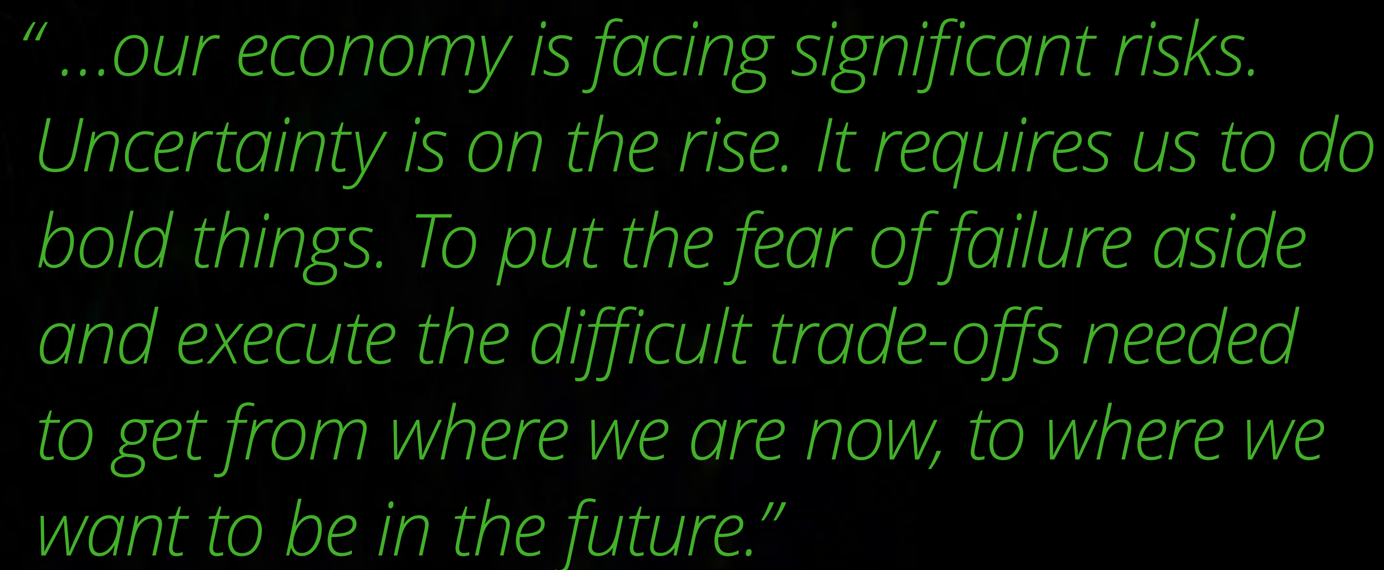
Deloitte.

Stabilising through trade-offs

Deloitte commentary on South Africa Budget 2023/24



"...our economy is facing significant risks. Uncertainty is on the rise. It requires us to do bold things. To put the fear of failure aside and execute the difficult trade-offs needed to get from where we are now, to where we want to be in the future."

Minister of Finance
Mr Enoch Godongwana, 22 February 2023

Contents

01 Foreword 4

02 Economic outlook 6

03 Tax policy proposals 10

Overview 11

Individuals 11

Corporate tax 12

Tax incentives 13

Base erosion and profit shifting: The two-pillar solution 14

Trusts 14

Value-Added Tax (VAT) 15

Customs and excise duty 15

Carbon tax 15

Minimum royalty rate for oil and gas companies 16

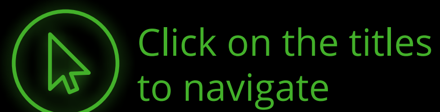
Tax administration 16

Tax research and reviews 17

04 Contacts 18

For more information, contact your nearest Deloitte tax office 19

Editorial team 19



Foreword

Foreword: *Stabilising through trade-offs*

Itireleng Kubeka
Managing Director,
Deloitte Africa Tax & Legal

Our 2023 National Budget serves as a roadmap for the country's economic, fiscal and social development. It comes at a pivotal time in our country and will determine our long-term future trajectory. The Minister of Finance focused on the energy crisis, debt relief to Eskom, transport and logistics and fiscal health. However, questions still remain on how government will practically solve the pressing socio-economic issues that face the country. Will the trade-off in this budget result in adequate long-term solutions to solve our economic situation? The Minister acknowledged the uncertain global and national circumstances we face and detailed a budget that is intended to give relative stability and relief for a constrained economy.

Real GDP growth for South Africa is expected to grow from 0.9% in 2023 to 1.8% in 2025, but notable risks to the economic outlook persist. This includes the impact of a slowing global recovery.

The Eskom Debt Relief Bill was tabled to affect a debt relief arrangement for the state-owned corporation. Debt relief to Eskom will amount to R254 billion over three tranches over the medium term. This debt relief will result in an increase in public debt, with the country's gross debt-to-GDP ratio now expected to stabilise at 73.6% only in 2025/26. Nonetheless, a primary budget surplus for 2022/23 is still expected to be achieved with the consolidated budget deficit revised downward to 4.2% of GDP in 2022/23, reaching 3.2% in 2025/26.

The Financial Action Task Force (FATF) sets global standards to combat money laundering and the financing of terrorism across national borders. FATF has made recommendations concerning the deficiencies in the South African anti-money laundering laws. Government has been working to address these concerns and a decision by FATF as to whether South Africa will be placed on the so called "grey list" is imminent. The Minister of Finance indicated that we "should be prepared for that possibility". This would have unfortunate economic and investment consequences for the country.

