

Tax Grapevine

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Special Budget Edition ...

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On Wednesday, 11 February 2009, the South African Minister of Finance, Mr Trevor Manuel, delivered his 2009 Budget Speech. This Tax Grapevine summarises the tax highlights of this speech.

Income Tax

Individuals -

Tax rate and bracket structure

The amended income tax rates and tax brackets as announced in the Budget for the 2009/2010 period are shown in the table below.

Taxable Income (R)	Rates of Tax
0 – 132 000	18% of each R1
132 001 – 210 000	R23 760 + 25% of the amount above R132 000
210 001 – 290 000	R43 260 + 30% of the amount above R210 000
290 001 – 410 000	R67 260 + 35% of the amount above R290 000
410 001 – 525 000	R109 260 + 38% of the amount above R410 000
525 001 and above	R152 960 + 40% of the amount above R525 000

Rebates

Primary	R9 756
Secondary (age 65 years and older)	R5 400

The tax threshold is now R54 200 (2008: R46 000) for individuals below 65 years of age, and R84 200 (2008: R74 000) for individuals 65 years of age and older.

Interest and dividend exemption

The interest and foreign dividend exemption is to be increased from R19 000 to R21 000 per annum for individuals under the age of 65, and from R27 500 to R30 000 per annum for individuals aged 65 and over. The portion of the exemption applicable to foreign interest and dividends is to be increased from R3 200 to R3 500 per annum.

Medical scheme contributions

- From 1 March 2009, the tax exempt monthly medical scheme contributions will increase to R625 for the 1st two beneficiaries and R380 for each additional beneficiary.
- It is proposed that the existing medical scheme contribution deduction be replaced with a non-refundable tax credit of 30%, to be implemented in two years' time.

Travel allowances

- The "deemed business kilometre" system is to be scrapped from 2010/11.
- Taxpayers who are required to use their vehicles for business purposes will still be entitled to claim the cost of their business travel based on actual business kilometres travelled, based on an accurate log book.

Capital gains tax

- From 1 March 2009, the annual exclusion increases to R17 500.
- Individuals who sell their primary residence for a "gross value" of up to R2 million will not be liable for any CGT. Where the value of the primary residence exceeds R2 million, the R1,5 million primary residence exclusion will still apply.

Post-retirement medical contributions

- Certain employers opt to settle post-retirement medical aid contribution obligations by once-off payments. Such once-off payments to be deductible in full in the year in which the expenditure is incurred, subject to certain conditions.

Provisional tax for taxpayers 65 and older

- The threshold for individuals 65 years or older to register as provisional taxpayers is to increase from R80 000 to R120 000, provided that they are not company directors and only receive employment income, interest, rentals or dividends.

Other personal and implement tax issues

The following amendments are proposed:

- Deductions for employer contributions to RA funds made on behalf of employees to be permitted
- Simplification of legislation relating deductions by employers for learnerships
- The tax-free lump-sum retirement benefits of public sector servants who were previously denied the protection of the retrospective taxing of their pre-1998 retirement benefits will be partially restored
- Unrealised gains relating to assets of deceased persons are taxed upon death. The heirs or legatees who acquire these assets are generally not taxed. However, certain assets do not benefit from such relief resulting in additional tax. This unintended additional tax will be removed.

Businesses -

Dividends tax

- It is expected that the new tax will come into operation during the second half of 2010 once the newly renegotiated tax treaties have been ratified.
- Further legislative amendments will be introduced during 2009. These amendments will deal with foreign dividends and will cover anti-avoidance concerns.

Incentives

Carbon-reducing changes:

- South African companies are encouraged to take advantage of the Clean Development Mechanism (CDM) opportunities of the Kyoto Protocol. There has been uncertainty with regard to the tax treatment of CDM's. In this regard it is recommended that revenue derived from primary Certified Emission Reductions (CERs) (from CDM projects) be given favourable tax treatment – either as tax exempt or subject to CGT instead of normal income tax- with secondary carbon credits to be treated as trading stock (carbon abatement projects which earns "carbon credits" through the CDM process) of the Kyoto Protocol.
- Recommendations that the existing duties on motor vehicles be amended to include CO₂ emissions as an environmental criterion from 1 March 2010.

