs) as a tax reduction in the South African payroll. Employees who are not remunerated via a South African payroll will be considered provisional taxpayers and will be required to claim the FTCs when filing their provisional and annual tax returns.

Fringe benefit exemption for employer provided bursaries

Employer-provided bursaries to employees are not subject to income eligibility thresholds or monetary limit criteria. However, there are other criteria that must be met in order for the bursary to be exempt entirely. The income eligibility threshold applicable to employees, in respect of bursaries granted to their relatives, is R600 000. The monetary limits for bursaries are as follows:

- R20 000 for grade R to grade 12 or for qualifications below NQF level 4; and
- R60 000 for qualifications at NQF level 5 and above.

The monetary limits for relatives with disabilities are as follows:

- R30 000 for grade R to grade 12 or for qualifications below NQF level 4; and
- R90 000 for qualifications at NQF level 5 and above.

With effect from 1 March 2021, the exemptions will not apply if the bursary is subject to an element of salary sacrifice.

Deductions from Income (individuals)

Contributions to Pension, Provident and Retirement Annuity Funds

Employer contributions to South African retirement funds for the benefit of employees are deemed to be a taxable fringe benefit in the hands of employees. Depending on the nature of the fund, the fringe benefit is either the actual cash value of the contribution or the result of a formula. The employee will be deemed to have made contributions to the value of the fringe benefit (which together with their own contributions, may be eligible for a deduction).

The annual tax deduction for contributions to all retirement funds is limited to the lower of R350 000 or 27.5% of the greater of taxable income before the inclusion of a taxable capital gain (excluding retirement and severance lump sums) or remuneration (excluding retirement and severance lump sums).

Any contributions in excess of the limitations will be rolled forward and will be available for deduction in future tax years, subject to the annual limitations applicable in those tax years.

Any non-deductible contributions will be available for deduction against retirement lump sums or annuity income.

It was clarified in the 2020 Budget that both employee and employer contributions to retirement funds (made on or after 1 March 2016) should qualify for a deduction under either paragraphs 5(1)(a) or 6(1)(a) of the Second Schedule to the Income Tax Act.

Donations to certain Public Benefit Organisations

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.

It has been proposed that third-party reporting be extended to tax deductible donations made so that SARS can pre-populate these on the relevant tax returns.

Medical and Disability Expenses

Taxpayers may deduct from their tax liability a tax credit (i.e. a rebate) of R332 per month for each of the first two beneficiaries and R224 per month for each additional beneficiary, in respect of medical aid contributions.

Taxpayers 65 years and older and those with disabilities under the age of 65 years or with disabled dependents may deduct an additional tax credit (rebate) equal to 33.3% of the sum of:

- qualifying medical expenses; and
- an amount by which the contributions paid exceed three times (3x) the medical tax credits for the year.

Taxpayers under the age of 65 years may deduct an additional tax credit (rebate) equal to 25% of the sum of:

- qualifying medical expenses; and
- an amount by which the contributions paid exceeds four times (4x) the medical tax credits for the year, but limited to the amount which exceeds 7.5% of taxable income (excluding retirement lump sums and severance benefits).

Tax-Free Savings and Investment Accounts

All returns received from tax free savings and investment accounts, such as interest, dividends and capital gains, are 100% tax free. The annual contribution limit is R36 000 from 1 March 2020 (previously R33 000), while the lifetime contribution limit is R500 000.

Taxation of Lump Sum Benefits

Retirement fund lump sum benefits (retirement or death) and severance lump sum benefits

The tax-free lump sum benefit upon death, retirement and in respect of severance benefits (as defined in the Income Tax Act), is R500 000. The applicable rates are:

Taxable income	Rates of tax
R1 – R500 000	0% of taxable income
R500 001 – R700 000	18% of taxable income above R500 000
R700 001 – R1 050 000	R36 000 + 27% of taxable income above R700 000
R1 050 001 and above	R130 500 + 36% of taxable income above R1 050 000

Retirement fund lump sum withdrawal benefits

Retirement fund lump sum withdrawal benefits refer to lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund upon withdrawal from the fund. The applicable rates are:

Taxable income	Rates of tax
R1 – R25 000	0% of taxable income
R25 001 – R660 000	18% of taxable income above R25 000
R660 001 – R990 000	R114 300 + 27% of taxable income above R660 000
R990 001 and above	R203 400 + 36% of taxable income above R990 000

These tax tables apply cumulatively to all lump sum benefits, and include:

- 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.