On the positive side, tax revenue collections for 2022/23 will exceed the 2022 Budget expectation by an estimated R93.7 billion, to total R1.7 trillion, largely due to higher collections and a more efficient and effective tax administration. Further funding will be provided to the South African Revenue Service (SARS) to bolster revenue collection capabilities in future years.

It was encouraging to see the renewable energy incentives being announced for both companies and individuals. Yet, rather than addressing the need for easily available solutions to the energy crisis for the majority of South Africans, it appears this was done to encourage the shift toward renewable energy and to move people and businesses off the grid.

From 1 March 2023:

- A rebate will be available to individuals who install rooftop solar panels of 25% of the cost of the panels, up to a maximum of R15 000 and will only be available in the 2023/24 tax year.
- Businesses will be able to claim a 125% allowance on the cost of renewables. This allowance will be available for the next two tax years.

From an individual perspective, it is noted that this rebate does not seem to include the cost of installation and other components needed for a solar system to work. From a business perspective, the proposal is an increase on the current incentive in place, resulting in an additional 6.75% after tax benefit for the taxpayer in the first year the allowance is claimable. These incentives may not be sufficient to encourage spending when consumers are already under pressure both financially and also economically. It is uncertain whether the granted assistance is sufficient to be felt by those in most need, namely, small and medium-sized businesses and individual consumers. Although this is encouraging and a step in the right direction, more needs to be done. On the positive side, it will be interesting to see how much the feed-in tariffs would be for individuals and businesses when they sell electricity back into the grid.

There are many components to the fuel price. Therefore, although the fuel levy will not be adjusted, there is still an increase in the carbon tax on fuel, which will result in slightly higher fuel prices. This does not consider the effect of the global market price of oil or of the increasing demand from faster growth in China. The relief provided to manufacturers of food stuffs on the diesel price through a refund on the Road Accident Fund levy is welcome, however, it appears to be limited to a very specific sector of manufacturing. We would have liked this relief to also apply to other critical industries such as telecommunications and retailers to assist with connectivity and supply of goods.

This budget will put pressure on the private sector to step in and work with the public sector. The collaboration between public and private sectors will be more important than ever as the current uncertainty can only be navigated through collaboration. Private business remains committed to working with government to address the major concerns plaguing the economy.

The question remains whether the trade-offs in this budget will lead to long-term solutions and stabilise our economy to achieve sustainable growth.

Economic outlook

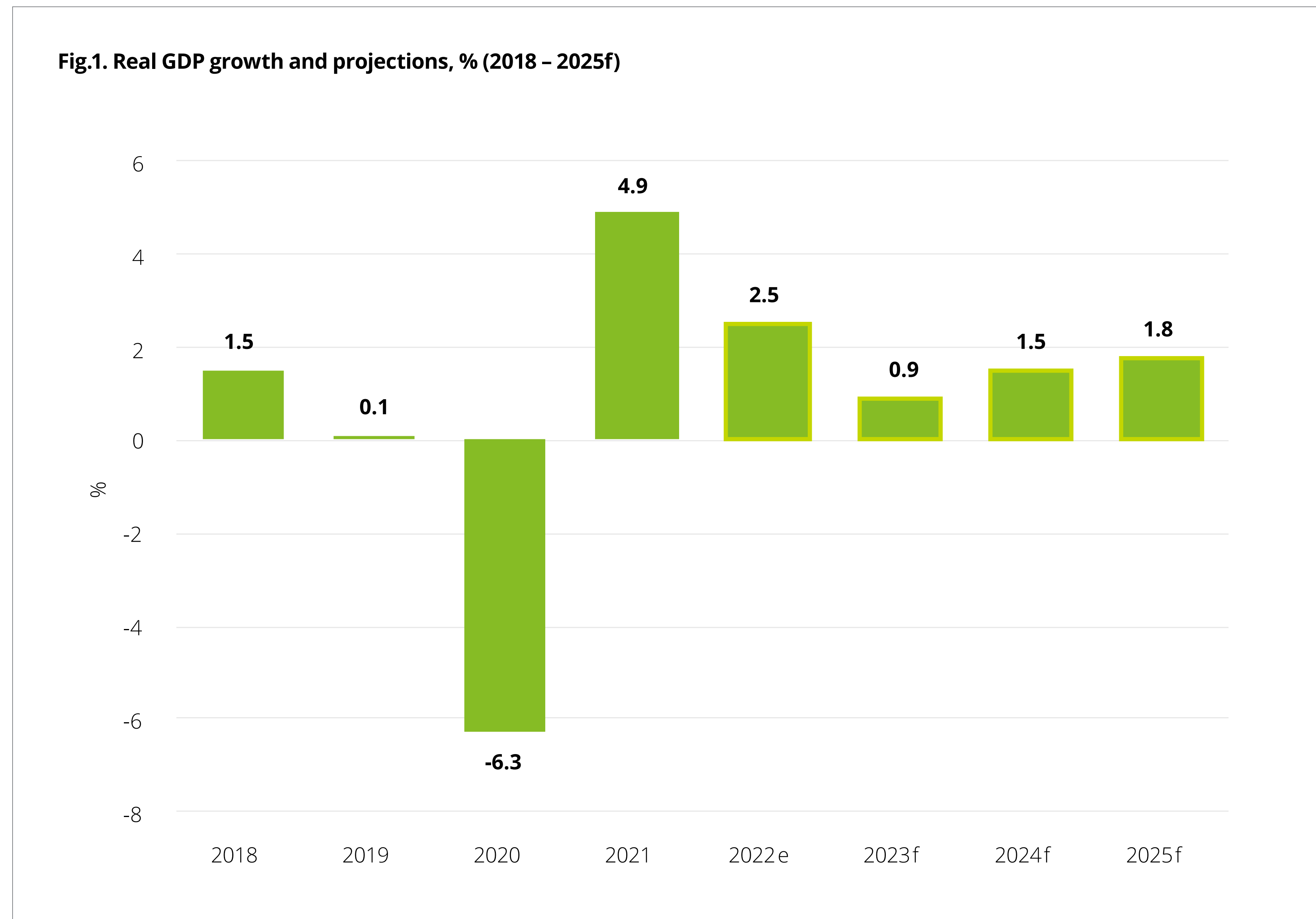
Economic outlook: *Navigating an uncertain economic outlook*

