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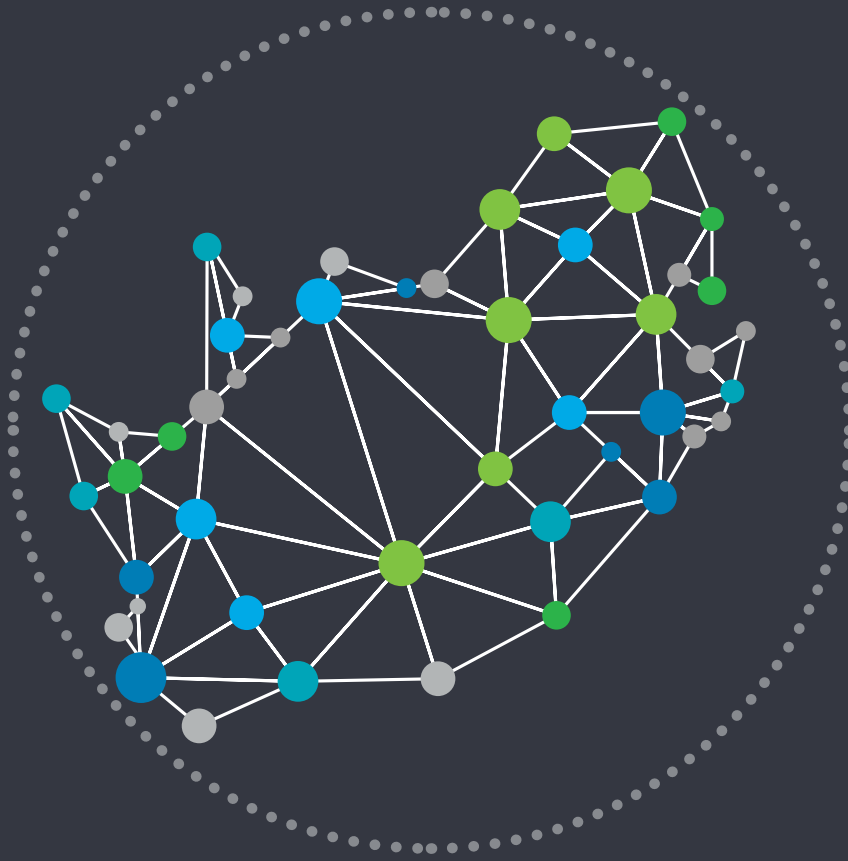


From restrictions to  
hopeful economic activity

**Deloitte commentary on  
South Africa Budget 2021/22**

**Making an impact that matters**





## Budget 2021/22

*"The damage caused by COVID-19 runs deep and we share in the collective pain of many South Africans who have lost their jobs.*

*All this notwithstanding, we are not without hope. Our national icon, the Nobel Laureate, Archbishop Emeritus Desmond Tutu reminded us that: "Hope is being able to see that there is light despite all of the darkness". He observed that sometimes we forget that just beyond the clouds the sun is shining."*

**Minister of Finance**  
Mr Tito Mboweni, 24 February 2021

# Foreword

Delia Ndlovu, Managing Director,  
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Finance Minister Tito Mboweni presented a budget which was an improvement compared to the October Medium-Term Budget Policy Statement (MTBPS), however, the fiscal crisis facing South Africa remains grave. He outlined aspects that gave him hope in these trying times, which include:

- 1) Fiscal framework that supports the economy and public health services while ensuring the sustainability of our public finances in the medium term.
- 2) Much improved economic outlook both globally and in South Africa.
- 3) Meaningful progress in the implementation of our structural economic reforms, including a R791.2 billion infrastructure investment drive.
- 4) Budget explicitly supports economic transformation and job creation.

Despite the message of hope projected by Minister Mboweni, South Africa faces

a consolidated budget deficit of 14% of GDP, with gross debt at about 80% of GDP for the 2021 fiscal year. Against this background, Minister Mboweni emphasised that the path to fiscal consolidation was difficult and would require us to be resolute and adamant. The debt trajectory is troubling and urgently needs to be addressed. Gross loan debt will increase from R3.95 trillion in the current year to R5.2 trillion in 2023/24. He said that we owe a lot of people a lot of money. The cost of servicing the debt detracts from capital investment in infrastructure. Investors are sceptical about South Africa's fiscal outlook and growth credibility.