Companies and Employers

Corporate Tax Rates

Type	Rates of Tax
Companies	
Resident Company	28%*
Non-resident Company	28%*
Personal Service Provider Company	28%*
*The corporate tax rate will be lowered to 27% for years of assessment commencing on or after 1 April 2022. Gold mining, oil & gas, and long-term insurance companies are subject to special rules and tax rates. It is envisaged that the corporate tax rate will be reduced in future, as part of the broadening of the corporate income tax base.	
Small Business Corporations [1]	
R 0 – R87 300	0% of taxable income
R87 301 – R365 000	7% of taxable income above R87 300
R365 001 – R550 000	R19 439 plus 21% of taxable income above R365 000
R550 001 and above	R58 289 plus 28% of taxable income above R550 000
Micro Businesses [2]	
R 0 – R335 000	0% of taxable turnover
R335 001 – R500 000	1% of taxable turnover above R 335 000
R500 001 – R750 000	R1 650 plus 2% of taxable turnover above R500 000
R750 001 and above	R6 650 plus 3% of taxable turnover above R750 000
Withholding Taxes [3]	
Dividends	20%
Interest paid to non-residents	15%
Royalties paid to non-residents	15%
Amounts paid to non-resident entertainers and sportspersons	15%
Disposal of fixed property by non- residents	Individuals: 7.5%, Companies: 10%, Trusts: 15%

[1] *Applicable for financial years ending on or after 1 April 2021.*

[2] *Micro businesses have the option of making payments for turnover tax, VAT and employees' tax bi-annually. Applicable in respect of years of assessment on commencing on or after 1 March 2021.*

[3] *Withholding taxes payable by non-residents may be subject to relief in terms of an applicable double tax agreement.*

Withholding Taxes

The rates may be reduced by the provisions of a relevant Double Tax Agreement ("DTA"). The foreign recipient of the royalty, dividend or interest should provide a declaration and/or an undertaking to the payor, confirming that the requirements to qualify for a reduced rate under a DTA have been met.

Which companies must submit returns

The Commissioner annually gives public notice of the persons who are required to furnish returns for the assessment of normal tax within the period prescribed in that notice (likely to be issued in June 2021).*

The following entities are currently required to submit annual income tax returns:

- every company, trust or other juristic person, which is a resident;
- every company, trust or other juristic person, which is not a resident, and
  - which carried on a trade through a permanent establishment in South Africa;
  - which derived income from a source in South Africa; or
  - which derived any capital gain or capital loss from the disposal of an asset to which the Eighth Schedule to the Income Tax Act applies;
- every company incorporated, established or formed in South Africa, but which is not a resident as a result of the application of any DTA.

** A tax alert setting out the category of persons required to submit a return, and any changes in relation to the above requirements will be issued at the time of publication of the public notice (made available on the SARS website).*

Capital Gains Tax

Effective CGT rates

Type of taxpayer	Inclusion Rate	Statutory Rate	Effective Rate
Other Trusts	80%	45%	36%
Companies* (including personal service provider companies and branches of non-resident companies)	80%	28%	22.4%
Small business corporations	80%	0% - 28%	0% - 22.4%

**The effective capital gains tax rate will be lowered to 21.6% for years of assessment commencing on or after 1 April 2022 (assuming the inclusion rate remains at 80%).*

Payroll Taxes and Levies

Employees' Tax / Pay-As-You-Earn ("PAYE")

Resident employers and resident representative employers are required to withhold PAYE from all remuneration paid to employees. The PAYE must be paid to SARS by the 7th day of the month following the month in which the remuneration is received. If the 7th falls on a weekend or public holiday, the payment must be made by the last business day before the 7th.

Employees' tax and personal income tax administration reforms are expected.

Unemployment Insurance Fund ("UIF")

UIF contributions are payable by employers to SARS on a monthly basis and are calculated at a rate of 2% of remuneration paid or payable (1% employee and 1% employer contribution based on the employee's remuneration) to each employee during the month. The monthly threshold has increased from a maximum threshold of R14 872 per month (R178 464 per annum) to R17 712 per month (R212 544) from 1 March 2021.

Employers (including non-resident employers) not registered for PAYE or SDL purposes must pay the contributions to the Unemployment Insurance Commissioner.

With effect from 1 March 2018, foreign nationals working in South Africa and employees undergoing learnership training, are subject to UIF.

Skills Development Levy ("SDL")

Employers with a payroll of more than R500 000 per annum must account for SDL, at a rate of 1% of total remuneration paid to employees.

Employment Tax Incentive ("ETI")

The ETI, which mainly benefits young workers, was reviewed and extended to February 2029.

From 1 March 2019, employers are able to claim the maximum value of R1 000 per month for employees earning up to R4 500 per month (previously R4 000), with the incentive tapering to zero at the maximum monthly remuneration of R6 500.

The value of the incentive varies depending on the remuneration band not exceeding R6 499 per month.

The value of the incentive halves during the second 12 month period during which the employer claims the ETI in respect of a specific employee. The ETI is positioned to incentivise employers to employ workers from the ages of 18 to 29 (if the employer operates in a Special Economic Zone, no age limit applies).

