WERKSMANS ATTORNEYS

TAX

2021/2022 Budget Proposals – Tax Overview

24 February 2021 *20 min read*

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INTRODUCTION

This was a Budget focused on big spending announcements and was heavily influenced by the need to shield citizens, businesses and the economy in general from the worst effects of the COVID-19 pandemic. This is evidenced by a R10 billion allocation for the purchase and delivery of COVID-19 vaccines over the next two years. In these circumstances, it is perhaps not surprising that the main tax rate increases take the form of an 8% increase in the excise duties on alcohol and tobacco products and a 27 cents per litre increase on fuel levies.

The tax collections for 2021 are anticipated to amount to R1.21 trillion, some R213 billion less than the expectations set out in 2020 Budget. This is the largest tax shortfall on record and was expected given the stringent lockdown and overall impact of COVID-19 on the economy. Despite the record tax shortfall, the Minister has been extremely bullish in estimating that tax revenue of R1.37 trillion will be collected in 2022 financial year, being 25.3% of GDP in 2021/22. At the same time, non-interest spending will remain steady at approximately R1.56 trillion over the next three years but will decline as a share of GDP from 29.2% in 2021/22 to 26.2% of GDP in 2023/24. This estimate is caveated by the assumption South Africa will rebound to a growth of 3.3% relative to the estimated global economic growth of 5.5%.

As with the last three Budgets, a major contributor to the increase in tax revenue is anticipated to come from a more efficient SARS. The efficiency is anticipated to be bolstered by expanding specialised audit and investigative skills in the tax and customs areas with a renewed focus on the abuse of transfer pricing, tax base erosion and tax crime. It is also envisaged that a new centre focused on wealthy individuals who have complex tax arrangements is to be formed with a renewed focus on illicit and criminal activity, including non-compliance of religious public-benefit organisations. The Budget has proposed an additional spending allocation to SARS of R3 billion over the medium term to assist with these efforts.

Some of the more significant developments of the day are a lowering of the corporate tax rate from 28% to 27% with effect from 1 April 2022. A lowering of the corporate tax rate is in line with a global decline in corporate tax rates, albeit that this was caveated by the comment that the reduction will be made alongside a limitation on interest deductions and assessed losses which was initially announced in the 2020 Budget, as well as the phasing out of a number of tax incentives, as contained in last year's tax amendments. (But even at 27% our rate is still high in relation to our main trading partners.) The Budget provides for an above inflation adjustment across all brackets of 5%, which is anticipated to lead to a reduction in tax revenue of R2.2 billion.

In various reports published over the course of the last few years anecdotal evidence suggest that the number of taxpayers earning in excess of R5 million annually has shrunk from approximately 7500 taxpayers in 2015 to approximately 1000 taxpayers in 2020. This reduction can be attributed to a stark increase in emigration. This has had a significant impact on revenue collection in middle to high earning brackets, given that personal tax contributes to 40% of total tax revenue. It is no surprise therefore that a further increase to the highest marginal tax rate was stated to have no compelling case. Any further increases would certainly result in further emigration, higher non-compliance, would make South Africa unattractive for foreign investment, and would have a negative impact on the ratings agencies.

Despite the above, the lingering threat of a "wealth tax" as proposed by the Davis Tax Committee is unlikely to halt the loss to the tax base through the emigration of high-net worth individuals. The feasibility of the "wealth tax" very much remains on the agenda as it will be assessed through the collection of data on taxpayer wealth.

In addition to the tax changes, the Budget documentation sets out a significant number of proposed amendments to the various fiscal Acts. Many of these are either of a highly technical or esoteric nature, and therefore the overview reports on those believed to be of more widespread interest to

individuals and companies. For tax changes announced at this Budget, draft legislation and responses to consultations is normally published in July 2021. The legislation will then be introduced in various amendment Bills towards the end of 2021.

Most of the amendments proposed below are to the Income Tax Act, 1962 (the Act).

INDIVIDUALS

Personal income tax and CGT

As was the case in 2020, individuals earning more than R1.5 million of taxable income per year will be taxed at 45%, with the top effective rate of CGT remaining at 18%. The first R40 000 of exempt capital gains also remains unchanged.

However, the personal income tax brackets and the primary, secondary and tertiary rebates will be increased by 5%, which is above expected inflation of 4%.

Long-service awards

The exclusion that allows employers to grant employees a long-service award in a form of an asset, the value of which does not exceed R5 000 (as opposed to cash) without it constituting a taxable fringe benefit, will be reviewed.

Transfer of assets to trust without donations tax

Anti-abuse measures will be introduced to curb the transfer of a right to assets to a trust before any value attaches to the right, thereby avoiding both the inclusion of the asset in gross income and donations tax on the value of the donation of the asset to the trust. The focus of this amendment appears to be in the context of taxpayers who receive a right to an asset in exchange for rendering services.