Amid the backdrop of a global economic slowdown, record-high inflation, and geopolitical risks, South Africa is navigating its own challenges. Ongoing and more severe power cuts since late-2022 are weighing down the country's potential and socio-economic progress. As noted by Finance Minister Enoch Godongwana: "Domestically, loadshedding has become more persistent and prolonged, impacting on service delivery and threatening the survival of businesses."

Shocks impacting economic activity in 2022 were plentiful and diverse, ranging from severe weather events and supply chain disruption to tighter monetary policy, rising inflation, a cost-of-living squeeze and more severe loadshedding. Despite these headwinds, National Treasury expects real GDP growth to have come in at 2.5% for 2022, upwardly revised from the 1.9% estimate of the 2022 Medium-Term Budget Policy Statement (MTBPS). The better-than-expected outcome was largely underpinned by stronger Q3 2022 growth, in the agriculture and services sectors; as well as higher commodity prices.

However, the medium-term growth outlook has deteriorated from previous forecasts. National Treasury expects real GDP growth to average 1.4% per annum over the 2023-25 period. Breaking this down further, an estimated 0.9% real GDP growth is pencilled in for 2023, increasing to 1.8% in the outer year of the forecast period. A downside scenario modelled by the Treasury sees growth slowing to only 0.2% – closer to the South African Reserve Bank's (SARB) recently lowered growth outlook of 0.3%. Under this scenario, Treasury assumes more intensive power cuts in 2023-24 together with delays in new generation capacity coming online.

While Treasury's baseline scenario for GDP growth (shown in Fig.1) provides a somewhat more optimistic outlook to the SARB's, the scenario acknowledges that a weaker global outlook, the impact of more and longer power cuts, higher inflation, higher borrowing costs, as well as a deterioration in freight and logistics could be a drag on growth in 2023.



Source: National Treasury, 2023

Addressing these risks requires meaningful progress on overcoming long-standing, structural bottlenecks to growth, the biggest being in the electricity and transport sectors. Thus, hastening the implementation of much-touted growth-enhancing reforms under *Operation Vulindlela* in these sectors will be important to ease the cost of and barriers to business, and to reverse South Africa's eroding competitiveness. The slow, yet ongoing market reforms in the energy sector to achieve security of power supply in the years to come are key to this. So too are reducing regulatory obstacles to feeding into the grid the electricity produced by independent power producers, as well as incentivising the private sector and households to support private generation (and ultimately the country's clean energy transition). Similarly, tabled reforms in freight rail will need to be accelerated – hopefully not being a case of too little, too late.

Another key area to address is investment spending. Total investment remains below pre-pandemic levels, and South Africa continues to underinvest in infrastructure even though infrastructure investment could be a key driver of economic activity, as well as "lay the foundation for more inclusive and sustainable growth" as per Minister Godongwana. The Budget makes provision for R903 billion in infrastructure investment over the medium term, largely for strategic projects in transport and logistics, as well as water and sanitation. R448 billion of this is expected to be invested by state-owned companies or through public-private partnerships, both in new infrastructure, but importantly also in maintaining rapidly deteriorating infrastructure.

The challenge though remains of how greater private sector resources are unlocked for infrastructure financing and delivery, and that infrastructure projects that are indeed committed to are delivered, in good time and within budget.

Other reforms, however, including labour market and education sector reforms, building a capable state while rooting out corruption and mismanagement will need to complement existing measures and noted reforms, while addressing crime levels, to build confidence among consumers, local businesses and the broader international investment community. Reform inertia is no longer an option. Ultimately households and businesses will need to feel that they are getting value for money from public goods and services. They need to feel the change on the ground, addressing some of the everyday challenges experienced by South Africans.

Providing an enabling environment to growth also requires fiscal discipline. In this light, the Minister noted that "government must maintain a prudent fiscal stance", and that South Africa will continue on a path of fiscal consolidation, limiting growth in consumption expenditure, while reducing the budget deficit without resorting to tax hikes, infrastructure investment cuts or impacting the social wage. Indeed, the latter continues to be a spending priority, making up 60% of non-interest expenditure over the next three years.