The ETI is available to "eligible employers" in respect of "qualifying employees", subject to specific criteria. For example, employers must abide by the relevant "wage-regulating measures" in order to be able to claim the ETI in respect of an employee.

One of the Budget proposals is to amend the definition of an "employee" in the ETI Act to specify that work must be performed in terms of an employment contract that adheres to the record-keeping provisions in accordance with the Basic Conditions of Employment Act (1997). These amendments will take place from 1 March 2021.

Value-Added Tax

- Standard rate:
  - 15% (from 1 April 2018)
  - 14% (until 31 March 2018)
- Threshold for compulsory VAT registration: Taxable supplies > R1 000 000 over any 12 month period
- Voluntary VAT registration threshold: Taxable supplies > R50 000 over any 12 month period
- VAT registration threshold for foreign suppliers of "electronic services ":
  - R50 000 (until 31 March 2019)
  - R1 000 000 (from 1 April 2019)

Corporate Income Tax

Restructure of the corporate income tax system and broadening the tax base

The 2020 Budget included proposals to broaden the tax base through changes to the interest limitation provisions in respect of cross border debt, whereby interest deductions will be limited to 30% of tax Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA"), as well as proposals to limit the utilisation of assessed losses carried forward to taxable income. These proposals were deferred as part of the 2020 COVID-19 tax relief measures. The 2021 Budget proposes to introduce these measures in 2022.

The corporate income tax rate will be lowered to 27% with effect from years of assessment commencing on or after 1 April 2022. It is intended that the introduction of the lower rate will be implemented in a revenue neutral manner.

Refining the interaction between anti-value shifting rules and corporate reorganisation rules

The current provisions relating to asset-for-share transactions, where the corporate reorganisation rules are not applied, deem the base cost of any asset acquired in exchange for the issue of shares to be an amount equal to the market value of the shares acquired, plus any capital gain that was triggered by the asset-for-share anti-value shifting rules.

On the other hand, the current corporate reorganisation rules, which may be subject to the application of the anti-value shifting rules, deem the base cost of the asset acquired to be equal to the base cost of the asset in the seller's hands. No adjustment is made in respect of any capital gain that may have been triggered by the anti-value shifting provisions.

To address the anomaly in relation to these rules, it is proposed that the legislation governing the corporate reorganisation rules be amended to allow for any capital gains triggered by virtue of the application of the anti-avoidance rules to be added to the base cost of the asset transferred.

Clarifying the rules that trigger additional consideration in asset-for-share transactions when a debt is assumed by a company

The corporate reorganisation rules allow for the transfer of assets in exchange for shares or the assumption of qualifying debt. However, the asset-for-share provisions rules contain specific anti-avoidance provisions which trigger a capital gain equal to the amount of debt assumed, where the shares acquired as part of the asset for share transaction are subsequently disposed of.

However, where the shares are subsequently transferred in terms of a transaction where the corporate reorganisation rules apply, the shares will again be transferred in a tax neutral manner at the historical base cost value and the capital gain in relation to the debt assumed is not triggered.

It is proposed that the additional consideration which would have been triggered be carried forward to subsequent reorganisation transactions until the shares are disposed of, in a transaction that falls outside the corporate reorganisation relief provisions.

Anti-avoidance measures relating to intra-group transactions

Various proposals in respect of the anti-avoidance provisions in relation to intra-group transactions have been tabled:

- In terms of section 45 of the Income Tax Act, where the parties to a reorganisation transaction cease to form part of the same group of companies within a period of 6 years, the tax benefit obtained under the intra-group transaction is unwound, i.e. a capital gain and/or taxable recoupments which would have applied at the time of entering into the transaction, are triggered. Similarly, where an asset is disposed of prior to the lapse of an 18 month period after the conclusion of an intra-group transaction, a capital gain or recoupment is triggered as if the asset had been acquired outside of the intra-group rules ("early disposal anti-avoidance rules").
- In order to avoid double taxation in respect of gains or recoupments triggered by virtue of the anti-avoidance triggers in respect of the early disposal of assets, it is proposed that where a gain or recoupment has already been taxed under one of the anti-avoidance measures, it is not subsequently taxed again by virtue of the application of the other.
- In addition, under section 45 of the Income Tax Act, any loan extended as consideration for the asset which is the subject of the disposal is deemed to have a Rnil base cost, with relief granted in respect of payments made by group companies. This provision can result in a gain being triggered in the hands of the creditor on repayment of the loan where repayment of the loan is made by a debtor that does not form part of the same group of companies. As part of the 2020 legislative cycle, changes were made to section 45 to deem a base cost equivalent to the balance of the loan capital owing in circumstances where the de-grouping provisions have been triggered. It is now proposed to extend this base cost relief to circumstances where capital gains or recoupments have been triggered as a result of the disposal of the asset within 18 months. In addition, the base cost relief will be applied on the sixth anniversary of the intra-group transaction, i.e. once the de-grouping provisions cease to have any effect.