Retirement reforms

Flexible choice of annuities

When a member of a retirement fund retires, he or she may opt to receive an annuity, which the retirement fund can provide either by paying it directly to the member or by purchasing it from an insurer in the name of the retirement fund or in the name of the retiring member. The full value of the member's retirement interest following commutation must be used to provide the annuity in one of these two ways. A member cannot, therefore, use his or her retirement interest to acquire various annuities. In order to increase flexibility for a retiring member and maximise the retirement capital available to provide for an annuity, the amount of retirement interest that may be used to acquire annuities will be expanded.

Cessation of residence

When an individual ceases to be a South African tax resident (e.g. on emigration), he or she will be deemed to have withdrawn from his or her retirement fund on the day before he or she ceases to be tax resident, thus triggering retirement withdrawal tax. If the individual leaves his or her investment in a South African retirement fund and only withdraws it on retirement from employment or death, the payment of the retirement withdrawal tax (and associated interest) will be deferred until payments are actually received from the fund or as a result of retirement. At this point, the tax payable will be calculated according to the prevailing lump sum tables or in the form of an annuity, with a tax credit being provided for the deemed retirement withdrawal tax calculated at the time of cessation of tax residence.

Most double tax agreements grant taxing rights over retirement income to the country of residence, so this amendment may result in an individual being taxed both in South Africa and in his or her new country of residence. (Last year the law changed so that, with effect from 1 March 2021, an emigrant may only access retirement fund savings after he or she has been non-resident for at least three years. Given this proposal to tax immediately, one wonders why it is still necessary to wait for the three years.)

Transfer

A member of a pension, provident or retirement annuity fund, who has chosen to retire early, will be able to transfer to a similar or more restrictive fund on a tax-free basis.

Employment Tax Incentive (ETI)

The ETI is aimed at encouraging employers to hire young work seekers. It reduces an employer's cost of hiring work seekers between the age of 18 and 29 through a cost-sharing arrangement with government by allowing the employer to reduce its monthly employees' tax liability by an amount of up to R1000 per qualifying employee, while leaving the qualifying employee's wage unaffected. Schemes involving recruitment agencies, training colleges and 'ghost employees' have been devised and marketed, which allow employers to meet the legal requirements for the ETI, but which do not create a genuine employment relationship between the employer and the employee. This is achievable, in part, due to the broad and loose definition of 'employee' in the ETI legislation. In an effort to ensure that the ETI achieves its intended purpose of stimulating 'real' jobs, the definition of 'employee' in

the ETI legislation, will be changed with effect from 1 March 2021 to specify that work must be performed in terms of an employment contract that adheres to record-keeping provisions in accordance with the Basic Conditions of Employment Act, 1997.

Venture Capital Companies

Venture Capital Company (VCC) legislation (section 12J of the Act) was enacted to encourage investment into small and medium enterprises by providing a tax deduction to an investor who subscribes for shares in the VCC. Since its introduction in 2009, section 12J has been subject to a 12-year sunset clause, i.e. the deduction is only available until 30 June 2021. This sunset clause currently remains in place and will not be extended.

CORPORATE TAX

Corporate tax rate

The corporate tax rate is to be reduced to 27% for companies with years of assessment commencing on or after 1 April 2022. The 1 April 2022 commencement date will ostensibly allow for the tax base to be broadened by minimising tax incentives, and introducing interest deduction and assessed loss limitations, which formed part of the main proposals in the 2020 Budget but which were deferred until 2021 because of COVID-19.

In respect of the latter, taxpayers forming part of a multinational group will be prevented from deducting interest expenses in excess of 30% of their "adjusted taxable income" or so-called "tax EBITDA". Furthermore, corporate taxpayers will only be allowed to claim assessed losses against 80% of their current year's taxable income. The extent of corporate assessed losses are only expected to have increased since the last Budget due to COVID-19 and the effect of the lockdown restrictions on businesses.

Corporate roll-over provisions

The purpose of the corporate roll-over provisions of the Act is to provide relief in respect of transactions within groups of companies and between shareholders and their companies, where the group or the shareholder retains a substantial interest in the assets being transferred. The policy rationale surrounding the corporate roll-over provisions is to permit the tax-neutral transfer of assets in such circumstances, in order to allow the assets to be transferred to the entity in which they can be employed in the most efficient manner.

For instance, section 45 of the Act provides for the tax neutral transfer of assets between companies that form part of the same group of companies by way of intra-group transactions. Often this involves a sale of an asset on loan account.

