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# Tax News

Budget 2009

*...get a good start*



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# In This Issue

The Minister of Finance, Trevor Manuel, presented the Budget for the 2009/2010 fiscal year on Wednesday 11 February 2009.

The Budget announcements included no major changes in tax policy. Limited tax relief was provided to individuals to compensate for inflation. Ongoing reform of the tax system, including laying the groundwork for a social security tax and the making of technical corrections to existing legislation, was proposed. There were also the usual increases in “sin taxes”.

The Budget Review also contains certain amendments to be included in tax legislation in 2009 or to be further considered, but without much detail on these proposals.

## Overview of Budget 2009

*Contributed by Clive Sharwood of the Port Elizabeth office*

### Introduction

The Budget Review contains the following overview of the 2009 Budget:

“The scope of the present global crisis – the most serious financial and economic contraction since the 1930’s – presents all countries with new challenges. Although the medium term growth outlook is poor, South Africa has made the right choices over the past decade, creating the room for a bold response now. The 2009 budget advances a series of policy measures to enable South Africa to respond to the changed economic environment and construct a more robust platform for growth once the world economy recovers.

Government’s sound fiscal and monetary policies have reduced but not eliminated the country’s exposure to the international downturn. Following six years of strong performance, GDP growth is expected to slow sharply to 1.2 per cent in 2009. While some factors point towards an incipient recovery in global growth towards the end of the year, the outlook is highly uncertain. Over the period ahead government is committed to strengthening the economic foundation required for accelerated long term growth by extending the public sector infrastructure programme. The fiscal stance provides for sustained growth in public expenditure to cushion the economy and reinforce the social safety net for the poor, while ensuring that debt incurred to finance the country’s priorities is kept as sustainable levels now and in future.”

### Tax proposals

The main tax proposals are as follows:

- Total tax relief for individuals of R13.6 billion
- Taxes on petrol and diesel increase by 40.5 and 41.5 cents per litre, respectively
- An increase in “sin” taxes
- Incentives for investment in energy-efficient technologies
- Motor vehicle excise reforms to tax carbon emissions
- A new tax on energy-intensive light education.

### Revenue

Revenue for the 2008/09 year is estimated at R611 billion, R14.2 billion less than was estimated in last year’s budget. Whilst collections from individuals (R8 billion) and companies (R5.6 billion) exceeded budget, significant reductions in actual collections compared to budget were in VAT (R12 billion), Customs and Excise (R11 billion) and Transfer Duties (R3.6 billion). Revenue for the 2009/10 year is estimated at R642 billion, an increase of 5.1%. Details of the sources of revenue collection are set out in Table 2.

Revenue is expected to be 26.0% of GDP compared to 26.5% in 2008/09. Although last year’s budget predicted collections of 28.4% of GDP, the economic conditions resulted in a lower amount collected.

### Expenditure

Actual expenditure for 2008/09 was R672 billion and exceeded the budget by R29 billion, or 4.5%. The estimated expenditure for the 2009/10 year is R771 billion, an increase of 14.7%. Table 3 sets out the economic classification of national and provincial expenditure.

The largest increases are subsidies to public corporations (78.9%), transfer to departmental agencies (22.8%) and social benefits (13.3%).

The Budget Review highlights the following additions to spending over the next three years.

- R24.8 billion for provinces for increasing services, mainly health and education.
- R12 billion more for social grants and R1.2 billion for grant administration fees.
- R4.1 billion for the second phase of the expanded public works programme.
- R4 billion for the school nutrition programme to feed more children more often.
- R5.4 billion for the criminal justice sector overhaul, including fingerprint and DNA databases.
- R4.1 billion for provincial infrastructure, especially school buildings, roads and clinics.
- R4.3 billion for municipal infrastructure and R1 billion for regional bulk water infrastructure.
- R600 million for municipalities to extend free basic services.
- R1.6 billion as an equity injection into South African Airways.
- R3.7 billion more for increased housing provision.
- R1 billion for electricity demand-side management.
- R932 million for the treatment and prevention of HIV and Aids.
- R6.4 billion for public transport, roads and rail infrastructure.
- R1.6 billion for industrial development and support to small enterprises.
- R1.8 billion for rural development mainly focused on supporting small scale agriculture.

