



We will start shortly

BUDGET SPEECH UPDATE 2023

28 FEBRUARY 2023 | 08:30

Hosted by:

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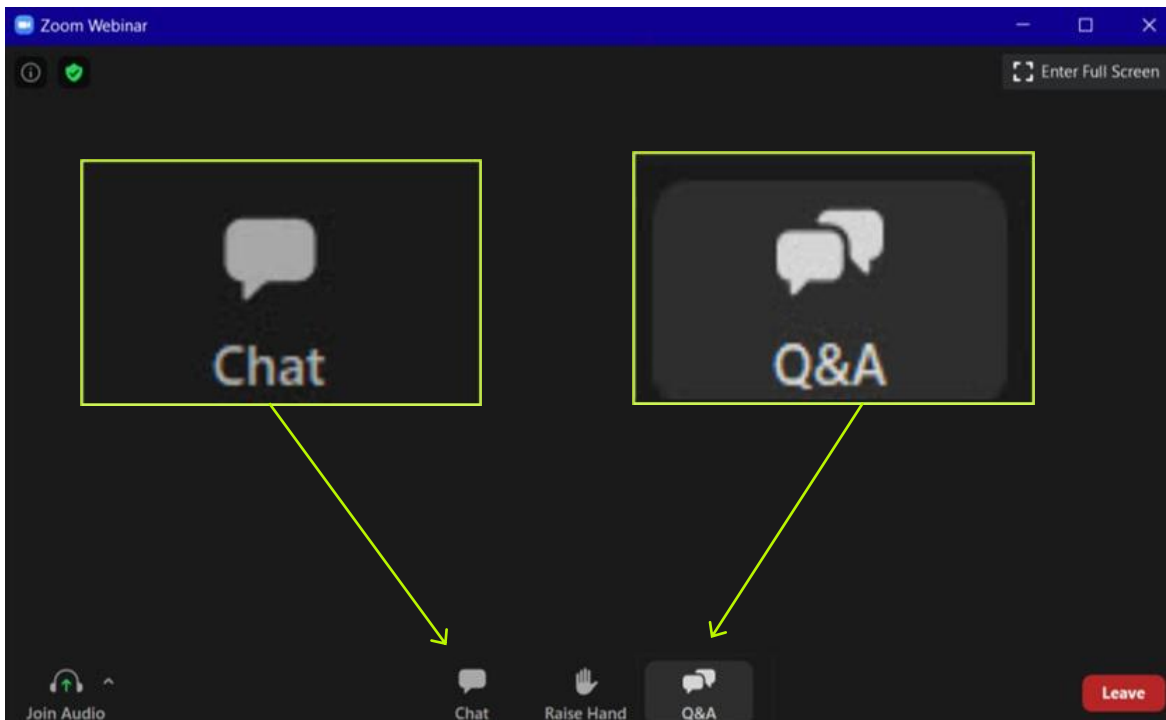
PROGRAMME

- 08:30** Welcome by Michael Avery and administrative procedures
- 08:40** Opening keynote by Gauteng MEC for Finance Jacob Mamabolo
- 09:00** Tax update by Kreston SA Director of Tax Services, Johan Heydenrych
- 09:45** 30 min Break
- 10:15** International tax update by KPMG Senior Manager, Mohamed Hassam
- 11:00** Economic update by FNB Chief Economist, Mamello Matikinca-Ngwenya
- 11:45** Your software partner Sage Director, Pierre Badenhorst
- 11:55** Panel discussion moderated by Michael Avery
- 12:15** Closing keynote by CIBA CEO, Nicolaas van Wyk
- 12:30** Networking lunch



EVENT PROCEDURE

ONLINE DELEGATES



CHAT Join the discussion. Select “everyone” from the dropdown before you post



Q&A Submit questions to the presenters here. The questions will be addressed in the Q&A session



Raise Hand During the Q&A session delegates can raise their hand to be unmuted by the host to ask questions live



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EVENT PROCEDURE

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South Africa's economic outlook

Jacob Mamabolo
Gauteng MEC
of Finance

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Tax amendments and their impact

Johan Heydenrych
Director: Tax Services
Kreston SA



Taxation and the 2023_2024 National Budget

28 February 2023

Johan Heydenrych

Director: Tax Services

Johan.Heydenrych@krestonsa.com

ABOUT THE PRESENTER

Johan Heydenrych Kreston South Africa



Johan is a Chartered Accountant who specialised in taxation since 1991. He holds the following qualifications:

- B. Com (Accounting) (Cum Laude)
- B. Com (Accounting) (Hons) (Cum Laude) (Award: “Best student in Audit 700”)
- Certificate in the Theory of Accounting
- M. Com (Taxation) (Cum Laude) (Award: “Best M. Com (Tax) student”)
- Chartered Accountant (Specialising in Taxation)
- Member of SAICA
- Registered Tax Practitioner

Johan was a tax partner at KPMG from 1997 to 2020 and is currently a partner in the Kreston SA network specialising in taxation. He provides a wide range of tax services to various clients across industries. These include but are not limited to the following:

- Advice on Tax Risk Management and Tax Governance.
- Tax compliance services including but not limited to ITR 14 and IT 14SD
- Dealing with tax disputes including representing clients at Alternative Dispute Resolution (ADR) hearings.
- Submission of documentation and revised returns under the Voluntary Disclosure Programme.
- Issuing of tax technical opinions on Income Tax, VAT and PAYE. This include preparing briefs to Senior Counsel and submissions of requests for Binding Opinions from SARS.
- Audit support services that includes Normal Tax and Deferred Tax disclosure and disclosure of uncertain tax positions.
- Assistance with implementation of tax reporting for new accounting standards such as IFRIC 23, IFRS 9, IFRS 15 and IFRS 16.
- Facilitation of tax diagnostic sessions with existing and prospective clients.
- Advice on mergers, acquisitions and reorganizations.
- Tax due diligences
- Advice on tax implications of recapitalization transactions, debt restructures, liquidations and deregistration’s





Wednesday, February 22 2023

Madam Speaker, 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.

A two-story house with a light-colored brick facade and a dark grey tiled roof. The roof is covered with a large array of blue solar panels. The house has a central gabled section with a large window on the second floor and a white double door on the ground floor. There are also windows on the ground floor flanking the door. The sky is a clear, pale blue.