South Africa's economy is expected to grow 3.3% in 2021 and average 1.9% in the next two years. National Treasury has developed a R6.2 trillion spending plan over the next three years to implement the Economic Reconstruction and Recovery Plan. The main drivers of the more positive outlook are better than expected household spending and increased value of commodity exports. However, the COVID-19 path remains uncertain and unknown and may remain a threat to the projected growth in the economy.

Government now expects to collect R1.21 trillion in taxes during 2020/21, R213 billion less than expected at the start of the year. While better than anticipated at mid-year (by almost R100 billion) this is nevertheless the largest tax shortfall on record. South Africa has a tax-to-GDP ratio of 24.6% in the 2021 fiscal year. Although lower than the Organisation for Economic Co-operation and Development average, South Africa's ratio is still relatively high compared with other developing countries.

There are no tax increases except for excise duties (above inflation) and fuel levies (in line with inflation). The Minister has elected to put on hold the tax measures to generate additional tax revenue of R40 billion over four years – as initially proposed in the October MTBPS. Personal income tax brackets have been adjusted by 5% – above inflation – for R2.5 billion in tax relief. Corporate income tax will be lowered to 27% for companies with years of assessment commencing on or after 1 April 2022. Further rate decreases are being considered.

It is encouraging that the Minister has chosen to bolster capacity at the South African Revenue Service (SARS) rather than increase taxes by:

- deepen technology, data and machine learning capability
- expand specialised audit and investigative skills in the tax and customs areas to renew its focus on base erosion and profit shifting and tax crime
- establish a dedicated unit to improve compliance of wealthy individuals with complex financial affairs.

To support the above, SARS has been allocated additional spending of R3 billion over the medium term.

The minister emphasised that this was not an austerity budget. However, it is essential to narrow the public finance deficit and invest in the future.

# Economic outlook:

## *Amidst improved economic outlook, long-standing challenges remain*



After many years of lethargic GDP growth and structural challenges to uplifting growth, South Africa's economy was hard-hit by the COVID-19 pandemic.

In October 2020, the MTBPS painted a dire picture of the state of the economy, as well as South Africa's public purse. This included a big contraction in GDP for 2020, rising unemployment, a sizable fiscal deficit, and a fast-expanding debt-to-GDP ratio. With limited fiscal space, taking the country out of its economic predicament via spending has not been an option.

Indeed, the 2021 Budget Review expects GDP to have contracted by -7.2% in 2020 (an improvement from the MTBPS forecast of -7.8%), with (narrow) unemployment levels reaching 30.8% in the third quarter of 2020; and an estimated 1.7 million fewer jobs the same quarter, compared to the same period in 2019. Arguably, COVID-19 has thrown

South Africa's decades-long struggle with poverty and inequality into even sharper spotlight, with poorer households severely affected by the consequences of the pandemic.

Yet, Finance Minister Tito Mboweni in the 2021 Budget Speech painted a picture of hope. Quoting Archbishop Emeritus Desmond Tutu, he noted *"Hope is being able to see that there is light despite all of the darkness"*.

And some of this light is evident in National Treasury's proposal to continue on the MTBPS 2020 outlined trajectory of supporting the country's immediate-term economic recovery from the pandemic. It also includes stabilising the fiscus through pro-growth fiscal consolidation, and implementing long-touted reforms to eliminate structural constraints to growth.

GDP growth is expected to rebound to 3.3% in 2021, from a low base; and to 2.2% and 1.6% in 2022 and 2023 respectively. However, pre-pandemic GDP levels are likely only going to be achieved after 2023. The 2021 growth rebound is supported by the vaccine rollout in South Africa, the extension of short-term relief programmes to households, and the public employment programme.