The intra-group rules contain a so-called "de-grouping" charge, which unwinds the tax neutral treatment of an intra-group transaction in the hands of the transferee. This de-grouping charge is imposed if the de-grouping occurs (i.e. either the transferor or the transferee exits the group) within six years of the intra-group transaction. In the case of such a de-grouping, the transferee triggers a deemed capital gain and/or recoupment of depreciation.

The penal effect of a de-grouping does not stop here because, in addition, if the consideration for disposing of the asset is a loan owing by the purchaser, such loan has a nil base cost even where a de-grouping occurs after six years. Thus, any repayment triggers a gain subject to CGT, but the gain is disregarded as long as the debtor and creditor are still part of the group.

If the loan is repaid after a de-grouping, a gain also arises for the creditor company being repaid. Accordingly, in a de-grouping scenario, economically speaking, both companies are subject to tax on the same asset. While certain changes were introduced into the Act last year to remove the anomalies referred to above, a number of practical issues and anomalies remain. These issues and anomalies, mainly the ongoing zero base cost of the loans and those in relation to asset-for-share transactions, intra-group transactions and unbundling transactions, will be addressed by legislative amendments.

INTERNATIONAL TAX

Save for a clarification to the controlled foreign company (CFC) rules there have been few proposed changes on the international tax front.

A CFC is a foreign company in which South African residents collectively, hold more than 50% of the participation rights. The CFC rules provide for the taxable income of the CFC to be calculated as if the CFC was a South African tax resident and to be attributed to and taxed in the hands of the resident shareholders.

In terms of the CFC rules amounts that are attributable to a so-called foreign business establishment (FBE) are exempt from imputation. However, this exemption is subject to a number of complex provisos and exclusions to the provisos, particularly where goods are sold to South African tax resident connected parties or where goods are acquired by the CFC from South African tax resident connected parties. It has come to National Treasury's attention that taxpayers have found ways to circumvent the exclusions to the FBE exemption. Accordingly, it has been proposed by National Treasury that these rules be amended.

VAT

VAT Treatment of temporary letting of residential immovable property

Currently, the sale of residential properties by property developers is subject to VAT at the standard rate when each unit is sold. However, developers are entitled to claim the VAT incurred on development costs as input tax as and when the development costs are incurred. In comparison, the leasing of residential accommodation is exempt from VAT and, consequently, any VAT incurred on development costs in respect of units that are intended to be leased out, cannot be claimed as input tax. Complexity arises where the property developers (who had the intention to sell the units when they began developing the units) are unable to sell the units and temporarily lease them out. Despite there being no change in purpose, SARS will argue that there has been a "change in use" from a taxable to exempt purpose, and thus there is a claw-back of the VAT input tax that was claimed for the particular leased units. This adversely effects the developer's cash flow as the claw-back is disproportionate to the temporary rental income received in respect of the leased units. If the unit is subsequently sold there is no provision allowing the developer to re-claim the VAT paid back to SARS. Instead transfer duty is payable on the sale.

Although this issue was addressed in the 2010 Budget Review, to date no amendments have been made to the VAT Act. Accordingly, it has been proposed by National Treasury that the VAT Act be amended to resolve this issue.

MISCELLANEOUS

Reporting of tax deductible donations

Currently, when a PBO approved under section 18A of the Act issues a receipt to a donor for a tax deductible donation, there is no reporting to SARS by the organisation. In order to counter the issue of fraudulent receipts, and to assist in pre-populating income tax returns for individuals, the legislation will be amended to require the PBO to report the information contained in the receipt directly to SARS.

Review of advance tax ruling system and voluntary disclosure programme

Recently, tax practitioners have raised with SARS the increasing difficulties experienced by taxpayers in obtaining advance tax rulings or voluntary disclosure relief. Therefore, the proposal by National Treasury to review the advance tax ruling process and the voluntary disclosure legislation is to be welcomed.

EXCHANGE CONTROLS

In the 2020 Budget, the Minister announced a revamp of the exchange control system with a conversion to a risk-based capital flow management framework. The new system is being developed with the Financial Intelligence Centre and SARS and is expected to be 'substantively' completed this year.

TAX RATES AND THRESHOLDS

INDIVIDUALS AND SPECIAL TRUSTS

For the second year in a row relief is given at all tax brackets, with significant percentage relief in the lowest three brackets.