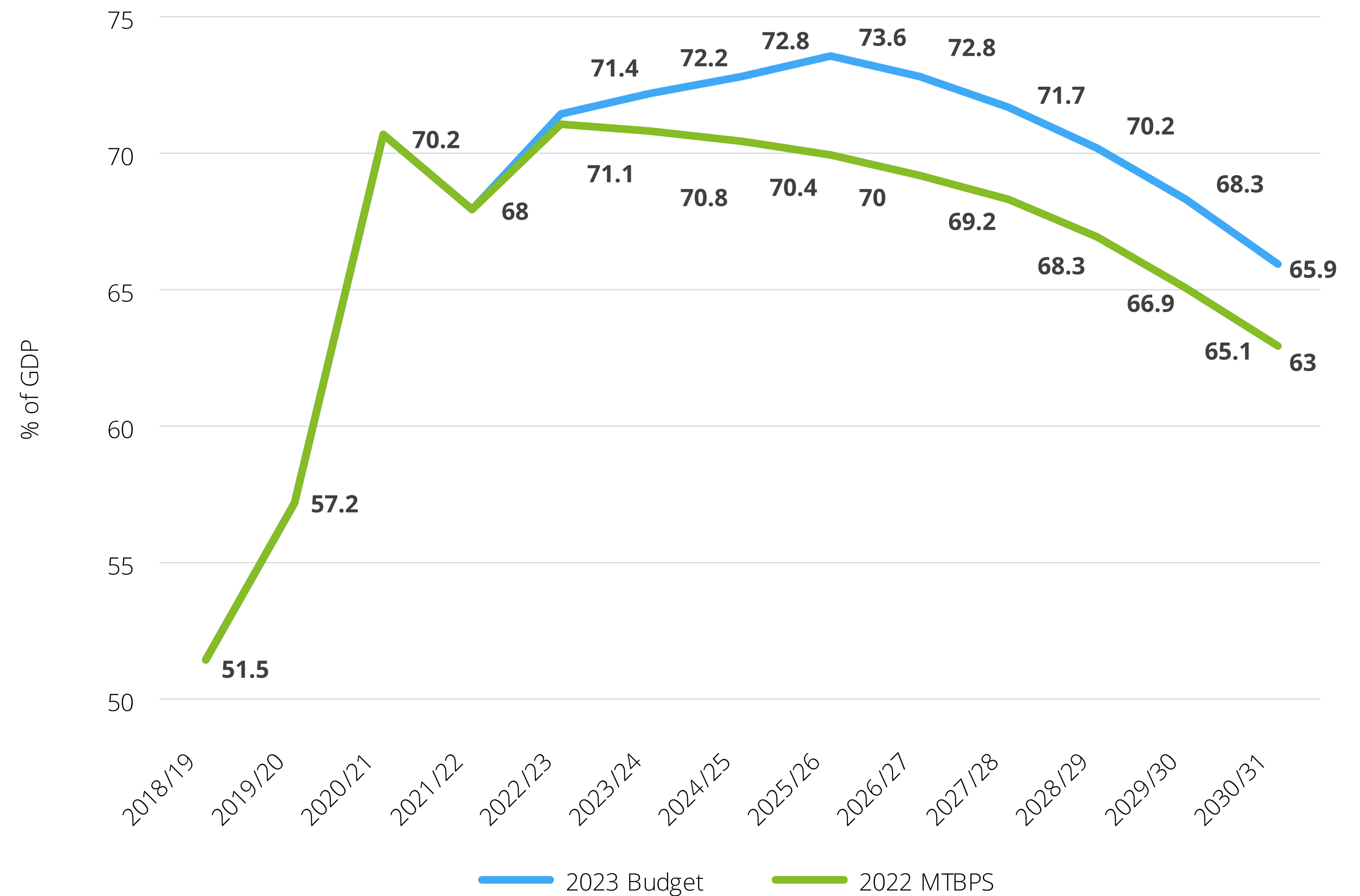
Given that tax collection exceeded the 2022 Budget expectation by an estimated R93.7 billion, to total R1.69 trillion – largely due to more efficient and effective tax administration and collection – the consolidated budget deficit is expected to decrease to 4.2% of GDP in 2022/23, 4% in 2023/24 and even 3.2% in 2025/26. This is despite an average annual increase in consolidated expenditure over the next three years of 4.5% to R2.48 trillion in 2025/26. A primary budget surplus is still expected for 2023/24 as per the most recent MTBPS.

The proposed electricity sector reforms are complemented with the anticipated Eskom debt relief arrangement – confirmed at R254 billion (or more than 50% of Eskom's debt) over three years, and in three tranches that will cover capital and interest payments as they fall due. As expected, while subject to strict conditions, this will free up resources for the power producer to unbundle, and invest in new capacity and maintenance activities.

This arrangement, however, has notable implications for the country's gross debt-to-GDP ratio given the need for increased government borrowing and thus public debt. The country's public debt position deteriorated significantly since 2019 due to spending increases during the pandemic. While revenue windfalls last year saw debt levels expected to stabilise as early as 2022/23 at 71.4% of GDP (see 2022 MTBPS), stabilising the debt-to-GDP ratio is only anticipated to occur in three years' time, at 73.6% of GDP in 2025/26. The arrangement will also see a rise in the debt-service costs – which remains among the fastest-growing expenditure items in the medium term, while continuing to crowd out other expenditure. Whichever way, the worrisome trend in South Africa's debt trajectory that took place in the decade prior to the COVID-19 pandemic, is on course to slowly reverse, with debt being reined in, under the circumstances, to more stable levels in the next seven years only.

While the measures outlined, and the short-term relief tabled for consumers and households are positive, 2023 could still see a perfect storm for South Africa if various global and domestic risks materialise. Domestically, addressing weak growth, mismanagement, maladministration and other wide-ranging (and often self-imposed) challenges swiftly will be key to take the brakes off the country's dire growth outlook.

Whichever way, structural constraints to growth will see South Africa continue to be a "1% growth economy" in the short to medium term, with such low growth – simply put – remaining unfavourable for creating jobs and reducing unemployment, and for truly addressing the issues of poverty and inequality, so desperately needed.



Source: National Treasury, 2023

Tax policy proposals

Tax policy proposals

Overview

A strong revenue collection performance in 2022/2023, with tax revenues expected to reach R1.69 trillion, was underpinned by elevated commodity prices and a continued recovery from the pandemic among manufacturing and financial firms. Enhanced tax administration and tax compliance has also contributed to additional revenue collection.