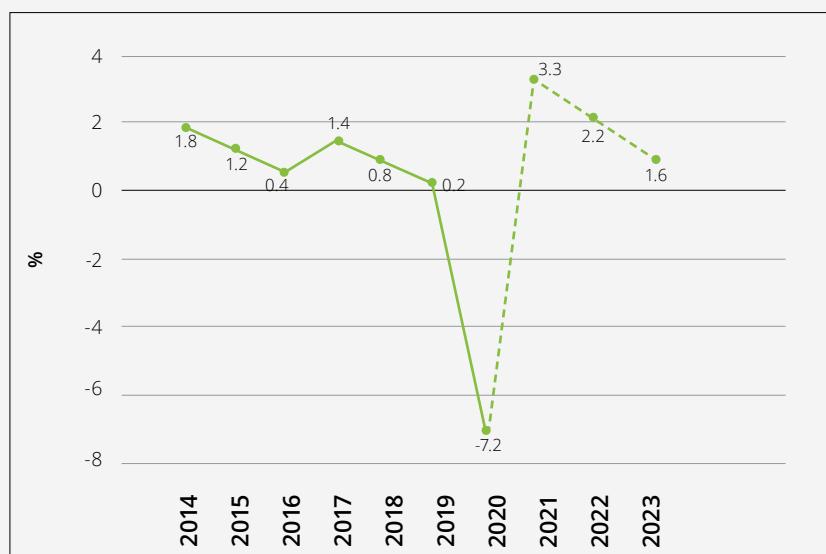
This is also bolstered by the expected rebound in global growth. Global tailwinds such as the vaccine rollout, low cost of capital, rising commodity prices, as well as normalising trade and supply chains has the International Monetary Fund forecast global growth at 5.5% in 2021, and 4.2% the year thereafter. China and India, at 8.1% and 11.5% respectively, are expected to be at the forefront of the recovery in emerging markets.

Downside risks to the growth outlook largely include new waves of COVID-19 infections, and a divergence from the proposed medium-term fiscal consolidation plan. A deterioration in public finances could trigger an additional ratings downgrade resulting in an increase in debt-service costs, and at worst a "debilitating debt spiral".

Minister Mboweni has once again stressed the importance of both expenditure and broader structural reforms, if South Africa is to achieve meaningful outcomes from government spending programmes, as well as to increase the country's potential output while achieving more inclusive economic growth.

Rebalancing the composition of expenditure remains key, as higher government spending over the past decade has not promoted growth. The budget remains focussed on social spending, including health, education and social grants. Growth in debt-service costs over the next three years, however, will continue to exceed spending growth on important functions like health.

South Africa's real GDP growth (2014-23f)



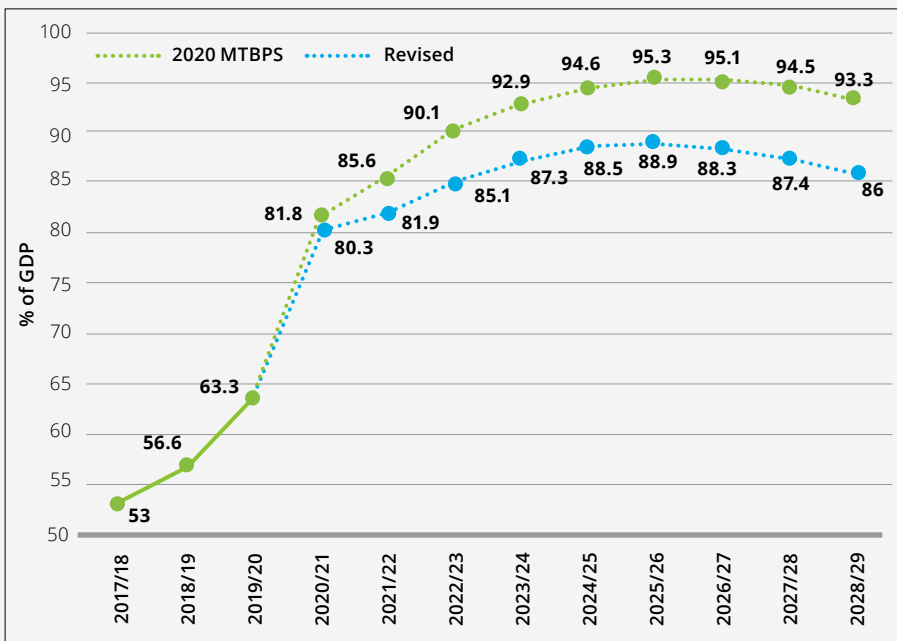
Source: Statistics South Africa, National Treasury forecast

A reduction in the growth of the public wage bill will see wage bill growth moderate to 1.2% over the medium term. Unsuccessful implementation in this reduction will place significant risk on the debt stabilisation process.

