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2022/2023 Budget Proposals Tax Overview

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2022/2023 Budget Proposals – Tax Overview

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INTRODUCTION

Minister of Finance Enoch Godongwana delivered his maiden Budget Speech on 23 February 2022. Setting out the government's tax and spending plans for the year ahead, Godongwana said his plans were focused on "reducing fiscal deficit and stabilising debt" while spending will be prioritised on "education, health, the fight against crime and corruption, and to improve capital investment, amongst others".

The consolidated **budget deficit is projected to narrow from 5.7% of GDP in 2021/22, to 4.2% of GDP by 2024/25** with the expectation of a primary fiscal surplus, where revenue exceeds non-interest expenditure by 2023/24.

From a debt perspective, the financial position of the Country in 2021 was significantly impacted by business closures and job losses from the aftermath of the Covid-19 lockdowns in 2020 and the devastating impact of the July unrest, which is estimated to have cost the country in excess of R50 billion. Allied to this, the low economic growth and growing unemployment rates have all contributed to the soaring debt levels over the last decade which has reached R4.3 trillion and is projected to rise to R5.4 trillion over the medium-term. The costs to service this debt are more than the spending on each of health, policing or basic education.

The Minister noted that the risks to the fiscal framework are found in low global and domestic economic growth and continued requests for financial support from financially distressed state-owned companies. The latter is likely to become a hot topic in the coming years for business rescue practitioners if one takes the comments from the Minister seriously that there will be some "tough love" for failing state-owned companies. For this reason and to support the economic recovery, the focus is on reducing the fiscal deficit and stabilising debt, with Eskom seemingly front and centre.

To support businesses in distress owing to the Covid-19 pandemic, a new business bounce-back scheme will be launched, using two mechanisms which will be introduced sequentially. Firstly, small business loan guarantees of R15 billion will be facilitated through participating banks and development finance institutions. This allows access for qualifying non-bank small and medium loan providers. Government will partner with loan providers by underwriting the first 20% of losses for banks and other eligible small and medium loan providers. Secondly, by April this year, a business equity-linked loan guarantee support mechanism will be introduced.

Despite Covid-19 and the July unrest, tax collections were better than expected with estimated tax revenue for 2021/22 to be R1.55 trillion, R62 billion higher than the estimates from four months ago. It is, however, acknowledged that this has been driven by the high commodity prices in the mining sector, which is not a cornerstone upon which tax revenues can be built.

Overall, there were a few focused changes for certain sectors, but most will be pleased that there are no increases to corporation tax, income tax and VAT, with the Minister stating that "*Now is not the time to increase taxes and put the recovery at risk!*" The expression that comes to mind here is *"Don't kill the goose that lays the golden egg"*.

While the corporate tax rate is to be reduced from 28% to 27% for tax years that end on or after 31 March 2023, this change was first announced in the 2020 Budget Review. The reduced corporate rate is to be considered together with the efforts to broaden the tax base in the form of the limitation on the use of assessed losses brought forward to 80% of the current year's taxable income. The cross-border interest limitation rules (deduction capped at 30% of 'tax EBITDA') also kicks in at the same time.

In so far as individuals are concerned, inflationary relief is provided through an adjustment in the personal income tax brackets and rebates of 4.5%. Personal income tax remains the largest contributor to revenue collection making up at least 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, a decrease in South Africa's attractiveness for foreign investment, and would have a negative impact on the ratings agencies.

Thankfully, although perhaps not surprising given current record fuel prices, there is no change to the general fuel levy or the Road Accident Fund (RAF) levy. There is, however, an increase of between 4.5% to 6.5% in excise duties on alcohol and tobacco.

In summary, with there being very little scope for significant tax raising measures this was a budget focused on implementing previous proposals that will serve to broaden the tax base.

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 would normally be published in July 2022. The legislation would then be introduced towards the end of 2022.

INDIVIDUALS

Personal Income Tax and CGT

Individuals earning more than R1.731 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.

The personal income tax brackets and the primary, secondary and tertiary rebates will be increased by 4.5%.

In contrast to prior years, there is no express mention of a "wealth tax" as proposed by the Davis Tax Committee. However, all provisional taxpayers with assets at the total cost of more than R50 million will be required to declare specified assets and liabilities at market values in their 2023 tax returns. It was noted that the additional information will also help in determining the levels and structure of wealth holdings as recommended by the Davis Tax Committee. One can only surmise that 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.

Retirement reforms

Before 1 March 2021 transfers to a provident or provident preservation fund would be taxable if the transfer was made from a fund that had a mandatory annuitisation requirement. Previous amendments to the Income Tax Act (ITA) altered this position to align with the mandatory annuitisation of provident and provident preservation funds so that transfers of contributions were tax neutral. However, due to an anomaly in the ITA, transfers of contributions made before 1 March 2021 are still taxed. The ITA will be amended to remove this anomaly.