Lets talk Solar...

DE RUYTER...

...NO POINT
IN CHANGING
JOCKEYS
NOW!



Brandan
BUSINESS DAY 20211110



As announced by the President, we will also introduce a new tax incentive for individuals to install rooftop solar panels to reduce pressure on the grid and help ease loadshedding. Individuals who install rooftop solar panels from 1 March 2023 will be able to claim a rebate of 25 per cent of the cost of the panels, up to a maximum of R15 000. This can be used to reduce their tax liability in the 2023/24 tax year. This incentive will be available for one year.

FREQUENTLY ASKED QUESTIONS

SOLAR PANEL TAX INCENTIVE FOR INDIVIDUALS



WHAT CAN BE CLAIMED?

Individuals will be able to claim a rebate to the value of 25% of the cost of new and unused solar photovoltaic (PV) panels, up to a maximum of R15 000 per individual.

For example, a person buys 10 solar PV panels, at a cost of R4000 per panel (so total cost of R40 000). That person would be able to claim 25% of the cost up to R15 000, so R10 000.

A different person is able to buy 20 panels at a cost of R4000 per panel (so total cost of R80 000). The calculation of 25% adds up to R20 000, but they can only claim R15 000.



WHAT ARE THE REQUIREMENTS?

- Only new and unused solar PV panels qualify, to ensure that the capacity is in addition to what the country already has in place. The panels can be installed as part of a new system, or as an extension of an existing system.
- Only solar PV panels with a minimum capacity of 275W per panel (design output) qualify for the rebate. Other components of a system – batteries, inverters, fittings or diesel generators – and installation costs do not qualify. Portable panels will also not qualify.
- Solar PV panels must be installed at a residence that is mainly used by an individual for domestic purposes. The installation will have to be proved with a certificate of compliance in terms of the Electrical Installation Regulations, 2009 to ensure safety of the installation and compliance to electric regulations.
- The solar PV panels must form part of a system that is connected to the mains distribution of the private residence.
- The rebate applies to qualifying solar PV panels that are brought into use for the first time in the period from 1 March 2023 to 29 February 2024.



From 1 March 2023, businesses will be able to reduce their taxable income by 125 per cent of the cost of an investment in renewables. There will be no thresholds on the size of the projects that qualify, and the incentive will be available for two years to stimulate investment in the short term.

Expansion of the renewable energy incentive

- The tax incentive available for businesses to promote renewable energy will be temporarily expanded to **encourage rapid private investment to alleviate the energy crisis.**
 - The current incentive allows businesses to deduct the costs of qualifying investments over a one- or three-year period, which creates a cash flow benefit in the early years of a project.
 - Businesses are able to deduct 50 per cent of the costs in the first year, 30 per cent in the second and 20 per cent in the third for qualifying investments in wind, concentrated solar, hydropower below 30 megawatts (MW), biomass and photovoltaic (PV) projects above 1 MW.
 - Investors in PV projects below 1 MW are able to deduct 100 per cent of the cost in the first year.
- Under the expanded incentive, businesses will be able to claim a 125 per cent deduction in the first year for all renewable energy projects **with no thresholds on generation capacity.**
 - The adjusted incentive will only be available for investments brought into use for the first time between 1 March 2023 and 28 February 2025.
 - For a business with positive taxable income, the deduction will reduce its tax liability. For example, a renewable energy investment of R1 million would qualify for a deduction of R1.25 million.
 - Using the current corporate tax rate, this deduction could reduce the corporate income tax liability of a company by R337 500 in the first year of operation.

BINDING PRIVATE RULING: BCR 085

DATE: 9 December 2022

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTIONS 12B(1)(h) AND (2) AND 24H
SUBJECT : EN COMMANDITE PARTNERSHIPS INVESTING IN PHOTOVOLTAIC SOLAR ENERGY PLANTS

BINDING PRIVATE RULING: BPR 311

DATE: 11 October 2018

ACT : INCOME TAX ACT 58 OF 1962 (the Act)
SECTION : SECTION 12B
SUBJECT : PHOTOVOLTAIC SOLAR ENERGY PLANTS

Binding Class Ruling 85

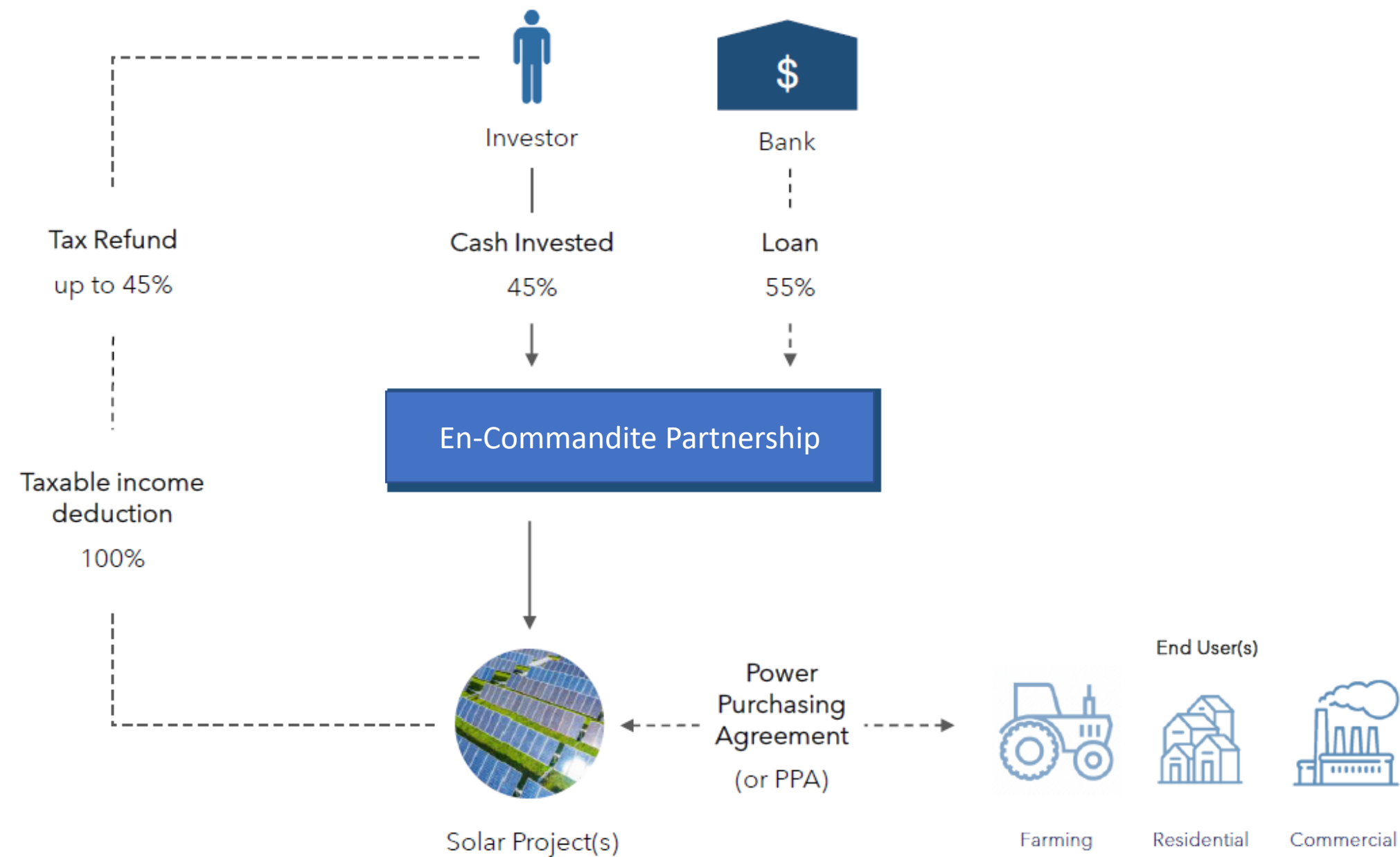
This ruling determines the deductibility of expenditure to be incurred by *en commandite* partners in investing in photovoltaic solar energy plants to be owned by the *en commandite* partnerships which will be installed at clients' premises in terms of power purchase agreements (PPAs).