Indeed, the expenditure proposals tabled in the 2021 Budget Review put the country on course to achieve a primary surplus in 2024/25, and thus gross debt-to-GDP stabilising at 88.9% in 2025/26, down from the 95.3% estimate in the 2020 MTBPS.

A boost in infrastructure spending is another vital component of the country's economic recovery going forward. A project pipeline in network industries such as energy, water, transport and telecommunications worth R340 billion has been identified. Still, major reforms are needed to lower barriers to doing business in general, and subsequently unlock the large investment potential of the private sector. Other key structural reforms mooted include improving access to reliable electricity, enabling cost-effective digital services and supporting industries with high employment potential.

**Gross debt-to-GDP outlook (2017/18-2028/29)**



Source: National Treasury

The economic landscape remains plagued with uncertainty, with the short-term outlook highly dependent on a successful vaccine programme rollout. In the medium term, structural reforms will need to be honoured if sustainable and inclusive growth is to be achieved in the outer years. However, hope remains and, as the Minister mentioned in his closing remarks, "a prosperous future is possible for our beautiful country."

# Tax policy proposals



## Tax policy proposals

No major tax increases were proposed by the Minister in the 2021/2022 Budget Speech. The following are the major proposals:

- Personal income tax brackets and rebates are to be adjusted to give, what the Minister described as, relief in excess of inflation amounting to R 2.2 billion. Medical tax credits have also been adjusted for inflation. The Budget Review noted that South Africa has the highest personal income tax share amongst upper middle-income countries, alongside one of the highest top personal income tax rates. The conclusion reached is that further increases in personal income tax rates would put additional pressure on households and undermine the chance of a stronger economic recovery. Consequently, the conclusion is that there is no compelling case for increasing tax rates at this time. In addition, the review notes that substantial tax increases in previous years have raised less revenue than anticipated due to their impact on taxpayer behaviour and growth.
- 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 this reduction in the corporate tax rate will be done alongside the broadening of the corporate income tax base by limiting the deductibility of interest and assessed losses, which were proposals announced in the 2020 Budget. Consideration will be given to further rate decreases in the future to make our tax system competitive. Any future reductions will be done in a revenue-neutral manner leveraging off the insights of the Davis Tax Committee.
- Fuel levies will be increased by 27 cents per litre comprising 15 cents per litre for the general fuel levy, 11 cents per litre for

the Road Accident Fund and 1 cent per litre for the carbon fuel levy.

- Excise duties on alcohol and tobacco products are to be increased by 8%.
- Given the smaller revenue shortfall compared with October 2020 estimates, the previously announced tax increases of R 40 billion have been withdrawn to support the economy.

In addition, a number of other initiatives and legislative amendments have been proposed to counter perceived avoidance or deal with identified anomalies. Certain of these are dealt with below.

### Establishment of dedicated unit to deal with wealthy individuals

In order to improve the tax compliance of wealthy individuals and those who have complex financial arrangements, SARS will establish a new dedicated unit. The first group of affected taxpayers have been identified and will receive communication during April 2021. To support the establishment of this unit an additional spending allocation to SARS of R3 billion was proposed over the medium term.

### Potential wealth tax

Following the recommendations of the Davis Tax Committee, SARS will focus on consolidating wealth data for taxpayers through third-party information. It is expected that this will assist in broadening the tax base, improving tax compliance and assessing the feasibility for a wealth tax.

### Limitation of corporate tax incentives

Government intends reducing the number of tax incentives and other deductible amounts with the aim of lowering the corporate income tax rate over the medium term. It is expected that these changes will enhance efficiency, transparency and fairness in the business tax system while facilitating economic growth through improved investment and competitiveness.

In keeping with this policy position the sunset date for the venture capital company initiative will not be extended beyond 30 June 2021. This decision follows a National Treasury assessment of the program which determined that the incentive did not sufficiently achieve its objectives of developing small businesses, generating economic activity and creating jobs but rather provided a significant tax deduction to wealthy taxpayers.

A large number of other incentives have fixed "sunset dates" when the incentive in question is due to terminate. National Treasury is accepting detailed submissions from affected stakeholders who wish these incentives to remain. The submission deadline is 31 March 2021. To accommodate this review the urban development zones and learnership tax incentives will be extended for two years while the review is completed.