Incentives in 2009:

- Investment by companies in energy-efficient equipment to be given an additional allowance of up to 15%, subject to conditions.
- R17 billion of the budget has been set aside for industrial support, including tax incentives and industrial development and support to small enterprises.

General Provisions -

Various other legislative changes of a general nature were announced, including the following:

Treatment of collective investment scheme distributions: It is proposed that these schemes should follow a flow through principle so that if a dividend received is distributed, it is treated as a dividend distribution, and if interest received is distributed, it is treated as an interest distribution.

Permissible short term insurance reserves: Short term insurers are currently only allowed income tax deductions on reserves which are regulated by the FSB. It is proposed to extend the deduction to reserves relating to offshore short-term insurance operations, subject to conditions.

Application of leasing losses: Anomalies currently exist whereby allowances on assets (arising from finance leases) may not be set off against recoupments arising from the disposal of leased assets (only leasing income). This anomaly will be removed to ring-fence allowances on leased assets against leasing income and recoupments.

Controlled Foreign Companies ("CFC's"): Relief against the imputation of the income of a CFC may be granted if SARS provides a ruling that no erosion of the tax base occurs. In practice, this section is difficult to administer and it is proposed that the provisions be re-examined. A further proposal relates to the introduction of additional objective exemptions from imputation.

Liquidating inactive property owning companies: It is proposed that rollover relief be provided to facilitate the liquidations for a transitional period only (i.e. no CGT will be payable as a result of the liquidation).

Securities lending arrangements ("SLA's"): Certain SLA's (instruments with features of both loans and disposals) seek to be treated as a loan for the one party and as a disposal for the other party in order to generate artificial losses. The tax law will be clarified so that a SLA is either classified as a loan or as a disposal.

Company law reform: Tax legislation will be amended during 2009 and 2010 to take into account the introduction of the revised Companies Act, which becomes effective on 1 January 2010.

Oil and gas companies conducting incidental trades: Currently only domestic companies that are solely engaged in oil exploration and production (with passive income as their only other income) qualify for certain income tax incentives. The legislation will be expanded to also allow oil and gas companies that are involved in incidental trades to qualify for the income tax incentives. However, no tax deductions will be allowed for expenditure relating to oil and gas exploration outside South Africa.

Underwater telecommunication cables: Currently land based telephone lines and cables are eligible for a 5% depreciation write off over 20 years. This allowance will be extended to underwater cables.

Depreciation of improvements: The law is currently not uniform in granting the same depreciation on new and unused improvements when the underlying investment may not qualify. The law will be clarified to grant the allowance for improvements.

Pre-existing cooperatives: New legislation, which will become fully effective in 2010, will revise and expand the role of cooperatives. In light of this, the tax law will be reviewed to preserve tax benefits that existed under the prior law. Adjustments will be made accordingly.

Agricultural trusts: As indirectly controlled government parastatals, agricultural boards have for many years been tax exempt. These boards were converted into trusts pursuant to a legislative mandate that narrowed their authority, whilst the Department of Agriculture continued to retain

control over certain trustee positions, trustee rules amendments and certain cash-flows. Despite their conversion to trusts, the underlying activities should largely retain their exemption. Possible amendments may be required to achieve this objective.

Converted Section 21 companies: An entity which is incorporated as a for-profit company and subsequently converts to a Section 21 company may technically not qualify for tax relief. This anomaly will be removed.

Partial taxation of clubs: All clubs created prior to 1 April 2007 are required to apply for the partial exemption system by close of 31 March 2009. The application deadline for these clubs will be moved to 20 September 2010. Other technical anomalies will also be remedied.

Supporting PBO's: Currently some supporting PBO's cannot obtain deductible donations. The deductible donations status of supporting benefits organisations will thus be considered to the extent that tax avoidance does not arise.

Film rebate subsidies: Tax exemptions granted to film producers to be extended so that the rebates can be transferred to the investor-owner. The current film scheme anti-avoidance rules may need expansion as a result of a new set of film schemes currently in the market.

Judicial decisions in respect of trading stock: In a recent decision the Tax Court held that mining stockpiles could not be considered to be trading stock. Indications are that this decision will be appealed. However, it would seem that legislation will be introduced to prevent other taxpayers engaged in mining to rely on this decision whilst the appeal is under way.