Personal income tax rate and bracket adjustments

2021/22		**2020/21**	
Taxable Income (R)	**Rates of tax**	**Taxable Income (R)**	**Rates of tax**
0 – 216 200	18% of taxable income	0 – 205 900	18% of taxable income
216 201 – 337 800	R38 916 + 26% of the taxable income above R216 200	205 901 – 321 600	R37 062 + 26% of the taxable income above R205 900
337 801 – 467 500	R70 532 + 31% of the taxable income above R337 800	321 601 – 445 100	R67 144 + 31% of the taxable income above R321 600
467 501 – 613 600	R110 739 + 36% of the taxable income above R467 500	445 101 – 584 200	R105 429 + 36% of the taxable income above R445 100
613 601 – 782 200	R163 335 + 39% of the taxable income above R613 600	584 201 – 744 800	R155 505 + 39% of the taxable income above R584 200
782 201 – 1 656 600	R229 089 + 41% of the taxable income above R782 200	744 801 – 1 577 300	R218 139 + 41% of the taxable income above R744 800

1 656 601 and above	R587 593 + 45% of the amount above R1 656 600	1 577 301 and above	R559 464 + 45% of the amount above R1 577 300

Rebates

	2021/22	2020/21
	R	R
Primary	15 714	14 958
Secondary (Persons 65 and older)	8 613	8 199
Tertiary (Persons 75 and older)	2 871	2 736

Tax threshold

	2021/22	2020/21
	R	R
Below age 65	87 300	83 100
Age 65 to below 75	135 150	128 650
Age 75 and older	151 100	143 850

Annual income tax payable and average tax payable comparison (taxpayers younger than 65):

Taxable Income	**2020/21 Tax**	**2021/22 Tax**	**Tax change**	**% change**	**Average tax rates**	
R	R	R	R	%	**New rates**	**Old rates**
85 000	342	–	-342	-100%	0.0%	0.4%
90 000	1 242	486	-756	-60.9%	0.5%	1.4%
100 000	3 042	2 286	-756	-24.9%	2.3%	3.0%
120 000	6 642	5 886	-756	-11.4%	4.9%	5.5%
150 000	12 042	11 286	-756	-6.3%	7.5%	8.0%
200 000	21 042	20 286	-756	-3.6%	10.1%	10.5%
250 000	33 570	31 990	-1 580	-4.7%	12.8%	13.4%
300 000	46 570	44 990	-1 580	-3.4%	15.0%	15.5%
400 000	76 490	74 100	-2 390	-3.1%	18.5%	19.1%
500 000	110 235	106 725	-3 510	-3.2%	21.3%	22.0%
750 000	205 313	200 817	-4 496	-2.2%	26.8%	27.4%
1 000 000	307 813	302 673	-5 140	-1.7%	30.3%	30.8%
1 500 000	512 813	507 673	-5 140	-1.0%	33.8%	34.2%
2 000 000	734 721	726 409	-8 312	-1.1%	36.3%	36.7%

Source: National Treasury

Tax free portion of interest

	2021/22	**2020/21**

	R	R
Under 65	23 800	23 800
Over 65	34 500	34 500

Medical tax credits

Description	2021/22	2020/21
Medical scheme fees tax credit, in respect of benefits to the taxpayer	R332	R319
Medical scheme fees tax credit, in respect of benefits to the taxpayer and one dependent	R664	R638
Medical scheme fees tax credit, in respect of benefits to each additional dependant	R224	R215

Income tax rates for trusts

Rate of Tax %	
2021/22	2020/21
45	45

Retirement fund lump sum withdrawal benefits

2021/22	
Taxable Income (R)	**Rates of tax (R)**
1 – 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 benefits or severance benefits

2021/22	
Taxable Income (R)	**Rates of tax (R)**
1 – 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

CORPORATE INCOME TAX RATES

Income tax – Companies

For the financial years ending on any date between 1 April 2021 and 31 March 2022, the following rates of tax will apply:

Type	Rate of Tax %	
	2021/22	2020/21
Companies (other than gold mining companies and long term insurers)	28	28
Personal service providers	28	28

Foreign resident companies earning income from a South African source	28	28
Dividends Tax	20	20

Note: It was announced that the rate will reduce to 27% in the 2022/23 tax year.

Tax regime for small business corporations

2021/22		2020/21	
Taxable income	**Rate**	**Taxable income**	**Rate**
1 – 87 300	0% of taxable income	1 – 83 100	0% of taxable income
87 301 – 365 000	7% of taxable income above R87 300	83 101 – 365 000	7% of taxable income above R83 100
365 001 – 550 000	R19 439 plus 21% of taxable income above R365 000	365 001 – 550 000	R19 733 plus 21% of taxable income above R550 000
550 001 and above	R58 289 + 28% of taxable income above R550 000	550 001 and above	R58 583 + 28% of taxable income above R550 000

CAPITAL GAINS TAX

Capital gains tax effective rate (%)

	2021/22	2020/21
For individuals and special trusts	18	18
Companies	22.4	22.4
Trusts	36	36

Capital gains exemptions

Description	2021/22 R	2020/21 R
Annual exclusion for individuals and special trusts	40 000	40 000
Exclusion on death	300 000	300 000
Exclusion in respect of disposal of primary residence (based on amount of capital gain or loss on disposal)		