### Limitation of Interest deductions for corporates

At the time of the 2020 Budget a discussion document on limiting excessive interest deductions was released for public comment. After assessing the feedback provided, government proposes to expand the scope of the current interest limitation rules to include some similar interest items; to adjust the fixed ratio limitation for net interest expense to 30% of earnings; and to apply the restriction only to connected party interest rather than total interest. This last change is significant as the initial proposals drew no distinction between connected and third party debt.

### Tax regime for the upstream petroleum industry

The Budget Review notes that two large gas finds near Mossel Bay underline the potential for additional exploration, development and production of South African petroleum resources. To move towards a fairer and more certain fiscal and



regulatory regime, the National Treasury and the Department of Mineral Resources and Energy will publish a discussion paper on potential tax reforms.

### International tax

- Ratification of Multilateral Instrument - The South African government takes note of the fact that an effective tax system South Africa needs to take into account the globalised nature of trade, investment and technological change. Therefore, to reduce the possibilities of any tax base erosion and profit shifting, South Africa has committed to ratifying the multilateral instrument which requires parliamentary approval and to renegotiate existing bilateral tax treaties with countries that have not yet signed the multilateral instrument.

We note that National Treasury has seen the importance of ratifying the multilateral instrument, however, we have not seen any commitment to the final date as to when National Treasury expects to actually receive parliamentary approval to ratify their participation to the multilateral instrument. Consequently, this leaves a lot of uncertainty in practice.

- Clarifying the controlled foreign company (CFC) diversionary rules - South Africa's CFC rules contains a number of diversionary rules that serve as anti-abuse measures. The diversionary rules for CFC outbound sale of goods provides an exemption if the CFC that sells the goods also bought the goods from an unconnected person whose residence is in the same country as the CFC.

It appears some taxpayers try to make use of this exemption by entering into a contract that implies that the purchase of the goods took place in the CFC's country of residence, when it was in fact not the case.

It is not yet clear how this stated objective would be achieved as the authenticity of the sale and purchase transactions would have to be addressed. Any amendments to the Act would require careful consideration in order to address this effectively.

### The transfer of an insurance book of business between short-term insurers

Some uncertainty exists in the current tax legislation when an insurance book of business is transferred between short-term insurers, specifically regarding the transfer of liabilities, which is not specifically catered for in section 28 that deals with the taxation of short-term insurers. This could lead to inequitable tax treatments adopted between the two parties to the transaction, when the general provisions of the Act are interpreted and applied.

In the Budget Speech the Minister proposes amendments to section 28 to clarify the treatment to be followed. This clarification is welcomed.

### Refining the expense deduction formula for long-term insurer policyholder funds

Long-term insurers have to apply a specific formula, called the expense ratio, when determining what portion of indirect expenditure would be deductible in the calculation of taxable income of policyholder tax funds. In general, this ratio is based on taxable income divided by total income. A few years ago this formula was revised to include unrealised capital gains, while unrealised capital losses are disregarded. Since then uncertainty has existed in the industry on whether unrealised losses should be disregarded per individual asset, or only disregarded when the aggregate of all the assets in a tax fund is in an unrealised loss position.

The Minister announced that a change would be made to clarify that it would apply to the aggregate of all assets in a tax fund. Request for clarification in this regard has been made previously by the insurance industry, and obtaining it now as announced by the minister is welcomed.

### Additional proposed amendments affecting corporate taxpayers

Additional amendments are proposed to, inter-alia:

- clarify the definition of contributed tax capital
- limit potential for double taxation under the hybrid debt anti-avoidance rules

- clarify the meaning of "interest" under the debt relief rules
- make certain refinements to the corporate reorganisation rules
- deal with the tax implications of the proposed establishment of a deposit insurance scheme which is to be established in order to protect depositors in the event of a bank failure.

### Individuals

The following tax proposals affecting individuals, and mainly aimed at curbing perceived avoidance, were announced:

- It is proposed that the current provisions of the Income Tax Act be broadened to cover other non-cash awards granted to employees within the limits for long-service awards.
- To curb abuse by schemes involving training institutions, it is proposed that the definition of an "employee" be changed in the Employment Tax Incentive Act 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. These amendments will take effect from 1 March 2021.
- The Income Tax Act is to be amended to curb abuse by schemes that seek to circumvent the gross income and donations tax provisions through the cession of assets by an employee or independent contractor to for example, a family trust for no consideration.
- The anti-avoidance rules initially introduced in 2016 to curb the transfer of growth assets to trusts using low-interest or interest-free loans will be revised further to curb perceived continued abuse through the transfer of loans between trusts where the founder of one trust is related to one or more beneficiaries of the other trust.
- To clarify the time of disposal by an estate of the deceased to the relevant heirs, it is proposed that the legislation be changed so that the disposal by the estate occurs on the date when the liquidation and distribution account becomes final.