- The applicant is a renewable energy utilities company with a focus on solar energy. The applicant proposes to set up multiple *en commandite* partnerships between the applicant as general partner and the *limited* partners for the purpose of enabling the limited partners to invest in solar energy generation assets that will be generating and selling electricity to end users in terms of PPAs entered into with clients.
- The applicant will sign PPAs with clients who will pay for the use of electricity generated by the generation assets owned or to be owned by the partnerships that are installed at the client's premises.
- The partnerships will buy existing projects installed by the applicant or carry on the business of acquiring and installing generation assets for the specific purpose of generating and selling electricity in terms of the signed PPAs.
- When a limited partner enters into a partnership the partner will sign a deed of adherence which details the value of the generation assets to be acquired. This value represents the capital contribution of the limited partner to the partnership. The capital contribution will be used solely to purchase generation assets.

Binding Class Ruling 85

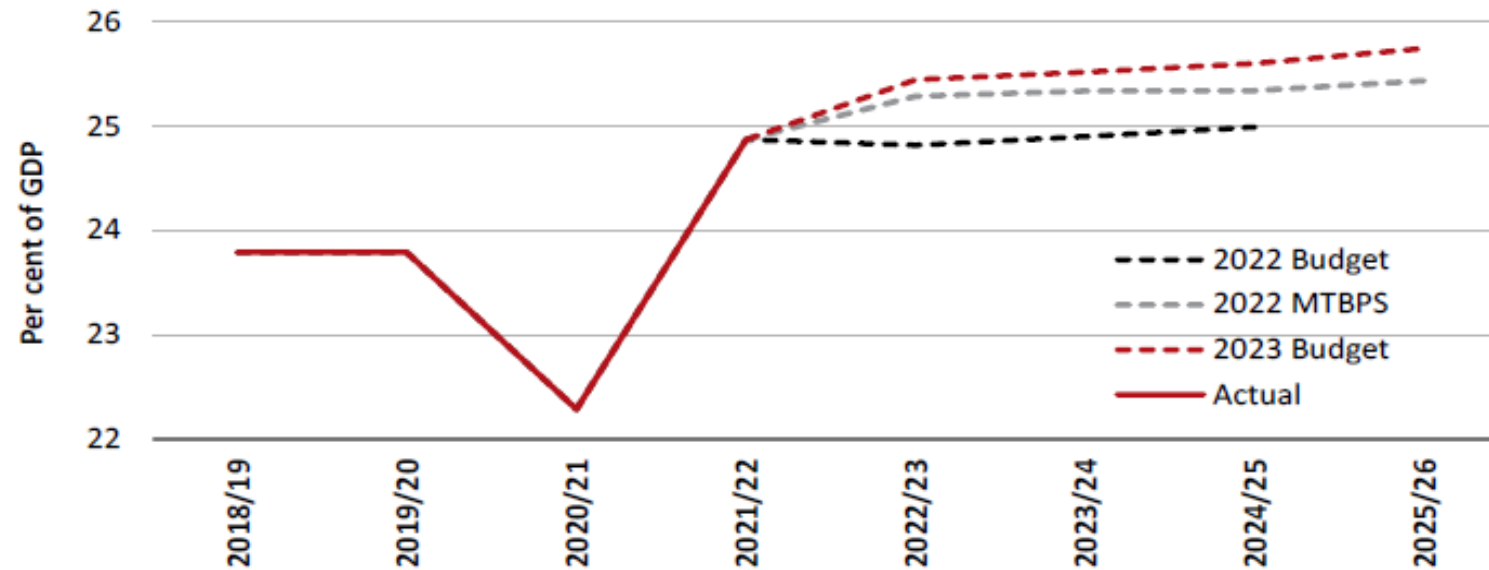
The ruling made in connection with the proposed transaction is as follows:

- a) Each limited partner of an *en commandite* partnership will be regarded as having a proportionate interest in the generation assets acquired by the partnership based on their capital contribution to the partnership in relation to the total capital contribution made to the partnership.
- b) A limited partner will be entitled in terms of section 12B(2)(b) in respect of the acquisition by the partnership of photovoltaic solar energy generation assets not exceeding 1 megawatt (whether it be one or multiple projects) to the partner's proportionate share of a capital allowance of 100% of the cost of the assets in the year of assessment in which the assets are brought into use.
- c) A limited partner will be entitled in terms of section 12B(2)(a) in respect of the acquisition by the partnership of photovoltaic solar energy generation assets exceeding 1 megawatt (whether it be one or multiple projects) to the partner's proportionate share of a capital allowance of –
 - 50% of the cost of the assets in the year of assessment in which the assets are brought into use;
 - 30% of the cost of the assets in the second year of assessment; and
 - 20% of the cost of the assets in the third year of assessment.
- d) The cost of the foundations and structures designed for the installation of the section 12B(1)(h) assets that meet the criteria set out in the proviso to section 12B(1) will qualify for the same deductions as the assets they relate to.