In the previous Budget it was announced that individuals ceasing to be tax resident (e.g., on emigration) would be deemed to withdraw from their retirement funds on the day before ceasing to be resident, thus triggering tax on the withdrawal. The issue this proposal was trying to address is, however, rooted in the application of double tax agreements as opposed to simply domestic law. Most double tax agreements grant taxing rights over retirement income to the country of residence. If an individual ceases to be a tax resident of South Africa and assumes residence in a country with which South Africa has such a double tax agreement before withdrawing from his or her retirement fund, South Africa may not have the right to tax the funds. If last year's proposal had gone ahead, an individual may have suffered tax twice, in South Africa the day before ceasing to be resident and again in his or her country of residence when he or she withdrew from the fund and the double tax agreement granted the country of residence the right to tax. Accordingly, Government will initiate the process of renegotiating the relevant tax treaties this year.

CORPORATES

Corporate tax rate

The corporate tax rate is to be reduced to 27% for companies with years of assessment ending on or after 31 March 2023. The reduced corporate income tax rate of 27% still exceeds the OECD average of 23%. Interestingly, it is observed that many countries with strong investment and trading ties to South Africa have significantly lower rates, which provides a strong incentive for tax avoidance.

The commencement date for the reduced corporate rate will coincide with assessed loss limitation rules in terms of which corporate taxpayers will only be allowed to claim assessed losses against 80% of their income, as well as with the cross-border interest limitation rules where the deduction

will be limited to 30% of 'tax EBITDA'.

Recoupments under the debt forgiveness rules

It is proposed that the debt forgiveness rules that apply where there is a concession or compromise of a debt that was used to fund the acquisition of an asset that was disposed of in a previous year of assessment also apply where the disposal of the asset resulted in a capital loss or scrapping allowance.

Reviewing the debtors' allowance provisions to limit the impact on lay-by agreements

The debtor's allowance in section 24 of the ITA regulates the recognition of income for tax purposes by a taxpayer which sells goods under credit agreements where ownership over the goods only passes to the purchaser after the receipt by the taxpayer of the whole or a certain portion of the amount payable under the agreement. It deems the whole amount to have accrued to the taxpayer on the date on which the agreement is entered into. If at least 25% of the amount included in the taxpayer's income only becomes due and payable on or after the expiry of not less than 12 months from the date of the agreement, the Commissioner may allow the taxpayer to deduct all amounts under such agreement which have not been received by the taxpayer at the close of its accounting period. This deduction must then be added to the taxpayer's income in the following year of assessment to ensure that the recognition of the income is matched with the actual receipt of the funds by the taxpayer.

Lay-by arrangements do not currently qualify for the debtor's allowance as they are for periods shorter than 12 months. It is proposed that this allowance be reviewed with the aim of extending it to lay-by arrangements.

Tax treatment of Collective Investment Schemes

The disposal of assets held on capital account by portfolios of Collective Investment Schemes in Securities (CIS) is not subject to CGT as a result of a specific CGT exclusion. This exclusion does not, however, extend to the disposal by a CIS of assets held on trading account and there is no other exclusion in the ITA for such disposals. It follows that profits derived by a CIS from such disposals are fully subject to income tax in their hands.

Amendments were proposed during the 2018 legislative cycle to treat the profits derived by CISs from frequent trading as being revenue in nature and, therefore, subject to income tax in their hands. The proposed amendments were ultimately not introduced as more time was needed for public consultation. It is proposed that a discussion document dealing with the taxation of amounts derived by a CIS will be published before any amendments are proposed to tax legislation.

Tax treatment of mining operations

In the 2021 amendments to the ITA, the set-off of assessed tax losses against income was restricted to the greater of R1 million or 80% of taxable income. However, this restriction potentially conflicts with the capital expenditure allowance granted for mining operations. Government proposes to amend the ITA to ensure that the assessed loss restriction is calculated before taking into account the capital expenditure allowance for mining operations.

Further, the rules limiting interest deductions on debts owed to persons who are not subject to South African income tax which were tightened in 2021 will similarly be amended to be excluded from applying to interest expenditure incurred during pre-production periods.

Tax incentives

The research and development tax incentive will be extended to 31 December 2023 while Government undertakes further public engagement regarding the future of this incentive. However, several incentives which are reaching their sunset date in 2022 will not be renewed.

Employment Tax Incentive

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 with an amount of up to R1000 per qualifying employee while leaving the qualifying employee's wage unaffected.