## Retirement

- South Africa may forfeit its taxing rights where an individual ceases to be a South African tax resident but retains his/her investment in a South African retirement fund. If that individual becomes tax resident in another country he/she may be able to avail himself/herself of relief provided in terms of the relevant tax treaty between South Africa and the other country.

To prevent such forfeiture, it is proposed that when the individual ceases to be a South African tax resident, the retirement fund interest will form part of the assets that are subject to retirement withdrawal tax. The individual will be deemed to have withdrawn from the fund on the day before he or she ceases to be a South African tax resident. If the individual does not immediately withdraw from the fund then the retirement withdrawal tax (including associated interest) will be deferred until payments are received from the retirement fund. When the individual eventually receives payment from the fund, the tax due will be calculated based on the prevailing lump sum tables or in the form of an annuity. A tax credit will be provided for the deemed retirement withdrawal tax calculated when the individual ceased to be a South African tax resident.

While the intention to avoid the erosion of the South African tax base is understood, the practical application of the deferral mechanism remains to be seen.

- Currently, a member of a retirement fund is prohibited from using their retirement interest to acquire multiple annuities. To increase flexibility for retiring members this restriction will be eased.
- It is proposed that amendments be made to allow tax-free transfers into more or similarly restrictive pension, provident or retirement annuity funds for members who are 55 years or older and have opted to retire early.
- It is proposed that certain amendments be made so that retirement funds that provide both defined contribution component retirement benefits and self-insured risk benefits can provide the fringe benefit value based on the actual contributions.

## Value-added tax (VAT)

- Taxing the digital economy - Annexure A to the 2021 Budget Review indicated that National Treasury and SARS are required to provide updates in the 2021 Budget Review on the developments in resolving the question regarding the taxing rights of countries involving income derived from digital activities. South Africa is one of the few countries that are already collecting VAT from the digital economy. It is stated that National Treasury should also collaborate with the African Tax Administration Forum on the digital tax framework. The Budget Review indicates that work continues towards developing a consensus by mid-2021. However, where these efforts fail, South Africa will consider the appropriateness of a unilateral approach.

- Measures to combat malpractice relating to gold transactions - SARS intends to introduce measures to address undue VAT refunds on gold transactions relating to exports. In the past, gold has been used in order to create fraudulent input tax deductions by non-vendors selling illegal gold to vendors. This had the effect of legitimising illegally obtained gold by selling it into the formal economy. In addition, the zero rate cannot apply where second-hand goods are acquired and subsequently exported after notional input tax has been deducted on the acquisition thereof. It is proposed that a domestic reverse charge mechanism be included in the VAT Act to deal with the malpractice.

- Zero-rating of super fine maize meal - it is proposed that super fine maize meal is included in schedule 2 part B of the VAT Act as a zero-rated basic foodstuff item. This amendment is proposed in order to align the VAT Act with the Agricultural Products Standards Act.

- Introducing VAT rules for micro-insurance - to align with the New Insurance Act (2017), which makes provision for micro-insurance, it is proposed that the VAT Act be amended to provide clarity on the VAT treatment of these services.

- VAT treatment of temporary letting of residential immovable property - the VAT Act allows property developers to claim an input VAT deduction on costs

incurred to build residential property for sale. If the developer is unable to sell the residential property and chooses to let such property temporarily until it can be sold, the developer has to account for output VAT based on the open market value of the property when it is leased for the first time. The current rate of VAT recovery for the developer is inequitable as the VAT treatment is disproportionate to the exempt rental income. Therefore, changes to the VAT Act need to be made to ensure that the property developer has a right to a fair recovery. It is proposed that the VAT Act will be amended to address this matter.