Revenue Trends

Figure 4.1 Tax-to-GDP ratio



Source: National Treasury and SARS

Over the past year, revenue collection has remained strong despite an uneven economic recovery.

The tax-to-GDP ratio continues to recover from COVID-19-induced lows and is projected to reach 25.4 per cent in 2022/23.

Table 4.1 Budget estimates and revenue outcomes¹

R million	2021/22			2022/23			Percentage change ³
	Budget ²	Outcome	Deviation	Budget ²	Revised	Deviation	
Taxes on income and profits	910 107	912 870	2 764	894 300	989 877	95 577	8.4%
Personal income tax	553 529	553 951	422	587 907	601 649	13 742	8.6%
Corporate income tax	318 380	320 447	2 067	269 931	344 944	75 013	7.6%
Dividends tax	32 182	33 429	1 247	30 450	38 515	8 065	15.2%
Other taxes on income and profits ⁴	6 015	5 042	-972	6 011	4 768	-1 243	-5.4%
Skills development levy	18 933	19 336	403	20 619	21 238	619	9.8%
Taxes on property	19 693	22 033	2 339	20 291	22 656	2 364	2.8%
Domestic taxes on goods and services	541 296	549 806	8 510	600 732	581 871	-18 861	5.8%
Value-added tax	383 724	390 895	7 171	439 681	426 283	-13 398	9.1%
Specific excise duties	48 212	49 705	1 493	51 864	55 228	3 364	11.1%
Health promotion levy	2 211	2 182	-28	2 355	2 320	-35	6.3%
Ad valorem excise duties	4 276	4 725	449	4 406	4 461	55	-5.6%
Fuel levy	89 884	88 889	-995	89 113	79 131	-9 982	-11.0%
Other domestic taxes on goods and services ⁵	12 990	13 410	420	13 313	14 448	1 135	7.7%
Taxes on international trade and transactions	57 042	59 719	2 678	62 505	76 535	14 030	28.2%
Customs duties	55 821	57 994	2 173	61 095	74 176	13 081	27.9%
Health promotion levy on imports	78	78	-1	86	114	28	46.4%
Diamond export levy	92	170	78	89	151	62	-11.1%
Export tax	302	407	105	473	819	347	101.0%
Miscellaneous customs and excise receipts	748	1 071	322	763	1 276	513	19.2%
Gross tax revenue	1 547 071	1 563 754	16 684	1 598 447	1 692 177	93 729	8.2%

Table 4.2 Budget revenue¹

R million	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26
	Outcome			Revised	Medium-term estimates		
Taxes on income and profits ²	772 685	718 180	912 870	989 877	1 021 213	1 089 123	1 172 033
of which:							
Personal income tax	527 633	487 011	553 951	601 649	640 300	696 624	752 627
Corporate income tax	211 522	202 123	320 447	344 944	336 119	345 434	369 477
Skills development levy	18 486	12 250	19 336	21 238	23 027	24 816	26 846
Taxes on property	15 980	15 947	22 033	22 656	23 863	25 384	27 040
Domestic taxes on goods and services	492 283	455 867	549 806	581 871	642 765	687 208	731 032
of which:							
VAT	346 761	331 197	390 895	426 283	471 477	505 409	537 868
Taxes on international trade and transactions	56 322	47 455	59 719	76 535	76 588	81 195	86 506
Gross tax revenue	1 355 766	1 249 711	1 563 754	1 692 177	1 787 456	1 907 727	2 043 456

CIT as % of Gross tax revenue:

- 2020: 15.6%,
- 2023: 20.4%
- 2026: 18.1%

PIT as % of Gross tax revenue:

- 2020: 38.9%,
- 2023: 35.5%
- 2026: 36.8%

VAT as % of Gross tax revenue:

- 2020: 25.5%,
- 2023: 25.2%
- 2026: 26.3%



Tax increases are often put forward as the natural response to cover expected revenue shortfalls, but in a highly unpredictable or low-growth economic environment, such increases carry significant risks.

Research in South Africa – including two United Nations University World Institute for Development Economics Research papers – has indicated that tax increases can impede economic activity and the negative impact is more pronounced when growth is weak. For this reason, government intends to avoid tax increases while the economy is recovering from recent shocks.



Madam Speaker, our country is reaping the benefits of a more efficient and effective tax administration, that is building trust to increase voluntary compliance and boost revenue collections.

... an injection into the budget of the SARS is proposed. In addition to a direct allocation for capital and ICT projects, provisional allocations are set aside to improve revenue raising capabilities of SARS.



SARS renewal

The South African Revenue Service (SARS) celebrated its 25th anniversary in October 2022. SARS continues to enhance its service offering as it rebuilds from the period of state capture.

Over the past three years it has strengthened revenue collection and worked to ensure that its systems, officials and leadership are capacitated to improve the taxpayer's experience, increase compliance and generate additional tax revenue.

In November 2022, SARS finalised the reparation process for current and former employees as recommended by the Nugent Commission of Inquiry. It continues to build a tax administration that collects tax receipts in an efficient and fair manner.

SARS administration

- Over the period ahead, SARS intends to review the VAT administrative framework to simplify and modernise the current system, in consultation with all affected parties.
- In line with SARS' strategic objective of providing clarity and certainty through instruments such as advance rulings, government also proposes to introduce a legislative framework to empower SARS to conclude bilateral advance pricing agreements.

Revenue Proposals

Extension of diesel fuel levy refund

- Government implemented the diesel refund system in 2000 to provide full or partial relief for the general fuel levy and the RAF levy to primary sectors.
- The refund system is in place for the farming, forestry, fishing and mining sectors.
- In light of the current electricity crisis, a similar refund on the RAF levy for diesel used in the manufacturing process (such as for generators) will be extended to the **manufacturers of foodstuffs**.
- This will take effect from 1 April 2023, with refund payments taking place once the system is developed, and will be in place for two years until 31 March 2025.
- This relief is implemented to limit the impact of power cuts on food prices.