# Income Tax

## Individuals

Contributed by Kristen McClarty of the Cape Town office

### Personal Tax Rates and Rebates

Individuals are to receive personal income tax relief amounting to R13.6 billion which represents the majority of the net tax relief offered. This reduction in income tax payable by individuals is far

more favourable than that granted in the 2008/2009 Budget.

Although tax rates have once again remained unchanged, changes to the tax brackets provide a reduction in the individual tax burden at all income levels. This relief is aimed at compensating for the negative effects of wage inflation.

An illustration of this tax relief across a spectrum of incomes is shown in table 5.

The monthly tax saving (before any adjustment for fiscal drag) for individuals in the top tax bracket is approximately R419 (compared to R388 in 2008/2009).

The primary rebate for all natural persons increases from R8 280 to R9 756, and the additional rebate for persons 65 years and older increases from R5 040 to R5 400.

### Tax Thresholds

The annual income level at which an individual starts paying tax, after taking into account the individual rebates, has increased as follows:

	2008/2009	2009/2010
Under	R46 000	R54 200
65 years	R74 000	R84 200

Table 1: Revised Medium Term Macroeconomic Fiscal Framework

	2007/08	2008/09	2009/10	2010/11	2011/12
GDP (R billion)	2,067.9	2,304.1	2,474.2	2,686.3	2,953.0
GDP real growth rate	4.6%	2.6%	1.4%	3.4%	4.1%
Headline CPI inflation	8.1%	10.8%	5.4%	5.1%	4.6%
Consolidated Budget Expenditure (R billion) % of GDP	541.5 26.2%	633.9 27.5%	738.6 29.9%	792.3 29.5%	849.0 28.8%
Consolidated Budget Revenue % of GDP	559.8 27.1%	611.1 26.5%	643.0 26.0%	709.1 26.4%	781.2 26.5%
Consolidated Budget Deficit % of GDP	(18.3) -0.9%	22.8 1.0%	95.6 3.9%	83.2 3.1%	67.8 2.3%

Table 2: Revenue Collections

	2009/10 Rm Budget	2008/09 Rm Revised Estimate	% Increase/ (Decrease)
Income Tax	370,040	363,635	1.8%
Individuals and Trusts	207,450	199,000	4.2%
Companies	160,000	162,000	-1.2%
Other	2,590	2,635	-1.7%
Secondary Tax on Companies	19,000	20,000	-5.0%
Value-Added Tax	168,807	154,919	9.0%
Transfer Duty	5,340	5,040	6.0%
Securities Transfer Tax	4,300	3,875	11.0%
Donations Tax and Estate Duties	780	795	-1.9%
Other Income (Note 1)	11,601	12,969	-10.5%
Skills Development Levy	7,750	7,256	6.8%
Total Inland Revenue	587,618	568,489	3.4%
Customs & Excise	83,287	71,555	16.4%
Customs Duty	24,635	23,780	3.6%
Excise Duty	23,950	21,790	9.9%
Fuel Levy	30,090	24,480	22.9%
Other	4,612	1,505	206.4%
Less: Transfer i.t.o. Customs Union Agreements	27,915	28,920	-3.5%
Total Customs and Excise	55,372	42,635	29.9%
Grand Total	642,990	611,124	5.2%

Note 1: This includes sundry capital & revenue receipts

## Income Tax (continued)

	2009/10 Budgeted Rm	% of Total	2008/09 Estimated Actual Rm	% of Total
Remuneration of employees	231,800.4	30.1%	211,177.5	31.4%
Goods and services	104,453.9	13.6%	97,134.6	14.5%
Subsidies to public corporations and private enterprise	56,718.4	7.4%	31,703.2	4.7%
Transfers to households (includes pensions)	123,549.6	16.0%	109,017.4	16.2%
Transfers to non profit organisations	17,105.4	2.2%	15,799.2	2.4%
Transfers to provinces and municipalities	53,067.1	6.9%	47,323.8	7.0%
Transfers to departmental agencies	72,520.1	9.4%	59,054.6	8.8%
Universities and technikons	15,458.1	2.0%	14,013.8	2.1%
Interest and rent on land	55,275.4	7.2%	54,312.2	8.2%
Capital expenditure	33,646.2	4.4%	31,480.5	4.7%
Other (including contingency)	7,278.3	0.9%	1,001.0	0.1%
<b>Total</b>	<b>770,872.9</b>	<b>100.0%</b>	<b>672,017.8</b>	<b>100.1%</b>