Government has largely stuck to the intentions stated in the prior year, which is to avoid tax rate increases, to the extent possible, noting that tax increases can impede economic activity and that the negative impact is more pronounced when growth is weak.

The 2023 Budget provides R13 billion in tax relief. Of this amount, R9 billion is attributable to the newly proposed incentives aimed at encouraging households and businesses to invest in renewable energy. Further relief is provided through inflationary adjustments to personal income tax brackets and by not increasing the general fuel levy.

An injection into the budget of SARS has been proposed. In addition to a direct allocation for capital and Information and Communications Technology (ICT) projects, provisional allocations have been set aside to improve revenue raising capabilities of SARS. In practice, SARS' increased capacity in areas such as transfer pricing is noticeable from some of the additional assessments that we see being issued as well as the court cases that are being successfully challenged at the Supreme Court of Appeal. In addition, we expect to see SARS continue along the path of digitisation and automation of certain processes and information gathering.

Individuals

- In 2022, the Income Tax Act (ITA) was amended to ensure that the interest exemption and the CGT annual exclusion is apportioned in instances where an individual ceases to be a resident during the tax year. To ensure alignment, it is proposed that the tax-free investment contribution limitation and the limit on the deduction of the retirement funds contributions, also be apportioned when an individual ceases to be a resident during the tax year.
- An employer contribution to a retirement fund is deemed to be an employee contribution. However, there is currently no requirement that the calculated cash equivalent of such employer contributions be included in the employee's income (as is the case in sections 6A and 6B of the ITA). To address this, it is proposed that the provision be amended to require such inclusion before a tax deduction is allowed.
- Amendments are to be introduced to clarify anti-avoidance rules aimed at curbing the tax-free transfer of wealth to trusts using low-interest or interest-free loans, advances or credit. These rules deem any interest foregone in respect of low-interest or interest-free loans to a trust to be a donation which may be subject to donations tax.
- Amendments are proposed that will enable pre-retirement access to a portion of one's retirement assets, while preserving the remainder for retirement, a so-called "two-pot" retirement system.
- In 2022, changes were made to allow for tax-neutral transfers between retirement funds by members who are 55 years or older, where the member has reached normal retirement age but has not yet opted to retire. It has come to light that there are instances where active, contributing members who have reached retirement age and who are subjected to involuntary transfers to another fund may still be subject to tax. To address this, it is proposed that members of retirement funds who have reached the normal retirement age (per the rules of the fund) but have not yet retired must, as part of the involuntary transfer, be able to have their retirement interest transferred from a less restrictive to a more restrictive retirement fund without incurring tax. The value of the retirement interest (together with the growth thereon), will remain ring-fenced and preserved in the receiving pension or provident fund until the member elects to retire from that fund. As a result, the member will not be entitled to the payment of a withdrawal benefit in respect of the amount transferred.

Corporate tax

Controlled foreign companies (CFC)

- The foreign business establishment exemption provided for in section 9D will be amended to clarify that the primary operations of a CFC for which it receives compensation must be performed by that CFC unless that CFC can rely on the foreign business establishment of another CFC under the shared resources proviso to the foreign business establishment exemption.
- It would appear that this proposed amendment arises as a result of a case which SARS lost in the special tax court against a large fund manager. The judgement in question was recently overturned by the Supreme Court of Appeal which found in favour of SARS.

Contributed Tax Capital (CTC)

- CTC is a tax concept which is broadly equivalent to the capital contributed by shareholders to a company. Where a company elects to make a distribution out of CTC that distribution is treated as a return of capital and not a dividend. A distribution out of CTC can be particularly attractive to non-resident shareholders as no dividends tax is levied on the return of CTC and unless the shareholding in the company constitutes an "interest in immovable property" the non-resident shareholder will not be subject to CGT on the shares.
- Two amendments are proposed in relation to CTC. The first amendment is to counter the perceived abuse which can arise where a foreign holding company holds shares in a South African operating company through a foreign intermediary company. If the intermediary company changes its tax residence to South Africa it is immediately deemed to have CTC equal to the market value of its shares. Where this happens dividends can flow tax-free between the South African operating company and its newly resident intermediary holding company and that holding company can return its newly created CTC to its foreign holding company free of tax. The statement is made that the government proposes legislation to address this abuse but no details were given as to what form it will take.
- The second proposed amendment, which is presumably related to the above proposal to address abuse, is that specific rules be implemented for the conversion of CTC to rands for a foreign company that changes its residence to South Africa.

Corporate reorganisation rules

- A number of changes are proposed to the corporate reorganisation rules. These include proposals to:
  - Clarify the requirements for an exemption from the application of the "debt benefit" provisions where a dormant company is liquidated.
  - Clarify the interaction and effect of provisions dealing with the acquisition of assets in exchange for shares.
  - Refining the provisions applicable to unbundling transactions by giving consideration to the appropriateness of the manner in which the ITA currently gives additional base cost to shareholders in an unbundling company to recognise the fact that the unbundling relief was restricted because certain shareholders constituted "disqualified persons".

Interest limitation rules

- Government proposes clarifying a number of areas in respect of the interest limitation rules in section 23M of the ITA. These primarily include clarifications around:
  - The definition of "adjusted taxable income" – Amendments are proposed to align with the intention of the legislator that only the balance of assessed losses from the prior year be added in the adjusted taxable income calculation.
  - Introducing a definition of the term "creditor" – Currently the legislation only defines a "debtor" or "debt". The proposed amendment will introduce a definition of "creditor".
  - The treatment of exchange gains and losses – Section 23M of the ITA currently deems an exchange loss deducted from the income of a person, as contemplated in sections 24I(3) or (10A) of the ITA, to be interest incurred for the purposes of section 23M of the ITA. The clarification seeks to include a corresponding deeming provision in respect of exchange gains.
- Further clarifications and amendments may be made to section 23M, and the definition of "controlling relationship" is to be reviewed. While the clarifications are welcomed there is still uncertainty around several issues and the draft amendments are eagerly awaited.