Refining the provisions applicable to unbundling transactions

Section 46 of the Income Tax Act allows for the tax neutral transfer of assets in respect of so-called unbundling transactions, in terms of which the shares of one entity (the unbundled company) are distributed to qualifying shareholders of another company (the unbundling company) in proportion to their respective shareholding. The effect of a section 46 unbundling transaction is to defer any capital gains or taxable recoupments until such a time that the assets are disposed of in terms of a transaction not qualifying for tax relief. The tax relief will however not apply to the extent that the unbundling company distributes shares to "disqualified shareholders" (shareholders outside of the South African tax net), holding at least 5% of the shares in the unbundling company prior to the unbundling transaction. The unbundling company is accordingly taxed on the distributions made to disqualified shareholders, negatively impacting the value of the unbundling company,

It is proposed that qualifying shareholders in respect of the unbundling transaction receive an increase in the base cost of their shares in proportion to their respective shareholding.

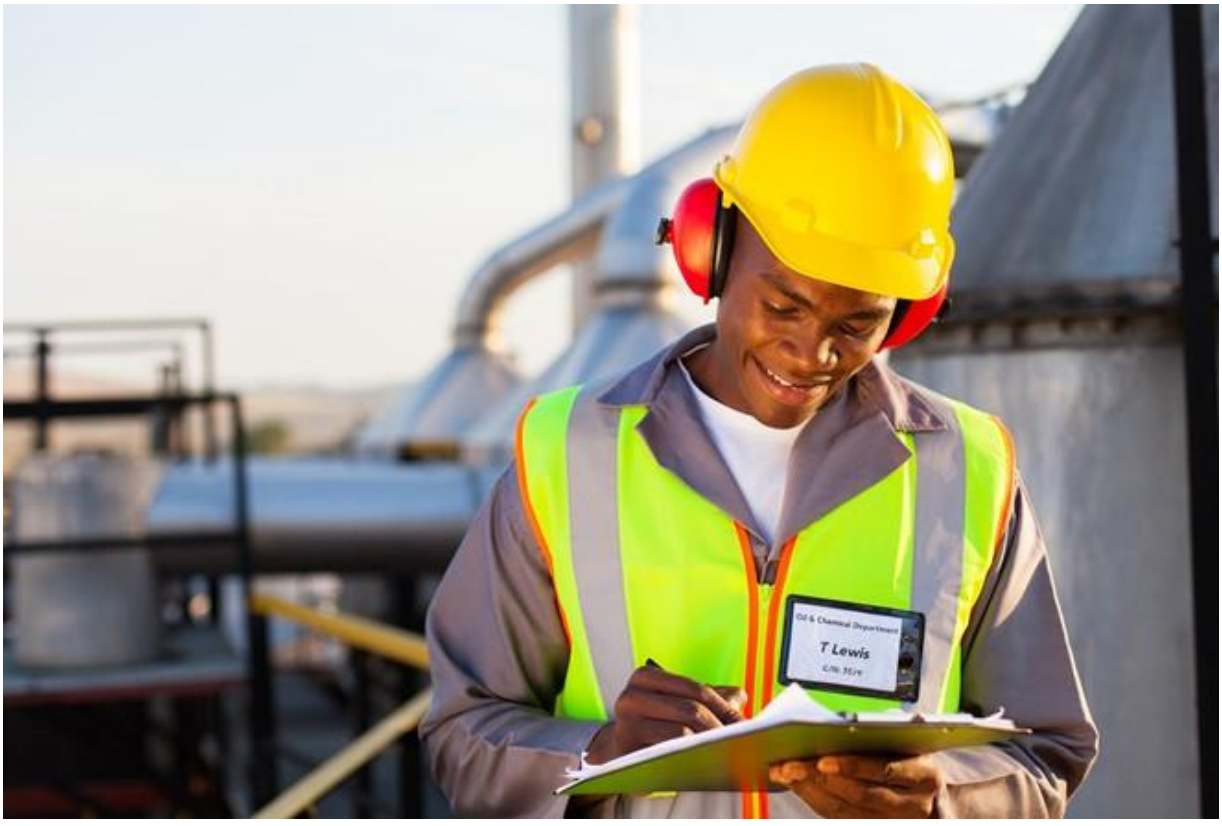
Other Incentives

Venture Capital Companies

The venture capital company tax incentive will cease on 30 June 2021.

Incentives review

- The following tax incentives will come to an end on the dates specified:
  - sections 12DA (rolling stock), 12F (airport and port assets) and 13 sept (low cost housing on loan account): 28 February 2022
  - 12O (films): 1 January 2022
- The Urban Development Zone and section 12H learnership agreement tax incentives will be extended by two years (until 31 March 2023 and 31 March 2024 respectively), until Government's effectiveness review has been completed.
- The research and development tax incentive currently expires on 1 October 2022. A discussion document on the future of the incentive will be published during 2021 for public comment.
- Industrial policy projects approved in terms of section 12I are required to meet certain compliance criteria within a specified timeframe. The COVID-19 pandemic has hindered compliance. An amendment of the time period within which assets must be brought into use, as well as the compliance period, will be considered.