Judicial decisions in respect of restraint of trade: The Supreme Court of Appeal overturned a decision by the Tax Court that multiple restraints of trade paid by a company to the same individual were in the nature of a salary substitute making it taxable in the hands of the individual after the first payment. Legislative intervention may be required to improve the amendment passed in 2000 which stated that restraints of trade are fully taxable.

Other taxes

Estate duty

- The R3.5 million estate duty deduction permitted for each spouse will now be portable, in that a surviving spouse estate's will be permitted to utilise the unused deduction of the deceased spouse. The combined deduction will be R7 million.
- The 5 year rule which allows SARS to raise an additional assessment will be reconsidered to counter the problem of enforcement once the executor has closed the estate.
- 1 year usufructuary interest schemes will be closed.

Value-Added Tax

The following amendments have been proposed to the VAT Act:

- The minimum threshold for businesses registering for VAT will increase from the current R20 000 annual taxable supply turnover to R50 000 effective from 1 March 2010
- False statements on any VAT form submitted to SARS (not just returns) will be considered an offence in order to serve as a deterrent for those not eligible to register for VAT
- Provisions will be introduced to permit the use of biometric measures to verify the identity of applicants for VAT registration
- Clarification will be provided by way of interpretation note on the reorganisation relief provisions introduced into the VAT Act
- It is proposed that the application of the grounds on which SARS may fully or partially waive interest due on late payments (namely whether there is a loss to the state or whether there is no financial benefit for the taxpayer) be clarified
- In respect of the transfer of shares in share block schemes it is proposed that the law is streamlined so that at least one indirect tax (Transfer Duty or VAT) will be applicable to each transfer

Customs and excise duties

The following changes have been announced to the current Customs and Excise legislation.

Specific Excise Duties ("Sin Taxes")

- The excise duty on malt beer increases by 9.5% from R42.38 to R46.41 per litre of absolute alcohol, which equates to an average tax of 79c per 340ml can
- No changes have been announced to the excise duty on traditional African beer and traditional African beer powder
- Increases have been announced in excise duties on wine of 7.6% unfortified, 9.4% fortified and 9.4% in respect of sparkling wine. This has resulted in the rates per litre on these products equalling R1.98 per litre unfortified, R3.72 per litre fortified and R6.16 per litre sparkling.
- Ciders and alcoholic fruit beverages received an increase in excise duty of 9.9% on unfortified and fortified.
- Spirits and liqueurs also increase by 14.7% from R21.84 to R 25.05 per 750ml bottle.
- Smokers will also face increased prices as a result of increases in the excise duties - 12.9% on cigarettes, 5.5% on cigarette tobacco, 8.6% on pipe tobacco and 13% on cigars.

These duty amendments to the specific excise duties above are effective from 11 February 2009.

Plastic bag levy

The levy on plastic bags, introduced in 2004/5 at 3c per bag, has been increased to 4c per bag with effect from 1 April 2009.

Fuel taxes

- The fuel levy is increased by 23c and 24c per litre for petrol and diesel respectively. The diesel fuel levy refund relief for the primary sector remains unchanged in percentage terms and its monetary value will be adjusted.
- The Road Accident Fund ("RAF") levy is increased on both petrol and diesel by 17.5c per litre from 46.5c to 64.0c per litre.

The above proposals become effective from 1 April 2009.

Ad Valorem excise duties on motor vehicles

- The existing "luxury" *ad valorem* excise duties on the sale of new motor vehicles will be reduced while an additional *ad valorem* excise duty will be introduced to take into account carbon dioxide (CO₂) emissions (referred to as an "emission" tax). The new rate structure will become effective from 1 March 2010.