## Customs and excise duty

- The effective date of the proposed export tax on scrap metals which was aimed to replace the current price preference system, was postponed from 1 March 2021 to 1 August 2021 to allow SARS and taxpayers' systems to be ready and because the price preference system was extended to 31 July 2021 or the date on which the export tax is fully implemented at a rate that is higher than 0%, whichever date comes first.
- It is proposed that section 6(1)(hC) of the Customs and Excise Act which authorises the Commissioner to make rules prescribing the places where de-grouping depots may be established, be amended to regulate the consolidation of air cargo for export at de-grouping depots. The presents rules do not currently contemplate the mentioned consolidation.
- SARS is amending the current accreditation system to more closely reflect the requirements of the SAFE Framework of Standards issued by the World Customs Organisation. In light of these developments, it is proposed that the Customs and Excise Act be amended accordingly.
- To ease the administrative burden on SARS and taxpayers, it is proposed to increase the minimum threshold for the payment of refunds on certain imports.
- It is proposed that the unlawful use or possession of a customs uniform be included as an offence which will be liable on conviction to a fine or imprisonment.



## Carbon tax

- Carbon tax rates - the Budget announced an increase in the carbon tax rate from R127 to R134/tCO<sub>2</sub>e (effective from 1 January 2021) on taxable greenhouse gas (GHG) emissions. The increase will also reflect as an additional 1 cent per litre in the fuel levy (effective from 7 April 2021) bringing the total carbon tax related fuel levy to 8 cents per litre petrol and 9 cents per litre diesel.

- Clarification on selected issues - The proposed amendments provide much needed clarity on the following issues that have been unclear in the past:

– Renewable Energy Premium Beneficiaries (REP) – An amendment is proposed (effective from 1 January 2021) to clarify the eligibility requirements and calculation methodology required to deduct the REP from an electricity producer's carbon tax liability. The amendment proposes that only entities that generate electricity and also directly purchase additional primary renewable energy are eligible to claim the REP deduction.

– Definition of carbon capture and sequestration – The Carbon Tax Act presently allows for the deduction of sequestered emissions from fuel-combustion related emissions. These sequestered emissions have to be verified and certified by the Department of Environment, Forestry and Fisheries (DEFF). It is proposed that the definition of greenhouse gas emissions sequestration should be amended to remove carbon capture and storage in geological reservoirs from the scope of the deduction to address possible double benefits for the same sequestered emissions. It is also proposed that only actual forestry plantation sequestered emissions should be eligible for the deduction.

– Carbon budget allowance – DEFF supports South Africa's climate change commitments under the Paris agreement through the development of a carbon budget system. The Carbon Tax Act supports voluntary participation in the budget by granting

a 5% allowance to taxpayers that participate "during or before the tax period". This allowance will be phased out once legislation is enacted making participation in the budgets with potential caps mandatory. A mandatory carbon budget system is expected in 2023. It is proposed that reference to "before the tax period" be replaced with the specific timeframes, i.e. 2021 and 2022, for the carbon budget to avoid any ambiguity.

- Alignment with Department of Environment, Forestry and Fisheries
  - The Carbon Tax Act specifies which activities are subject to carbon tax and also stipulates how the taxable emissions should be determined. The National Greenhouse Gas Emissions Reporting Regulations performs a parallel function indicating which activities (and subsequent emissions) should be reported to DEFF on an annual basis. Several amendments are proposed to align carbon tax and the activities reported to DEFF, these are:
    - including "Other Emissions from Energy Production" (IPCC code 1B3)
    - developing emission factors for waste tyres for possible inclusion in the 2022 Budget Review
    - changing schedule 2 of the Act to align activities and thresholds published by DEFF.

## Tax administration

The process of rebuilding SARS continues. In this regard the Budget Review notes that SARS continues to implement the recommendations made by the Nugent Commission. Furthermore, a National Treasury discussion document proposing legislative amendments to SARS' governance will be published soon.

An additional spending allocation of R3 billion will be provided to SARS to modernise its technology infrastructure and systems, expand and improve the use of data analytics and artificial intelligence capabilities, and participate meaningfully in global tax compliance initiatives. A digitalised SARS is intended to lower cost of compliance, simplify tax administration and improve collections.