Table 4.5 Personal income tax rates and bracket adjustments

2022/23		2023/24	
Taxable income (R)	Rates of tax	Taxable income (R)	Rates of tax
R0 - R226 000	18% of each R1	R0 - R237 100	18% of each R1
R226 001 - R353 100	R40 680 + 26% of the amount above R226 000	R237 101 - R370 500	R42 678 + 26% of the amount above R237 100
R353 101 - R488 700	R73 726 + 31% of the amount above R353 100	R370 501 - R512 800	R77 362 + 31% of the amount above R370 500
R488 701 - R641 400	R115 762 + 36% of the amount above R488 700	R512 801 - R673 000	R121 475 + 36% of the amount above R512 800
R641 401 - R817 600	R170 734 + 39% of the amount above R641 400	R673 001 - R857 900	R179 147 + 39% of the amount above R673 000
R817 601 - R1 731 600	R239 452 + 41% of the amount above R817 600	R857 901 - R1 817 000	R251 258 + 41% of the amount above R857 900
R1 731 601 and above	R614 192 + 45% of the amount above R1 731 600	R1 817 001 and above	R644 489 + 45% of the amount above R1 817 000
Rebates		Rebates	
Primary	R16 425	Primary	R17 235
Secondary	R9 000	Secondary	R9 444
Tertiary	R2 997	Tertiary	R3 145
Tax threshold		Tax threshold	
Below age 65	R91 250	Below age 65	R95 750
Age 65 and over	R141 250	Age 65 and over	R148 217
Age 75 and over	R157 900	Age 75 and over	R165 689

Source: National Treasury

Adjustment of transfer duty and retirement tax tables

As part of the periodic reviews of monetary values in tax tables, the brackets for transfer duties, retirement fund lump sum benefits and retirement fund lump sum withdrawal benefits will all be adjusted upwards by 10 per cent to compensate for inflation. Tax rates remain unchanged. The rates shown in tables 4.7 to 4.9 are effective from 1 March 2023.

Table 4.7 Transfer duty rate adjustments

2022/23		2023/24	
Property value (R)	Rates of tax	Property value (R)	Rates of tax
R0 - R1 000 000	0% of property value	R0 - R1 100 000	0% of property value
R1 000 001 - R1 375 000	3% of property value above R1 000 000	R1 100 001 - R1 512 500	3% of property value above R1 100 000
R1 375 001 - R1 925 000	R11 250 + 6% of property value above R1 375 000	R1 512 501 - R2 117 500	R12 375 + 6% of property value above R1 512 500
R1 925 001 - R2 475 000	R44 250 + 8% of property value above R1 925 000	R2 117 501 - R2 722 500	R48 675 + 8% of property value above R2 117 500
R2 475 001 - R11 000 000	R88 250 + 11% of property value above R2 475 000	R2 722 501 - R12 100 000	R97 075 + 11% of property value above R2 722 500
R11 000 001 and above	R1 026 000 + 13% of property value above R11 000 000	R12 100 001 and above	R1 128 600 + 13% of property value above R12 100 000

Source: National Treasury

Table 4.8 Personal income tax rates: Retirement fund lump sum benefits

2022/23		2023/24	
Taxable income (R)	Rates of tax	Taxable income (R)	Rates of tax
R0 - R500 000	0% of taxable income	R0 - R550 000	0% of taxable income
R500 001 - R700 000	18% of taxable income above R500 000	R550 001 - R770 000	18% of taxable income above R550 000
R700 001 - R1 050 000	R56 700 + 27% of taxable income above R700 000	R770 001 - R1 155 000	R39 600 + 27% of taxable income above R770 000
R1 050 001 and above	R141 750 + 36% of taxable income above R1 050 000	R1 155 001 and above	R143 550 + 36% of taxable income above R1 155 000

Source: National Treasury

Table 4.9 Personal income tax rates: Retirement fund lump sum withdrawal benefits

2022/23		2023/24	
Taxable income (R)	Rates of tax	Taxable income (R)	Rates of tax
R0 - R25 000	0% of taxable income	R0 - R27 500	0% of taxable income
R25 001 - R660 000	18% of taxable income above R25 000	R27 501 - R726 000	18% of taxable income above R27 500
R660 001 - R990 000	R114 300 + 27% of taxable income above R660 000	R726 001 - R1 089 000	R125 730 + 27% of taxable income above R726 000
R990 001 and above	R203 400 + 36% of taxable income above R990 000	R1 089 001 and above	R223 740 + 36% of taxable income above R1 089 000

Source: National Treasury

Tax Policy

Base Erosion and Profit Shifting

The 2022 *Budget Review* announced that legislative amendments would be proposed to implement tax rules related to digitalisation and base erosion, flowing from South Africa's role in the Steering Group of the OECD/G20 Inclusive Framework. The framework has two pillars.



Pillar One

focuses on the digital economy and is expected to establish a coherent and integrated approach to the tax treatment of multinationals, with the allocation of taxing rights among jurisdictions based on their market share.

Currently, no final agreement has been reached on Pillar One and OECD guidelines for this pillar have not been finalised.



Pillar Two

focuses on the remaining base erosion and profit shifting matters.

It proposes an approach to ensure that all internationally operating businesses with global annual revenue of more than €750 million pay an effective tax rate of at least 15 per cent, regardless of where they are headquartered or which jurisdictions they operate in.

A minimum effective tax rate for large multinationals is expected to apply in a number of countries from December 2023.

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.

Two-pot retirement system

- Following extensive public consultation, the first phase of legislative amendments to the retirement system is due to take effect on 1 March 2024.
- **The intent of these amendments is to enable pre-retirement access to a portion of one's retirement assets, while preserving the remainder for retirement.**
- Retirement fund contributions will remain deductible up to R350 000 per year or 27.5 per cent of taxable income per year – whichever is lower.
- Permissible withdrawals from funds accrued before 1 March 2024 will be taxed according to the lump sum tables.
- Withdrawals from the “savings pot” before retirement will be taxed at marginal rates.
- On retirement, any remaining amounts in the savings pot will be taxed according to the retirement lump sum table (for example, R550 000 is a tax-free lump sum on retirement).