General Customs and Excise Amendments

- **Customs dispute resolution:** Amendments to align remission and mitigation provisions within customs dispute resolution to ensure that a single procedure is to be followed will be considered.
- **Warehouse policies and procedures:** Amendments will be considered to provide for simplified clearance of goods from licensed warehouses to assist with the administration of ship stores.
- **Advance passenger Information ("API"):** Following the enactment of the empowering provisions for the compulsory electronic furnishing of API to SARS, consequential amendments may be necessary subsequent to implementation.
- **Customs transit procedures:** Amendments will be considered for improved provision for interruptions to goods in transit.
- **Customs enforcement at the border:** As additional support for the Customs Border Control Unit, the Customs and Excise Act will be amended to provide for powers of officers to patrol and carry out surveillance, to question and search persons, and for equipment and facilities to be used in detecting illicit goods concealed on persons.
- **Treatment of duty free VAT exempt goods:** The Customs and Excise Act is to be amended to provide for the clearance of duty free goods which are VAT exempt.
- **2010 FIFA World Cup:** Amendments relating to the FIFA World Cup rebate item (including the 2009 Confederations Cup) will be considered as required.
- **Customs modernisation:** In support of the rapidly changing trade environment, improved use of technology and third-party information to authenticate data and reduce the need for supporting documentation, work is continuing in relation to the modernisation of key customs measures.

Mineral and petroleum royalties

The implementation date of the Mineral and Petroleum Resource Royalty Act will be changed from 1 May 2009 to 1 March 2010 resulting in a saving of R1.8 billion for mining companies.

Taxation of incandescent light bulbs

In order to encourage the use of energy-saving light bulbs, an environmental levy of R3 per bulb will be imposed on incandescent light bulbs.

International air passenger departure tax

From 1 October 2009 the international air passenger departure tax will increase from R120 to R150 on flights to international destinations and from R60 to R80 on flights to Southern African Customs Union member states.

Additional proposed amendments

Various other miscellaneous amendments to the Income Tax Act are proposed, including amendments in respect of the following:

Technical corrections

Various technical amendments will be made to legislation to address non-revenue impact items such as typing and grammatical errors, differences between two texts of the legislation and obsolete provisions. According to the Budget Review, such technical corrections may also be made to legislation which is clearly not in line with the legislative intent. These corrections include:

- Specific inclusion of rates and thresholds such as the rates for the turnover tax for micro businesses
- Refinements to legislation dealing with the taxation of retirement fund withdrawals in the case of divorce
- Technical changes stemming from the Mineral and Petroleum Resource Royalty Act and the Diamond Export Levy Act dealing with unanticipated circumstances and administration.

Tax administration

Dispute settlement procedures: to be clarified to ensure settlement procedures are limited to post assessment.

Payment of interest on allowance of an objection: Proposed amendments to the Income Tax Act and VAT Act in relation to this matter include:

- Clarification that payment is not suspended due to an objection
- Formalisation of circumstances where payment will be required despite an objection
- Provision for the payment of interest by SARS on refunded overpayments following successful objections

Interest on delayed payment by employers of PAYE: Currently, if an employer fails to withhold and pay over employees' tax, SARS can enforce payment of the amount as a penalty. This prevents SARS from charging interest for the late payment. Interest will now be levied.

Rounding: The rounding off of employees' tax, provisional tax, foreign tax credits and tax is proposed to simplify the income tax return process.

Other measures under review

Income Tax Act rewrite

It is proposed that employment income tax base be simplified by introducing a uniform definition of employment income which will be utilised for all taxes. The first step to the modernisation is to rewrite the Income Tax Act. A draft for discussion is hoped to be released by the end of 2010.

Provident funds, social security and retirement reforms

The possibility of phasing out provident funds into pension funds as a prelude to broader social security reforms will be considered.

Tax administration modernisation agenda

To further reforms of personal income tax collection and lay the ground for a future social security tax the following changes will be made:

- To allow for employees' tax reconciliations more than once a year, and to provide for reconciliations for SDL and UIF contributions
- Reinstatement of an obligation on employers to obtain and maintain certain employee data and report as required
- Permitting SARS to provide employees' tax reference numbers and other non-financial data to employers
- Requiring other third party data providers to include taxpayer reference numbers with the information they provide
- Alignment of estimated assessments, interest and additional tax provisions across personal income tax, SDL and UIF contributions

It is proposed that key customs modernisation measures introduced in 2008 will be supported by the following further measures:

- Moving to a single taxpayer account across different tax types
- Using of a single interest rate on underpayments and overpayments
- Charging compound interest instead of simple interest
- A revised payment allocation rule that generally sets payments off against the oldest outstanding debt

SARS will also be assessing the potential for a single taxpayer registration process across multiple taxes and automatic registration of employees to improve service and efficiency.

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