Provisional Tax

Provisional tax – individuals / companies

- 1st payment: To be made within 6 months from the start of tax year.
- 2nd payment: To be made by the end of the tax year.
- 3rd payment: Voluntary payment to be made within 7 months after the tax year end (if tax year end is 28/29 February), or to be made within 6 months after year end (if tax year end falls on any other date).

A provisional taxpayer is any person who earns income by way of remuneration from an unregistered employer, or income that is not remuneration or an allowance or advance payable by the person's principal. An individual is not required to pay provisional tax if the individual does not carry on any business and the individual's taxable income:

- will not exceed the tax threshold for the tax year; or
- arising from interest, dividends, foreign dividends, rental from the letting of fixed property and remuneration from an unregistered employer will be R30 000 or less for the tax year.

Provisional tax returns showing an estimation of total taxable income for the year of assessment are required to be submitted by provisional taxpayers.

Deceased estates are not provisional taxpayers.

Provisional tax – penalties on late payment, late submission and underestimation

The following penalties may be imposed:

- A 10% penalty for the late payment of the amount of provisional tax due.
- A 20% penalty for the late submission of the provisional tax return or for the underestimation of the amount of provisional tax due (the latter applies only in respect of the second provisional tax payment).
- The 20% underestimation penalty is reduced by the amount of any late payment penalty imposed. Both of these penalties constitute percentage based penalties in terms of section 213 of the Tax Administration Act.

The 20% underestimation penalty will only be triggered in the following scenarios:

- Taxable income of less than R1 million: if the taxable income per the second provisional tax return is less than 90% of the taxable income upon assessment and is less than the "basic amount", i.e. the taxable income per the most recent previous assessment issued.
- Taxable income equal to or more than R1 million: if the taxable income per the second provisional tax return is less than 80% of the taxable income per the final assessment.

International Tax

Interest deductibility

A significant change to the interest limitation provisions in respect of *inter alia* cross-border loans was set out in a discussion document in February 2020, which dealt with the limitation of excessive interest deductions.
To facilitate a tax neutral position resulting from the proposed decrease in the corporate income tax rate to 27%, National Treasury is proposing to expand the scope of the current interest limitation rules.

Clarifying the controlled foreign company diversionary rules

Current diversionary rules governing the outbound sale of goods by a controlled foreign company ("CFC") provide for an exemption to the rules where similar goods are purchased by the CFC from an unconnected person to that CFC, where that purchase is made mainly within the country in which the CFC is a resident.

Certain taxpayers are circumventing these rules by merely entering into a contract of purchase and sale that implies that the purchase of goods by the CFC took place in the country of residence of the CFC, when this is not the case.

It is proposed that in order to curb this abuse, the diversionary rules in respect of the outbound sale of goods be amended.

Clarifying the interaction between provisions dealing with a CFC ceasing to be a CFC and the participation exemption

As a result of the relaxation of approval requirements for so-called "loop structures" by the South African Reserve Bank, changes were made to the Income Tax Act to reduce tax avoidance planning that may emerge as a result thereof.

An amendment was made in relation to capital gains that may be derived on the disposal of shares in a non-resident company that would not be taxed because of the participation exemption in paragraph 64B of the Eighth Schedule. This amendment has the effect that the participation exemption does not apply to the disposal of shares in a CFC to the extent that the value of the CFC's assets is derived from South African assets. However, in terms of section 9H, where a CFC ceases to be a CFC as a direct or indirect result of the disposal of all or some of the equity shares in that CFC, the capital gain or loss realised in respect of such disposal is disregarded if the participation exemption under paragraph 64B of the Eighth Schedule applies.

To address the interaction between section 9H and paragraph 64B, it is proposed that section 9H be amended so that a partial participation exemption in terms of paragraph 64B(6) of the Eighth Schedule would not affect the exclusion under section 9H(5).

Effect of the reduction in corporate tax rate on the high tax exemption threshold

As a result of the corporate tax rate reducing to 27%, the high tax exemption threshold, for purposes of the South African CFC provisions, reduces to an effective rate of 18,225%. This presents an opportunity for SA tax residents to consider whether CFCs that previously did not meet the high tax exemption threshold, would meet the reduced high tax exemption.

Base erosion, profit shifting and digital services taxation

South Africa is party to several multinational tax processes and agreements, including international negotiations to finalise a treaty on base erosion and profit shifting which aims to reduce tax avoidance by multinational companies, and ensure that national tax bases, including the South African tax base, are not eroded. South Africa has signed but has not yet ratified its participation. It should also be noted that South Africa is proposing to renegotiate some existing bilateral tax treaties with those countries that are not signatories to the multilateral agreement.