Section 11D

- Extend the incentive for 10 years from 1 January 2024. 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.
- Refine the definition of R&D 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. For example, if a professional with appropriate knowledge and skills could resolve the uncertainty without R&D, then the incentive may not apply.**
- Move the definition of R&D from an “end-result” approach (for example, it must be patentable) to incorporate principles of the OECD Frascati Manual, in which activities should be novel, uncertain, systematic and transferable and/or reproducible. **This change recognises that, given the risk and uncertainty involved, applicants will not know how their R&D activities will unfold when applying for the incentive. It also removes a confusing requirement on innovation.**
- **Remove the exclusion for internal business processes** – so that 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.
- Allow the Commissioner of SARS to disclose certain information to the Minister of Higher Education, Science and Innovation to improve monitoring and evaluation.

Personal Income Tax Reform

- The pay-as-you-earn (PAYE) and personal income tax administration reform announced in the 2020 Budget has given pensioners the option to agree to more accurate PAYE withholding rates to take account of multiple sources of income, as well as enabling 2.9 million individual taxpayers to be automatically assessed without the need to file personal income tax returns.
- The 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.

Broadening the personal income tax base

- 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.

Interesting recent case law dealing with Understatement Penalties

Understatement Penalties Percentage Table

1	2	3	4	5	6
<i>Item</i>	<i>Behaviour</i>	<i>Standard case</i>	<i>If obstructive, or if it is a 'repeat case'</i>	<i>Voluntary disclosure after notification of audit or criminal investigation</i>	<i>Voluntary disclosure before notification of audit or criminal investigation</i>
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	'Impermissible avoidance arrangement'	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%

REPORTABLE

CASE NO: A 211/2021

In the matter between:

LANCE DICKSON CONSTRUCTION CC

Appellant

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Respondent

The taxpayer accepted that there was an Understatement of Tax.

The issue is about the imposition of 25% USP

7. SARS did not accept the position adopted by the taxpayer and took the view that it was liable to pay the full amount of CGT (R11 405 319, 40) to SARS during the 2017 tax year, when the taxpayer transferred the asset to the purchaser. In light of the taxpayer's understatement of its liability for CGT, SARS imposed an understatement penalty of 25% (R798 371, 36) pursuant to the provisions of s222 of the TAA.

8. Dissatisfied with SARS' determination, the taxpayer lodged an objection under s104 of the TAA, which objection eventually found its way via the Tax Board to the Tax Court. After hearing evidence adduced on behalf of SARS and argument on behalf of the parties, the Tax Court upheld the determination.

Three phases approach to USP

13. It follows that in circumstances where an alleged understatement of tax has occurred, a three phase process is contemplated by the Legislature.

- Firstly, SARS must consider whether the understatement constitutes an “understatement” as defined in s221 of the TAA.
- If it does, SARS must then consider whether the understatement results from a “*bona fide* inadvertent error”. If such an error is established, that is the end of the inquiry, and no understatement penalty may be levied.
- However, where there is no such error, SARS is then required to identify the appropriate behavioral category under which the taxpayer’s conduct allegedly resorts in terms of the table set out in section 223 before it can impose a penalty.

Court rejected the imposition of 25% USP

14. In the instant case, SARS elected to levy a penalty of 25% under Item (ii) of the table because it held the view that the taxpayer's understatement resulted from it not having taken **reasonable care in the completion of its 2017 tax return.**

13. The above notwithstanding, it is the [taxpayer's] contention that any 'understatement' did not arise from its return completion process and therefore that the imposition of an understatement penalty on the basis of 'reasonable care not taken in completing return' is inappropriate. **Rather if an 'understatement' is present, it arose from the tax position taken by the [taxpayer].**

51. In my view, the approach adopted by SARS in assessing the understatement penalty **was indeed unreasonable in the circumstances.**

- Throughout the taxpayer played open cards with SARS and as early as 16 May 2018, set out its case in seeking to justify the adoption of its tax position.
- That stance was repeated in detail in its Rule 32 Statement.
- SARS did not seek to adequately engage with the taxpayer as to the reasonableness of the tax position adopted, nor consider revising its assessment to levy a 50% penalty thereon.
- Rather, it steadfastly persisted with its claim that the taxpayer had not taken reasonable care in submitting the 2017 tax return.

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 1269/2021

In the matter between:

COMMISSIONER FOR THE

SOUTH AFRICAN REVENUE SERVICE

APPELLANT

and

CORONATION INVESTMENT

MANAGEMENT SA (PTY) LTD

RESPONDENT

[58] CIMSA stated that it relied on a tax opinion procured from a leading tax expert in the country.²² However, it did not disclose the contents thereof, or make the opinion available to SARS. SARS relies on this non-disclosure to draw a negative inference that the tax opinion did not support CIMSA's claim for an FBE exemption and that a deliberate and conscious decision was taken to exclude the net income of CGFM. It is contended that this was not an inadvertent error.

[60] Insofar as the tax opinion is concerned, it was not incumbent on CIMSA to disclose a tax opinion that it had obtained, any more than it would be on any other party which litigates on the basis of a procured legal opinion.

[63] To speculate that a tax opinion must have gone against CIMSA merely because it was not produced to SARS, is simply speculative. It is not sufficient to attribute male fides on the part of CIMSA.

[64] For these reasons, the claim for understatement penalties and underestimation penalties must fail.



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case No: 516/2021

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE
and

APPELLANT

THE THISTLE TRUST

RESPONDENT

Cannot make CGT distributions via multiple trusts. Paragraph 80 (2) of the Schedule, properly interpreted and applied, requires that the capital gains accrued upon the disposal of assets by the Tier 1 Trusts are to be taxed in the hands of the Thistle Trust and not its beneficiaries to whom it distributed those gains. In the circumstances, SARS was correct to raise the additional assessment for the relevant tax periods.

Understatement penalties:

In this matter, SARS imposed an understatement penalty of R1 460 092, which translated to a penalty of 50% levied against the Thistle Trust. As set out in the table, a penalty of 50% for a standard case relates to a taxpayer having ‘no reasonable grounds for the “tax position” taken by the taxpayer’. It is common cause that the Thistle Trust had obtained a legal opinion which another entity within the Zenprop Group had sought.