Foreign dividends

- The ITA contains provisions to prevent abuse which limits the exemption from tax of certain foreign dividends which are determined by reference to, or arise directly or indirectly from, amounts that were deductible from the South African taxable income of another person. The limitation in question does not currently apply to the exemption of foreign dividends paid on listed shares nor to the partial exemption which limits the tax on foreign dividends to 20%. It is proposed that going forward this anti-avoidance provision be extended to cover these exemptions as well.

Participation exemption

- Paragraph 64B will be amended to prevent the perceived abuse of the exemption in circumstances where the non-resident acquirer of foreign shares formed part of the same group of companies as the company selling the shares, or the shareholders are substantially the same as those in the group of companies disposing of the shares.
- Paragraph 64B will also be amended to require an 18-month holding period to rely on the exemption for a return of foreign capital.

Refining the provisions dealing with the impact of IFRS 17 insurance contracts on the taxation of insurers

- The current accounting standard for insurance contracts (i.e., IFRS 4) will be replaced by a new accounting standard (i.e., IFRS 17) for reporting periods starting on or after 1 January 2023.
- The necessary tax amendments were already legislated in 2022 to accommodate this new accounting standard. A further clarification of these tax provisions is necessary in respect of the treatment for cell captive arrangements. This clarification would be welcomed as it would align the future treatment with the current tax treatment of cell captive arrangements and avoid any uncertainty in this regard.

Tax treatment of deposit insurance scheme

- In 2020, government announced the establishment of a deposit insurance scheme to protect depositors in the event of a bank failure, which in turn will contribute to the stability of the South African financial system. It was also envisaged that each bank would make stipulated contributions to the scheme. Government proposes that tax legislation be amended to address the tax implications of the scheme.

Reviewing the Sharia-compliant financing arrangements

- In 2010, legislation dealing with Sharia-compliant financing arrangements was introduced in various tax acts. Government proposes to extend the provisions dealing with Sharia-compliant arrangements and ensure alignment across all the tax acts.

Tax incentives

Research and development tax incentive

- As anticipated, the research and development (R&D) tax incentive (Section 11D of the ITA) will be extended for 10 years from 1 January 2024 and will be refined to make it simpler and more effective. In addition, the following was noted:
  - There will be a six-month grace period for projects to commence before the application is submitted, to allow new and smaller applicants to gather information and potentially benefit from the incentive.
  - The definition of R&D will be refined to make it simpler to understand and administer, resulting in an easier application process for the incentive.
  - The incentive should apply only to activities aimed at resolving a scientific or technological uncertainty that a professional with appropriate knowledge and skills cannot resolve without R&D.
  - The R&D definition will move from an "end-result" approach to incorporate principles of the Organisation for Economic Corporation and Development (OECD) Frascati Manual, in which activities should be novel, uncertain, systematic and transferable and/or reproducible.
  - The exclusion for internal business processes will be removed; if an activity is investigative or experimental with the aim of resolving a scientific or technological uncertainty and it meets the proposed (revised) definition of R&D for the purposes of this incentive, it should be considered R&D – regardless of whether it is intended for sale or the use thereof is granted to connected parties.
- The 10-year extension creates certainty for businesses wanting to increase R&D activities in South Africa and supports innovation development.

Renewable energy tax incentive

- Section 12B of the ITA will be temporarily amended to allow for a 125% deduction in year 1 for all renewable energy projects brought into use between 1 Mar 2023 and 28 Feb 2025, irrespective of capacity generation.
- In effect, the proposed amendment will result in a 6.75% benefit for taxpayers in year 1 of bringing generation assets into use. Although this is an additional benefit, it may not be sufficient to create a conducive climate for investment and growth.

COVID-19 Relief Bounce-back Scheme for SMEs

- Government will be reworking its COVID-19 Relief Bounce-back Scheme for SMEs to facilitate the rollout of renewable energy and rooftop solar projects for SMEs.
- Government will guarantee solar-related loans for SMEs on a 20% first-loss basis.
- SMEs will now be eligible for renewable energy loan financing together with the 125% tax deduction for renewable energy projects brought into use between 1 Mar 2023 and 28 Feb 2025.
- The revised bounce-back scheme is anticipated to be launched 1 April 2023.
- Although the guarantee is for a small portion of the loan (i.e., 20%), it does create room for some SMEs that may otherwise not have qualified for financial support.

Tax incentive for Greenfield and Brownfield industrial investments

- Government will provide clarity on its intention of providing taxpayers with additional time to meet the requirements of section 12I of the ITA, and more specifically, the interaction between the skills development criteria and the extended compliance period, due to business-related disruptions caused by the COVID-19 pandemic.

Extending the urban development zone incentive

- The incentive will be extended for two years to 31 March 2025 to allow government to assess the incentive's results.

Base erosion and profit shifting: The two-pillar solution

- There appears to have been limited development on Pillar One of the OECD guidelines aimed at implementing tax rules related to the digital economy. Currently, no final agreement has been reached on Pillar One and the OECD guidelines for this pillar have not been finalised.
- In relation to Pillar Two, which focuses on base erosion and profit shifting, a minimum effective tax rate for large multinationals is expected to apply in several jurisdictions from December 2023. During the 2023 legislative cycle, government has undertaken to publish a draft position on the implementation of Pillar Two for public comment and draft legislation will be prepared for inclusion in the 2024 Taxation Laws Amendment Bill.