With effect from 1 March 2022, the current maximum employment tax incentive of R1 000 per month is increased to R1 500 per month for the first 12 months of employment and to R750 per month for the second 12 months of employment. It is also proposed to refine the incentive to target long-term unemployed work seekers, to improve the incentive for small businesses and to allow for the imposition of understatement penalties for reimbursements of the incentive that are improperly claimed.

INTERNATIONAL TAX

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

VAT

Non-resident suppliers of electronic services are required to register for VAT if the total value of their supplies to recipients in South Africa exceeds R1 million in any consecutive twelve-month period. Electronic services are defined with reference to those services prescribed by regulations.

It is proposed to review the regulations prescribing electronic services to account for further developments in the work of the Organisation for Economic Co-operation and Development / Group of 20 Base Erosion and Profit Shifting Action Measure 1 which deals with the tax challenges arising from digitalisation. It is also proposed that a once-off supply of electronic services by a non-resident to a recipient in South Africa for a consideration exceeding R1 million should not trigger a VAT registration liability for the non-resident.

MISCELLANEOUS

Customs and excise duty

Government proposes introducing an enabling framework for advanced rulings to be provided to importers. Furthermore, to resolve existing uncertainty regarding the form of invoices required for import and export goods, the Customs and Excise Act will be amended to clarify the requirements for such invoices.

Climate change response and carbon tax price path

To meet Government's commitment to the United Nations Framework Convention on Climate Change, Government proposes to increase the carbon price every year by at least US$1 to reach US$20 per ton by 2026 and US$30 per ton by 2030, and accelerating further in 2035, 2040 and up to US$120 by 2050.

Further, the basic tax-free allowances will be reduced between 2026 and 2030 and the carbon offset allowance will be increased by 5% from 2026 to encourage investments in carbon offset projects.

However, the first phase of the carbon tax is being pushed out to 2026, subject to certain adjustments to the current carbon tax regime.

EXCHANGE CONTROLS

Currently, resident individuals are required to repatriate any gifts received offshore from a resident or a non-resident (cash or assets) unless express approval is received from the Financial Surveillance Department of the South African Reserve Bank (FinSurv). Resident individuals may now receive and retain gifts from non-residents offshore. Residents may also now lend or dispose of authorised foreign assets held offshore to other South African residents, subject to local tax disclosure and compliance. Importantly, this relaxation only applies to future gifts received or foreign assets disposed of. Any previous contraventions must be regularised.

While South African individuals have in recent years been allowed to externalise an amount of R10m annually under their foreign investment allowance and invest those funds in offshore trusts, any amounts externalised in excess of this amount were previously prohibited from being invested (i.e., loaned or donated) to offshore trusts. This restriction will be lifted, and resident individuals will be allowed to invest authorised capital in excess of R10m in offshore trusts.

Resident individuals may now use their single discretionary allowance (colloquially referred to as the annual R1m travel allowance) to participate in online foreign-exchange trading activities. Debit and credit cards may not be used for this purpose.

Dual-listed domestic securities can now be exported by South African residents to a foreign share exchange provided the FinSurv is notified, and all tax and anti-money laundering rules are complied with. The value of the securities exported is limited to the annual R10m foreign investment allowance and/or the R1m single discretionary allowance.

The remaining cash balances of up to R100 000 of individuals who have ceased to be tax resident can be transferred offshore without any approval from SARS.

On the corporate front, the Foreign Direct Investment limit for investments offshore that can be approved by Authorised Dealers (i.e., without an application having to be made to FinSurv) will increase from R1bn to R5bn per annum, with excess profits allowed to be retained offshore. Further, parent companies can now transfer up to R5bn per calendar year to a domestic treasury management company that is a subsidiary of a listed company, and up to R3bn for unlisted groups. These funds can be used for new investments, expansions, and other transactions of a capital nature.

Post Script: Lastly, in terms of a circular released in January 2021, it announced that the full 'loop structure' restriction had been lifted to encourage inward investments into South Africa, subject to the normal criteria applying to inward investments into South Africa and the reporting to the FinSurv. Following the subsequent reporting of loop structures to the FinSurv, concerns have been raised by the FinSurv that the circular has been "misinterpreted" to allow for the externalisation of control over South African assets. It is widely anticipated that the contents of the circular will be narrowed and that the "misinterpretations" will be corrected. While nothing to this effect was contained in the Budget, a revised circular is still anticipated to be issued.