In addition the following tax administrative initiatives were noted:

- Public benefit organisations who are entitled to issue section 18A income tax certificates are currently not required to provide third-party data on the donations to SARS on a systematic basis. To ensure that only valid donations are claimed and to enhance SARS' ability to pre-populate individuals' returns, it is proposed that the information required in the receipts be extended and third-party reporting be extended in future to cover the receipts issued.
- SARS will only pay a valid refund of dividends tax if the claim is submitted within three years from the date of payment of the cash dividend. It is proposed to align the rule for dividends in specie (which links the three year period to the payment of the dividends tax), to the above rule for cash dividends.
- No withholding tax on interest applies in circumstances where a foreign person submits a declaration that he/she is, in terms of double tax agreement, exempt from the tax. As a similar declaration does not exist for withholding tax on royalties, a legislative amendment will be proposed to address this anomaly.
- Farmers are allowed to deduct the cost of livestock purchased, within a fixed period, to replace livestock sold in a previous tax year on account of drought, fire or other specified reasons, by reopening the assessment for the previous tax year. It is proposed that the period during which the assessments may be reopened and document retention requirements be aligned.
- SARS may impose a penalty for the non-submission of the six-monthly employees' tax returns by employers. As the penalty is calculated as a percentage of the employees' tax covered by the return, it can only be imposed retrospectively when the non-compliance is remedied by the employer. As this undermines the purpose and deterrent effect of the non-compliance penalty, it is proposed that SARS be enabled to raise the penalty on an alternative basis in such cases, for example, through an estimate of the employees' tax with an adjustment being

made once the actual employees' tax is known.

- It is proposed that a first provisional tax payment and return will not be required in instances when the duration of a year of assessment does not exceed six months.
- SARS has recently invited public comment on the advance tax ruling process for binding rulings to assess whether it can be improved. The Budget Review notes that legislative amendments may be required to give effect to improvements identified during the consultation process.
- The voluntary disclosure provisions will be reviewed in 2021 to ensure that they align with SARS' strategic objectives and the policy objectives of the programme. It is unclear whether this review is linked to a recent High Court decision where it was held that SARS had to consider, adjudicate and decide a request for the waiver of (VAT) interest previously paid in compliance with the terms of a voluntary disclosure agreement. SARS held the view that the request could not be considered.

### Tax research and reviews

The following discussion documents are expected

- The National Treasury and the Department of Mineral Resources and Energy will publish a discussion document on potential reforms to the tax regime for the upstream petroleum industry
- During 2021, the National Treasury and the Department of Science and Innovation will publish a discussion paper for comment on the future of the research and development tax incentive which is due to expire on 1 October 2022.

In what is expected to be a multi-year project, and starting with consultations during 2021/22, the National Treasury will review the current travel and home office allowances to investigate their efficacy, equity in application, simplicity of use, certainty for taxpayers and compatibility with environmental objectives.

The review of the diesel refund administration is still in progress. Further to comments and technical inputs received from various stakeholders, the second draft of the diesel refund notes was published on 9 February 2021 for public comment.

### Exchange control

During the 2020 budget it was announced that a modernisation of the current foreign exchange system will be phased in over the following twelve months. It was envisaged that by end February 2021 a system would be in place where all transactions will be permissible except for a risk-based list of capital flow measures which will mainly affect legal entities.

Progress appeared to have been slow as during 2020, the only change related to the lifting of the loop threshold from 40% to 100% for both companies and individuals.

The February 2021 budget reaffirmed that National Treasury and the Reserve Bank continue to work and develop a new legislative framework for the capital flow management system.

A set of Capital Flow Management Regulations will be issued during the current year and the entire system is expected to be completed by the end of 2021.

The risk-based list of capital flow measures proposed in the 2020 budget and which should be finalised during the current year will include:

- South African corporates will not be allowed to shift their primary domicile except under exceptional circumstances and as approved by the Minister
- approval conditions for corporates with a primary listing offshore will be aligned to current foreign direct investment criteria
- export of intellectual property for fair value to non-related parties will not be subject to approval.

The above list is not exhaustive.

The following has also been proposed for individuals:

- Transfers in excess of R10 million will result in a more stringent verification process by SARS. There will be no limits on individuals externalising funds provided the necessary tax clearance has been obtained.
- Natural person residents and natural person emigrants will be treated identically, and the current exchange control emigration concept will be phased out and be replaced by a SARS verification process. It is expected that this will be implemented before 1 March 2021.

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