Trusts

Taxation of non-resident beneficiaries of trusts

- The ITA makes provision for income which is received by or accrues to a trust and which is vested in a trust beneficiary in the same year of assessment to be taxable in the hands of that beneficiary and not the trust. The Eighth Schedule to the ITA which deals with capital gains contains similar provisions where the beneficiary is tax resident in South Africa. However, where the beneficiary is not resident in South Africa the capital gain remains taxable in the trust. It is proposed to change the provisions relating to the taxation of income to align it with the capital gains tax provisions. The effect of this is that income earned by a trust which is vested in the hands of a non-resident beneficiary will remain taxable in the trust, notwithstanding the fact that the income has been vested in a beneficiary.

Value-Added Tax (VAT)

- It is proposed that changes be made to the VAT Act to provide clarity in the mobile telecommunications industry in relation to the use of prepaid vouchers for services provided by third parties where the mobile telecommunication company acts as an agent of that third party – for example, data offerings and mobile money services.
- Government proposes making changes to the VAT Act to clarify the VAT treatment of specific supplies in the short-term insurance industry.
- With effect from 1 April 2022, a new section 18D was introduced in the VAT Act to clarify the VAT treatment of temporary letting of residential property. Consequential amendments were made to other sections of the VAT Act including section 10, which deals with how to determine the value of supply of goods and services. At issue is whether the term "adjusted cost" contemplated in section 10(29) of the VAT Act also includes the cost of the land. It is proposed that section 10(29) be clarified in this regard.
- Section 18D(5) of the VAT Act is to be clarified to deal with the current anomaly related to the recovery of previously declared output VAT.
- Changes are proposed to the VAT Act to address the difficulty faced by depositors to obtain the documentary evidence they need to support the application of the zero rate on a transaction-by-transaction basis in relation to their gold exports.
- Effective from 1 July 2022, government introduced regulations aimed at foreclosing schemes and malpractices to claim undue VAT refunds from SARS by vendors operating in the value chain relating to high-risk goods containing gold. These regulations allowed vendors a transitional period of one month – from 1 July 2022 to 1 August 2022 – to comply with the requirements. This implied that registered vendors must account for and pay VAT for transactions falling within the ambit of the regulations in the August 2022 tax period. It has come to government's attention that the regulations require further clarification in certain areas.

Customs and excise duty

- To ease the impact of the electricity crisis on food prices, the refund on the Road Accident Fund levy for diesel used in the manufacturing process, such as for generators, will be extended to manufacturers of foodstuffs. This takes effect from 1 April 2023 for two years.
- To provide some relief to households, no increases will be made to the general fuel levy on petrol and diesel. There will also be no increase in the Road Accident Fund levy.
- There will be no increase in the health promotion levy in 2023/24 and 2024/25 in order to assist the sugar industry in the light of challenges facing the industry. The Budget Review notes a discussion paper will be published for consultations to consider lowering the 4g threshold and extending the levy to fruit juices.
- Government proposes to increase excise duties on alcohol and tobacco products in line with expected inflation of 4.9% for 2023/2024.
- It is proposed that the SARS Commissioner be enabled to prescribe conditions under which deferment of duties will be allowed by rules in line with the Revised Kyoto Convention.
- There are currently no provisions in the Customs and Excise Duty Act ("Customs Act") relating to the liquidation of provisional payments that serve as security in certain circumstances and that are not claimed back by the trader. Government proposes amending the Customs Act to enhance the current processes and procedure for such payments below a specified amount or that remain unliquidated after a specified period and to introduce a prescription period for unclaimed amounts.

Carbon tax

- The Budget Review announced an increase in the carbon tax rate from R144 to R159/tCO_2e (effective from 1 January 2023) on taxable greenhouse gas (GHG) emissions. The increase will also reflect as an additional 1c/litre in the fuel levy (effective from 5 April 2023) bringing the total carbon tax related fuel levy to 10c/litre petrol and 11c/litre diesel.
- With effect from 1 January 2023, the utilisation period of carbon offsets will be changed in the Carbon Offsets Regulations to align it with the extension (announced in the 2022 Budget Review) of the first phase of the carbon tax until 31 December 2025.
- Also with effect from 1 January 2023, a new table containing updated carbon dioxide (CO_2) emission factors for domestic (tier 2) emissions reporting for existing fuel types and added fuel types will be inserted into schedule 1 of the Carbon Tax Act (2019). This will be done in order to align with amended methodological guidelines gazetted by the Department of Forestry, Fisheries and the Environment (DFFE) in October 2022. Should the DFFE publish further changes to the emission factors, these changes will be added to the Tax Laws Amendments Act (2023).
- It is also proposed that the formula used to calculate fugitive emissions in Section 4(2) of the Carbon Tax Act be changed to only multiply certain emission factors by 1 000 depending on the units of measurement in which the emission factors are expressed. This comes as a corrective measure to changes made in 2019 to the formula for fugitive emissions which were accurate for some Intergovernmental Panel on Climate Change (IPCC) code activities but not for all.

Minimum royalty rate for oil and gas companies

- In 2021 it was proposed to replace the variable mineral and petroleum resources royalty rate with a flat rate of 5% for oil and gas companies. Following consultations government proposes to retain the flexibility of the royalty rate, which is determined by profitability, rather than opt for a flat rate for these companies.
- However, to ensure that the country is adequately compensated for the loss of its finite resources, the minimum royalty rate will be increased from 0.5% to 2% for oil and gas companies, with the maximum remaining at 5%.
- While the certainty brought about by the above proposal is welcomed, the rationale for introducing a higher minimum rate for oil and gas companies is questionable.