TAX RATES AND THRESHOLDS

Individuals and special trusts

For the third 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

2022/23		**2021/22**	
Taxable Income (R)	**Rates of tax**	**Taxable Income (R)**	**Rates of tax**
0 – 226 000	18% of taxable income	0 – 216 200	18% of taxable income
226 001 – 353 100	R40 680 + 26% of the amount above R226 000	216 201 – 337 800	R38 916 + 26% of the taxable income above R216 200
353 101 – 488 700	R73 726 + 31% of the amount above R353 100	337 801 – 467 500	R70 532 + 31% of the taxable income above R337 800
488 701 – 641 400	R115 762 + 36% of the amount above R488 700	467 501 – 613 600	R110 739 + 36% of the taxable income above R467 500
641 401 – 817 600	R170 734 + 39% of the amount above R641 400	613 601 – 782 200	R163 335 + 39% of the taxable income above R613 600
817 601 – 1 731 600	R239 452 + 41% of the amount above R817 600	782 201 – 1 656 600	R229 089 + 41% of the taxable income above R782 200
1 731 601 and above	R614 192 + 45% of the amount above R1 731 600	1 656 601 and above	R587 593 + 45% of the amount above R1 656 600

Rebates

	2022/23 R	2021/22 R
Primary	16 425	15 714
Secondary (Persons 65 and older)	9 000	8 613
Tertiary (Persons 75 and older)	2 997	2 871

Tax threshold

	2022/23 R	2021/22 R

Below age 65	91 250	87 300
Age 65 to below 75	141 250	135 150
Age 75 and older	157 900	151 100

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

Taxable Income	2021/22 Tax	2022/23 Tax	Tax change	% change	Average tax rates	
R	R	R	R	%	**Old rates**	**New rates**
85 000	–	–	–	–	–	–
90 000	486	–	-486	-100.0%	0.5%	0.0%
100 000	2 286	1 575	-711	-31.1%	2.3%	1.6%
120 000	5 886	5 175	-711	-12.1%	4.9%	4.3%
150 000	11 286	10 575	-711	-6.3%	7.5%	7.1%
200 000	20 286	19 575	-711	-3.5%	10.1%	9.8%
250 000	31 990	30 495	-1 495	-4.7%	12.8%	12.2%
300 000	44 990	43 495	-1 495	-3.3%	15.0%	14.5%
400 000	74 100	71 840	-2 260	-3.0%	18.5%	18.0%
500 000	106 725	103 405	-3 320	-3.1%	21.3%	20.7%
750 000	200 817	196 663	-4 154	-2.1%	26.8%	26.2%
1 000 000	302 673	297 811	-4 862	-1.6%	30.3%	29.8%
1 500 000	507 673	502 811	-4 862	-1.0%	33.8%	33.5%
2 000 000	726 409	718 547	-7 862	-1.1%	36.3%	35.9%

Source: National Treasury

Retirement fund lump sum withdrawal benefits

2022/23	
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

2022/23	
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

Capital gains tax effective rate (%)

	2022/23	2021/22
For individuals and special trusts	18%	18%
Companies	22.4%	22.4%
Trusts	36%	36%

Capital gains exemptions

Description	**2022/23 R**	**2021/22 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)	2 million	2 million
Maximum market value of all assets allowed within definition of small business on disposal when person over 55	10 million	10 million
Exclusion amount on disposal of small business when person over 55	1.8 million	1.8 million

Corporate income tax rates

Income tax – Companies

For the financial years ending on any date between 1 April 2022 and 30 March 2023, the following rates of tax will apply:

Type	**Rate of Tax %**	
	2022/23	2021/22
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

Tax regime for small business corporations

2022/23		**2021/22**	
Taxable income	**Rate**	**Taxable income**	**Rate**
1 – 91 250	0% of taxable income	1 – 87 300	0% of taxable income
91 251 – 365 000	7% of taxable income above R91 250	87 301 – 365 000	7% of taxable income above R87 300
365 001 – 550 000	R19 163 plus 21% of taxable income above R365 000	365 001 – 550 000	R19 439 plus 21% of taxable income above R365 000
550 001 and above	R58 013 + 28% of taxable income above R550 000	550 001 and above	R58 289 + 28% of taxable income above R550 000

Income tax rates for trusts

Rate of Tax %	
2022/23	2021/22
45	45

Tax-free portion of interest

	2022/23	2021/22
	R	R
Under 65	23 800	23 800
Over 65	34 500	34 500

Withholding tax – non-residents	Rate of tax
	%
Dividends	20%
Interest	15%
Royalties	15%
Foreign entertainers and sportspersons	15%

Transfer Duty

The transfer duty table affecting sales on or from 1 March 2020, and which applies to all types of purchasers, is as follows:



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Value of Property	Rate
R	R
0 – 1 000 000	0% of property value
1 000 001 – 1 375 000	3% of the value above 1 000 000
1 375 001 – 1 925 000	11 250 + 6% of the value above 1 375 000
1 925 001 – 2 475 000	44 250 + 8% of the value above 1 925 000