In addition, South Africa is a member of the Steering Group of the Inclusive Framework. BEPS Action 1, Pillar 1 examines the income tax challenges associated with digitalisation of the economy. In June 2019, the Group of 20 endorsed a work programme with the commitment to deliver a consensus-based solution with regards to the taxation of the digitalised economy by the end of 2020. However, due to the COVID-19 pandemic, the process has been delayed. Work continues with the aim towards developing a consensus by mid-2021. Should these efforts fail, South Africa will consider the appropriateness of a unilateral approach.

Interest limitation on connected person debt

During February 2020, National Treasury released a discussion paper with a focus on enhancing the rules regarding limiting excessive interest deductions for South African taxpayers who operate as part of multinational enterprises, in line with the Organisation for Economic Cooperation and Development's BEPS Action 4. Following the release of the discussion paper and the review of comments provided by various stakeholders, government proposes to do the following:

- expand the scope of the current interest limitation rules to include items similar to interest;
- adjust the fixed-ratio limitation for net interest expense to 30% of earnings; and
- restrict only connected-party interest, rather than total interest incurred by the taxpayer.

Enforcement of transfer pricing rules

Further, the Commissioner for the South African Revenue Service has confirmed a strict focus on transfer pricing compliance, to curb base erosion and profit shifting.

Customs and Excise

Customs and Excise rates increases

Customs and excise rate increases:

- *Specific excise duties:* With effect from 24 February 2021, specific customs and excise duties are increased. Alcoholic beverages increased by 8% (excluding traditional African beer and beer powder which remain unchanged). The rate of duty on cigarettes, cigarette tobacco, pipe tobacco and cigars increased by 8%.
- *General Fuel Levy & Road Accident Fund Levy:* The General Fuel Levy for 2021/2022 is increased by 15c/li to 385c/li and 370c/li, respectively, for petrol and diesel. The Road Accident Fund Levy will increase by 11c/li to 218c/li. These increases will take effect on 7 April 2021.
- *Heated tobacco products:* The duty on heated tobacco products will remain unchanged at a rate of 75% of the rate applicable to a pack of cigarettes.
- *Carbon tax on fuel:* For the 2021 calendar year, the carbon tax rate will increase by 5.2% to R134 per tonne of carbon dioxide equivalent. The levy for 2021 will increase by 1c to 8c/litre for petrol and 9c/litre for diesel from 7 April 2021.

Legislative amendment proposals:

- *New excise proposals:* Following public consultation, National Treasury proposes to tax electronic nicotine and non-nicotine delivery systems.
- *Bio based placed plastic bags:* Government proposes to introduce a reduced levy of 12.5c/bag for bio-based plastic bags.
- *Export taxes on scrap metal:* Government proposes that the effective date of the export tax on scrap metals be postponed to 1 August 2021.
- *Air cargo exports:* Government proposes to amend section 6(1)(hC) to allow for the consolidation of air cargo at de-grouping depots for export.
- *Accreditation:* Government seeks to amend the current accreditation system to align with the requirements of the SAFE Framework of Standards issued by the World Customs Organisation.
- *Minimum threshold for payment of refunds and underpayment of duties:* Government proposes to adjust the minimum thresholds for payment of refunds to tax payers and underpayments of customs duties by tax payers.
- *Less serious offenses:* Government proposes to include the unlawful use or possession of a customs uniform as an offence in terms of section 79(1)(e).
- *Diesel refund administration:* On 9 February 2021, government published draft legislation for the diesel refund system for public comment and will take guidance from industry-specific consultations throughout 2021.

Environmental Taxes

Carbon Tax

Carbon tax rate

In terms of section 5 of the Carbon Tax Act No. 15 of 2019 ("Carbon Tax Act"), the rate of the tax must be increased annually based on the consumer price index ("CPI") inflation rate for the preceding tax period, plus two percentage points for the first phase of the carbon tax up to December 2022.

For the 2021 calendar year, the carbon tax rate will increase by 5.2% (CPI of 3.2% plus 2%), resulting in an increase in the carbon tax rate from R127 per tonne of carbon dioxide equivalent to R134 per tonne of carbon dioxide equivalent.

Carbon budget allowance

Section 12(1) of the Carbon Tax Act permits a taxpayer to claim a carbon budget allowance of 5% if the taxpayer participates in the voluntary carbon budget system during or before the tax period. Following the extension of the carbon budget system to 31 December 2022, and to address any ambiguity, it is proposed that reference to "before the tax period" be replaced with the specific timeframe for the carbon budget (1 January 2021 to 31 December 2022).