Tax administration

The following tax administrative initiatives were noted in the Budget Review:

- Pay-as-you-earn (PAYE) and personal income tax administration reform will continue over the medium term with a view to reducing the administrative burden for employers, payroll administrators and SARS, as well as individual salaried taxpayers. Work has commenced, in consultation with employers and representative organisations, to provide employer and employee data on a monthly basis in a fully automated fashion. Over time, the need for employer PAYE annual reconciliation is expected to fall away, and the reform will be extended to third-party data providers.
- SARS intends to review the VAT administrative framework to simplify and modernise the current system, in consultation with all affected parties. Government also proposes to introduce a legislative framework to empower SARS to conclude bilateral advance pricing agreements.
- It is proposed to align the various tax provisions impacting non-resident employers in order to ensure consistency.
- The Fourth Schedule to the ITA allows employers to request a variation in employees' tax withholding to take into account foreign taxes paid. However, such a variation does not apply to remuneration arising from share options and similar schemes. It is proposed that SARS also be empowered to vary the basis for withholding under these circumstances.
- In terms of the Tax Administration Act (2011), SARS may disclose a list of public benefit organisations approved in terms of sections 18A and 30 of the ITA. As a broader range of entities than public benefit organisations may be granted approval to issue receipts for tax-deductible donations in terms of section 18A, it is proposed that SARS be explicitly empowered to disclose all entities with a section 18A approval.
- The ITA contains special tax dispensation for public benefit organisations, recreational clubs and associations due to their non-profit status. One of the requirements to enjoy the special dispensation is that the entity must have three unconnected persons who accept fiduciary responsibility and that no single person may directly or indirectly control the decision-making powers of the entity. At issue is whether the word "person" in these requirements refers to a natural person or a juristic person. Government proposes amending the legislation to clarify that "person" in this context refers to a natural person.
- In terms of section 95 of the Tax Administration Act (2011), SARS may make an assessment based on an estimate where a taxpayer does not submit a return. The taxpayer may, within 40 days from the date of the assessment, request SARS to make a reduced or additional assessment by submitting a true and full return. It is proposed that SARS be empowered to extend the period within which the taxpayer is required to submit their request to SARS by public notice. This will allow the deadline for the request to be aligned with the end of the filing season for non-provisional taxpayers. This proposed amendment would appear to be directed at auto assessments which SARS has introduced in the last few years for certain taxpayers. The proposed amendment is consequently not expected to apply to provisional taxpayers, or corporates, for example.
- Although not providing any specific details, the Budget Review states that amendments are proposed to align with the National Strategy on Anti-Money Laundering, Counter Financing of Terrorism and Counter Financing of Proliferation, achieve consistency with the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act (2022) and take account of other developments related to the Financial Action Task Force.

Tax research and reviews

- as part of exploring the effect of remote work on the personal income tax regime, the National Treasury and SARS committed to a multi-year review of allowances. A discussion document will be released this year to outline workplace practices and policies, changes in the current environment and how different workplaces are affected by home office and travel allowance policies.
- The start of feed-in tariffs in some municipalities may require adjustments in the Income Tax Act (1962) to cater for additional revenue from electricity sales. The National Treasury and SARS will investigate the potential changes required.
- During the 2023 legislative cycle, government will publish a draft position on the implementation of Pillar Two for public comment and draft legislation will be prepared for inclusion in the 2024 Taxation Laws Amendment Bill.
- Government will publish a discussion paper on the health promotion levy for consultation on proposals to extend the levy to pure fruit juices and lower the 4-gram threshold.
- On 16 November 2022, SARS issued a notice informing the public of the intention to withdraw Practice Note 31 of 1994, entitled *Interest paid on moneys borrowed*, and Practice Note 37 of 1995, entitled *Deduction of fees paid to accountants, bookkeepers and tax consultants for the completion of income tax returns*, with effect from years of assessment starting on or after 1 March 2023, due to the increasing abuse of the tax deduction concession provided for in Practice Note 31 and the fact that Practice Note 37 does not incorporate the requirements of the term "registered tax practitioner" contained in the Tax Administration Act (2011). After reviewing the public comments received on the withdrawal of the practice notes, government will consider the impact of the proposed withdrawal and whether changes could be made in the tax legislation to accommodate legitimate transactions affected by such withdrawal. In light of this proposal, SARS also intends to delay and align the withdrawal of the practice notes with the effective date of any legislation arising from the proposed considerations.

Contacts

For more information, contact your nearest Deloitte tax office

Itireleng Kubeka, Managing Director, Deloitte Africa Tax & Legal
Email: ikubeka@deloitte.co.za

Gauteng: Alex Gwala, Global Business Tax Services Leader, Deloitte Africa Tax & Legal
Email: agwala@deloitte.co.za

KwaZulu-Natal: Mark Freer, Regional Leader, Deloitte Africa Tax & Legal
Email: mfreer@deloitte.co.za

Western Cape: Anthea Scholtz, Regional Leader, Deloitte Africa Tax & Legal
Email: ascholtz@deloitte.co.za

Editorial team

Hannah Marais
Email: hmarais@deloitte.co.za

Moray Wilson
Email: morwilson@deloitte.co.za

Ruben Johannes
Email: rjohannes@deloitte.co.za

Ben Proske
Email: bproske@deloitte.co.za

www.deloitte.co.za

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (DTTL), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte's approximately 415 000 people worldwide make an impact that matters at www.deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (DTTL), its global network of member firms or their related entities (collectively, the "Deloitte organization") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2023. For information, contact Deloitte Touche Tohmatsu Limited. (chr)