However, during the argument before us, counsel for SARS conceded, correctly, that the understatement by the Thistle Trust was a bona fide and inadvertent error as it had believed that s 25B was applicable to its case. Though the Thistle Trust erred, it did so in good faith and acted unintentionally. In the circumstances, it was conceded that SARS was not entitled to levy the understatement penalty.

Thank You!

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International Tax impact

Mohamed Hassam
Senior Manager
KPMG



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2022/2023

February 2023

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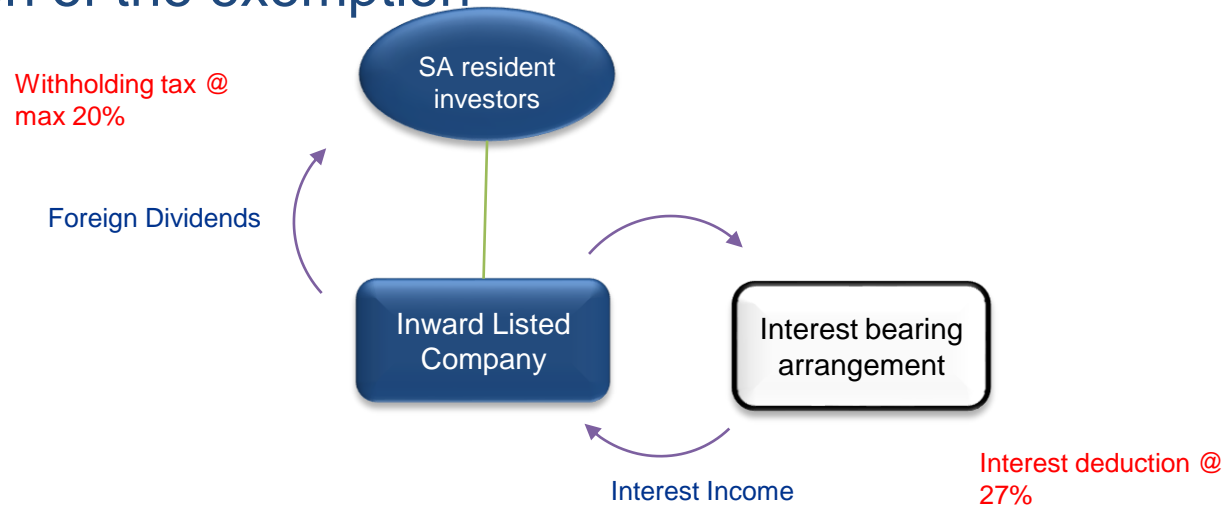
International Tax & Transfer Pricing

Mohamed Hassam
Senior Manager



International Tax – Proposed Amendments

- Extending the anti-avoidance provision to cover foreign dividends from shares listed in South Africa
- Currently there is an exemption for dividends paid by inward listed companies from normal tax
- Exploitation of the exemption



- Proposal: Round-tripping anti avoidance provisions be extended to include foreign dividends from inward listed shares that are funded by amounts that were deductible in South Africa.

International Tax – Proposed Amendments

- Interaction between the anti-avoidance rule and exemption applying to foreign dividends
- Section 10B(4) – prohibits the application of the participation exemption (i.e. the full exemption) where any amount of the foreign dividend arises directly/ indirectly from an amount that is deductible from the income of any person.
- However, a taxpayer may still qualify for a partial exemption – results in a maximum tax of 20% but the deduction is claimed at 27% or marginal tax rate.
- **Proposal: The exemption to tax foreign dividends at 20% should not apply where the anti-avoidance rule is applicable.**
- Taxation of non-resident beneficiaries of trusts
- Aligning the taxation of income tax and capital gains tax attributable to foreign beneficiaries of South African Trusts
- Paragraph 80 of the Eighth Schedule – capital gains for non-residents are taxed in the trust, (i.e. no flow through) distributions made thereafter
- Section 25B - no distinction between tax resident and non-resident beneficiaries. Therefore, income vested in foreign beneficiaries may flow through.
- **Proposal: Amendments to section 25B to align with paragraph 80.**

International Tax – Proposed Amendments

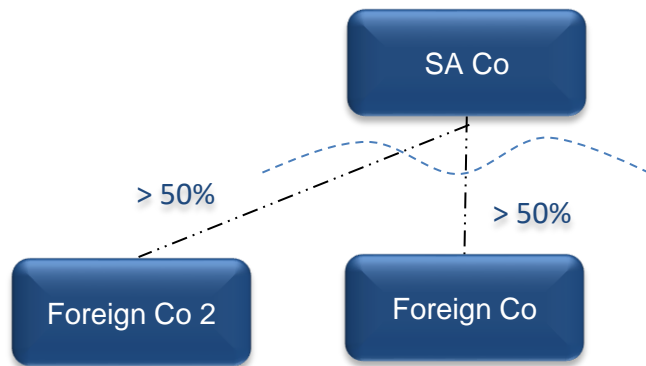
- Refining the participation exemption for the sale of shares in foreign companies
- The participation exemption in Paragraph 64B permits South African residents to dispose of their shares in foreign companies on a tax neutral basis provided certain requirements are met.
- The main aim of these exemptions is to encourage the repatriation back to South Africa of foreign dividends and the proceeds on the sale of shares in foreign companies to non-connected non-residents.
- Transactions have been identified where there is a sale of shares in a foreign company to non-connected non-residents, however the ultimate shareholders remain the same.
- **Proposal: Not grant the participation exemption if the sale of shares is to a non-resident company that formed part of the same group of companies as the company disposing of the shares, or the shareholders are substantially the same as the shareholders of any company in the group of companies disposing of the shares**

Refining the participation exemption for the foreign return of capital from a CFC

- The participation exemption in Paragraph 64B applies to both the sale of foreign companies and the foreign return of capital from a controlled foreign company (CFC).
- However, the holding period requirement (18 months) is not applicable to foreign return of capital from a CFC.
- **Proposal: Implement a similar holding period requirement for foreign return of capital from a CFC**

International Tax – Proposed Amendments

- Clarifying the foreign business establishment exemption for controlled foreign companies
- Proposal as a result of a recent SCA case
- Focus on the important functions of a CFC



FBE:

(a) a fixed place of business in the foreign country that is used for the carrying on of the business of that CFC for a period of not less than one year, where –

(i) that business is conducted through one or more offices, shops, factories etc;

(ii) that fixed place of business is suitably staffed with employees of who conduct primary operations of that business;

(iii) that fixed place of business is suitably equipped for conducting the primary operations of that business;

(iv) that fixed place of business has suitable facilities for conducting the primary operations of that business; and

(v) that fixed place of business is not located outside SA for the purposes of tax avoidance

- Proposal: Section 9D to be amended so that all important functions for which a CFC is compensated for needs to be performed by that CFC or by another CFC meeting the shared FBE definition.