In addition, the Department of Environment, Forestry and Fisheries ("DEFF") proposes to regulate greenhouse gas emissions under the carbon budgeting system by imposing caps on companies for a five-year period. Once legislation on carbon budgets is enacted, the carbon budget allowance of 5%, as provided in the Carbon Tax Act, will be phased out.

Offset of renewable energy premiums

In the first phase of the carbon tax, ending 31 December 2022, renewable electricity purchases can be offset against the carbon tax liability of electricity generators.

It is proposed that section 6(2)(c) of the Carbon Tax Act be amended to clarify that only entities that conduct electricity generation activities and purchase additional primary renewable energy, directly under the Renewable Energy Independent Power Procurement Programme, or from private independent power producers with a power purchase agreement, are eligible to claim the tax deduction for their renewable energy purchases. The amendment will take effect from 1 January 2021.

Fugitive emissions activities

Intergovernmental Panel on Climate Change ("IPCC") activity code 1B3 for "*other emissions from energy production*" was unintentionally excluded from section 4(2), which relates to country specific emission factors or default emissions factors prescribed by the IPCC. It is proposed that an additional category be included under the Carbon Tax Act to cover the IPCC code 1B3 activities.

Carbon capture and sequestration

The Carbon Tax Act allows taxpayers to deduct sequestered emissions (which includes carbon capture and storage in geological reservoirs and biological sequestration) from their fuel combustion-related greenhouse gas emissions for a tax period. For combustion activities where carbon capture and storage technologies are used, the net greenhouse emissions should be reported to the DEFF. To address possible double benefits for the same sequestered emissions, it is proposed that the definition of greenhouse gas emissions sequestration be amended to remove carbon capture and storage in geological reservoirs from the scope of the deduction.

In November 2020, the DEFF published a methodological guideline for quantifying greenhouse gas emissions sequestration in the forestry industry. To address concerns regarding the permanence of sequestered emissions in harvested wood products and the robustness of the available emissions calculation methodologies, it is proposed that only actual forestry plantation sequestered emissions should be eligible for the deduction under the Carbon Tax Act

Waste tyre greenhouse gas emissions

Although the Carbon Tax Act covers greenhouse gas emissions from waste incineration emissions, Schedule 1 of the Carbon Tax Act, which is aligned with the DEFF's technical guidelines, does not include a waste tyre fuel type and relevant emission factor. Therefore there is uncertainty over whether emissions due to the use of waste tyres are subject to the carbon tax. The DEFF will develop appropriate emission factors for waste tyres for possible inclusion in the 2022 Budget Review.

Amendments to reporting requirements

To ensure alignment between the activities covered under the Carbon Tax Act and the amended National Greenhouse Gas Emission Reporting Regulations, gazetted by the DEFF in September 2020, the following changes are proposed in Schedule 2 of the Carbon Tax Act, effective from 1 January 2021:

- Threshold change for activity *1A2m brick manufacturing* from 4 million to 1 million bricks/month
- Emissions from the following activities now reportable:
  - *2A4a ce*ramics, 2A4b soda ash, and 2A4d other (production capacity ≥ 50 tonnes/month)
  - 2B10 chemicals industry other (production capacity ≥ 20 tonnes/month)
  - 2C7 metal industry other (production capacity ≥ 50 tonnes/month)
  - 2G1B electrical equip*ment* (production capacity ≥ 50 kilograms/year)
- Inclusion of activity *1A2n manufacture of ceramic products by firing, in particular roofing tiles, tiles, stoneware or porcelain* (production capacity ≥ 5 tonnes/day)
- Exempted activities now reportable:
  - *3A2 manure management* (threshold: 40 000 places for poultry)
  - *3C1a biomass burning in forest lands, 3C4 direct nitrous oxide emissions from managed soils,* and *3C5 indirect nitrous oxide emissions from managed soils* (owning ≥ 100 hectares of plantation)
  - *3D1 harvest wood products* (harvest wood products produced from timber harvested from forest owner registered for reporting).

Transfer Duty and Securities Transfer Tax

Transfer Duty

Payable on transactions that are not subject to VAT (including zero-rated VAT)

Value of Property	Rates payable
R0 – R1 000 000	0% of the value
R1 000 001 – R1 375 000	3% of the value above R1 000 000
R1 375 001 – R1 925 000	R11 250 + 6% of the value above R1 375 000
R1 925 001 – R2 475 000	R44 250 + 8% of the value above R1 925 000
R2 475 001 – R11 000 000	R88 250 + 11% of the value above R2 475 000
R11 000 001 and above	R1 026 000 + 13% of the value above R11 000 000

Securities Transfer Tax (STT)

This tax is imposed at a rate of 0.25% on the transfer of listed or unlisted securities.

Estate Duty and Donations Tax

Estate Duty

Estate duty is payable on property of residents and South African property of non-residents (less allowable deductions).