International Tax – Proposed Amendments

- Other
- Bilateral Advance Pricing Agreements
- BEPS 2.0 – Pillar 2
- The interest limitation rules contained in section 23M of the Income Tax Act, which relate to cross border debt, are to be further refined and clarified



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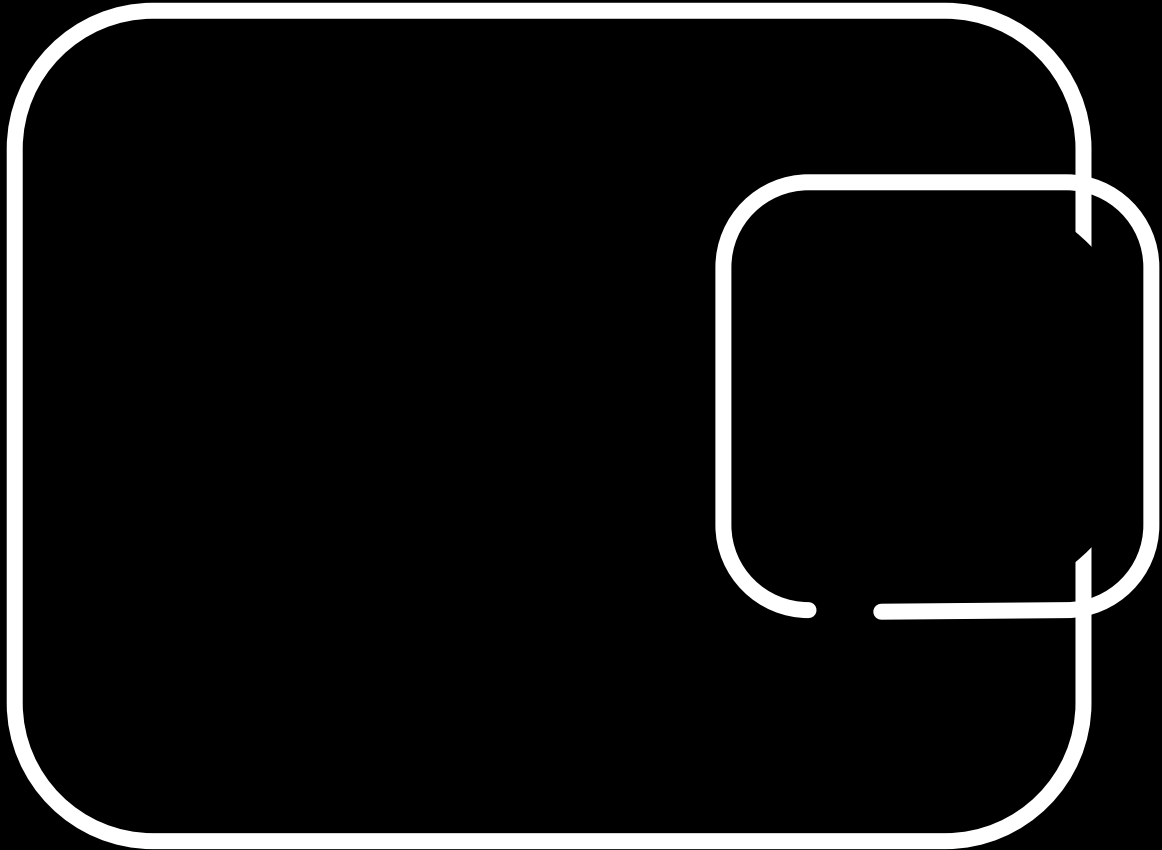
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**How Sage can help
you in the year ahead**

Pierre Badenhorst
Sage
Director



Ciba

Budget Breakfast

February 2023
Pierre Badenhurst

“Budget Update 2023”

How Sage can help in the year ahead
and what are the Payroll legislative
implications:

Changes effective March 2023:

Subsistence Allowance

Travel inside RSA – incidentals only	R 161 per day/ part of day	R 139 – FY22
Travel inside RSA – meals and incidentals	R 522 per day/ part of day	R 452 – FY22
Travel outside of RSA – meals and incidentals	Schedule of limits p/country	

Rate for Reimbursement

Prescribed rate for reimbursement kilometers (travel) R 4.64 p/km

Changes effective March 2023:

Long Service Award exemption

First R 5,000 of a qualifying long service award is exempt.

UIF Limit

Left unchanged at R 17 712 per month

OID Limit

R 563 520 per annum

BCEA earning threshold

R 241 110.59 per annum

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2023-2024 Tax Rates – Individuals

Individuals in Standard Employment and Special Trusts

Taxable Income (R)	Rate of Tax (R)
R1 – R237 100	18% of taxable income
R237 101 – R370 500	R42 678 + 26% of taxable income above R237 100
R370 501 – R512 800	R77 362 + 31% of taxable income above R370 500
R512 801 – R673 000	R121 475 + 36% of taxable income above R512 800
R673 001 – R857 900	R179 147 + 39% of taxable income above R673 000
R857 901 – R1 817 000	R251 258 + 41% of taxable income above R857 900
R1 817 001 and above	R644 489 + 45% of taxable income above R1 817 000

Tax rebates

Primary	R17 235
Secondary – Persons of 65 and older	R9 444
Tertiary – Persons of 75 and older	R3 145

Tax thresholds

The tax thresholds, at which liability for normal tax commences, are:

Persons under 65	R95 750
Persons of 65 – 74 years	R148 217
Persons of 75 years and older	R165 689

Medical Scheme fees tax credits

R 364 for main member
 R 364 for first dependent
 R 246 for each additional dependent

Payroll Legislation in the Cloud

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 - Desktop / Cloud
- Bureau / Preferential Pricing
- Human Resource
- Statutory Reporting
 - UIF Submission File
 - Year End Submission
 - EMP201/501

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Thank You



Panel discussion



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The impact of the Budget Speech on **Tax Practitioners**

Nicolaas van Wyk
CEO
CIBA

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