Estate duty will be levied on the "dutiable value" of an estate at a rate of 20% on the first R30 million. A tax rate of 25% will be applicable where the dutiable value of an estate is above R30 million.

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

A rate of 20% will be payable on the value of property donated. Donations exceeding R30 million in value will be taxed at a rate of 25%.

The first R100 000 of property donated in each year, by a natural person, is exempt from donations tax. For taxpayers who are not natural persons, exempt donations are limited to casual gifts not exceeding a total of R10 000 per annum.

Donations between spouses, South African group companies and donations to certain public benefit organisations are exempt from donations tax.

Administrative Non-Compliance Penalties

Fixed amount penalties

Taxable income for preceding year	Monthly Penalty
Assessed Loss	R250
R0 – R250 000	R250
R250 001 – R500 000	R500
R500 001 – R1 000 000	R1 000
R1 000 001 – R5 000 000	R2 000
R5 000 001 – R10 000 000	R4 000
R10 000 001 – R50 000 000	R8 000
Above R50 000 000	R16 000
Maximum successive penalties: 36 months (SARS in possession of address) or 48 months (SARS not in possession of address)	

Administrative non-compliance is the failure to comply with an obligation imposed by or under a tax Act and which is listed in a public notice by the Commissioner. Failures attracting fixed amount penalties currently include:

- The failure by a natural person to submit an income tax return (subject to further conditions).
- The failure by a reporting financial institution to submit returns in relation to the intergovernmental agreement to implement the United States of America's Foreign Account Tax Compliance Act.
- Certain incidences of non-compliance with the Common Reporting Standard ("CRS") Regulations (e.g. failure by a reporting financial institution to submit a return as required, or to remedy the partial or non-implementation of a due diligence required under the CRS Regulations within 60 days, etc.)
- Failure by a company to submit an income tax return as required under the Income Tax Act for years of assessment ending during the 2009 and subsequent calendar years, where SARS has issued the company with a final demand and such company has failed to submit the return within 21 business days of the date of issue of the final demand.

Understatement Percentage-Based Penalties

Behaviour	Standard case	Obstructive or repeat case	Voluntary disclosure after notification of audit	Voluntary disclosure before notification of audit
Substantial understatement	10%	20%	5%	0%
Reasonable care not taken in completing return	25%	50%	15%	0%
No reasonable grounds for tax position	50%	75%	25%	0%
Impermissible avoidance arrangement	75%	100%	35%	0%
Gross negligence	100%	125%	50%	5%
Intentional tax evasion	150%	200%	75%	10%

"Understatement" means any prejudice to SARS or the *fiscus* as a result of:

- A failure to submit a return
- An omission from a return
- An incorrect statement in a return
- Failure to pay correct amount of tax if no return is required
- An impermissible avoidance arrangement

The burden of proving the facts on which SARS based the imposition of the understatement penalty, is upon SARS.

Voluntary Disclosure Programme

A general Voluntary Disclosure Programme ("VDP") is provided for in the Tax Administration Act, in terms of which taxpayers (corporate entities, individuals, etc), can approach SARS with a view to regularise their tax affairs with the prospect of remittance of certain penalties.

It was announced in the budget speech that the VDP provisions would be reviewed to ensure that the provisions align with the strategic and policy objectives of the programme.

SARS Interest Rates

Effective 1 August 2020	
Fringe benefits – interest free or low interest loans	4.5%[1] p.a.
Effective 1 November 2020	
Late or underpayments of tax	7% p.a.
Refund of overpayments of provisional and employees' tax	3% p.a.
Refund of tax on successful appeal, or where the appeal was conceded by SARS	7% p.a.
Refund of VAT after prescribed period	7% p.a.
Late payments of VAT	7% p.a.
Customs and Excise Duties	7% p.a.

[1] *Based on the current official repurchase rate plus 100 basis points.*

Budget Proposal

The following amendments are considered as part of the budget proposals:

- There will be a strong focus on consolidating wealth data for taxpayers through third-party information. This will assist in broadening the tax base, improving tax compliance and assessing the feasibility of a wealth tax.
- Changes may be made to the Advance Tax Ruling provisions once consultations in relation to the improvement of the system have been finalised.
- Where, as a result of death, ceasing to be a resident or incorporation part way through a year, a taxpayer has a year of assessment that is less than six months, the taxpayer will not be required to submit a first provisional tax return.
- The penalty provisions applicable to the late submission of the 6 monthly employees tax returns will be amended. SARS will no longer be required to wait until the returns are submitted and the amount of employees tax is known, to levy the penalty. SARS will be permitted to determine the penalty based on alternative methods, e.g. by way of estimates.
- The date from which the 3 year period for refunds of dividends tax paid in respect of dividends in specie begins, will be changed to align with the period for cash dividends. The 3 year period will commence on date of payment of the dividend, rather than the date of payment of the tax.

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