**Table 4: Income Tax Rates for the Year of Assessment commencing on 1 March 2009**

Taxable income as exceeds R	but does not exceed R	Tax payable R
0	132 000	18%
132 000	210 000	R23 760 + 25%
210 000	290 000	R43 260 + 30%
290 000	410 000	R67 260 + 35%
410 000	525 000	R109 260 + 38%
525 000 +		R152 960 + 40%

**Table 5: Comparison of Annual Tax Payable (not inflation adjusted)  
(Natural Persons under 65)**

Taxable Income R	2008/09 Tax Payable R	2009/2010 Tax Payable R	Reduction in Tax Payable R	Percentage Reduction %
50 000	720	0	720	100,0
55 000	1 620	144	1 476	91,1
60 000	2 520	1 044	1 476	58,6
70 000	4 320	2 844	1 476	34,2
80 000	6 120	4 644	1 476	24,1
100 000	9 720	8 244	1 476	15,2
120 000	13 320	11 844	1 476	11,1
150 000	20 680	18 504	2 176	10,5
200 000	33 430	31 004	2 426	7,3
250 000	48 430	45 504	2 926	6,0
400 000	100 530	96 004	4 526	4,5
500 000	138 730	133 704	5 026	3,6
1 000 000	338 730	333 204	5 526	1,6

### Interest and Foreign Dividend Exemption

The 2009/10 increase in the interest and foreign dividend exemption is 10,5% (2008/09 – 5,5%) for persons under the age of 65 (from R19 000 to R21 000), and a 9,1% (2008/09 – 5,8%) increase for persons aged 65 years and older (from R27 500 to R30 000).

Of these total exemption amounts, the maximum exemption for foreign interest and foreign dividends increases from R3 200 to R3 500 per year.

It is also proposed that the annual exclusion threshold for capital gains or losses will increase from R16 000 to R17 500.

### Modification of capital gains tax exclusion for primary residence

Currently, a capital gain or loss of up to R1.5 million on the disposal of a primary residence is excluded from taxable capital gains. The Budget Review states that the calculation of the capital gain is often complex and difficult to understand for taxpayers.

In order to alleviate the technical difficulty of this calculation, it is proposed that an alternative be provided for the sale of a primary residence up to the gross value of R2 million. In terms of this proposal, where a primary residence is sold for a gross amount of less than R2 million, the capital gains tax exclusion will apply fully and it will not be necessary to perform the capital gains tax calculation.

Where a primary residence is sold for an amount in excess of R2 million, the existing R1.5 million capital gain/loss exclusion will continue to apply.

### Provisional tax for taxpayers 65 years and older

Currently, in respect of taxpayers 65 years and older, if the total of their employment income, interest, rental and dividends does not exceed R80 000, such individuals are exempt from provisional tax. It is proposed that this threshold be increased to R120 000.

### Miscellaneous personal and individual tax issues

The following additional amendments are proposed:

The Budget Review refers to employer contributions to retirement annuity funds made on

behalf of employees being included in the gross income of the individual, while the employee is not entitled to a tax deduction for the contribution. It is proposed that such employer contributions should qualify for a tax deduction in the hands of the employee, subject to the normal limits, to place them on a par with contributions made directly by employees. It is not clear what is being referred to here as the Fourth Schedule already contains a provision for the deduction for PAYE purposes of contributions made by an employer on behalf of employees.

A simplification of legislation relating to deductions by employers for learnerships is proposed. It is intended that this simplification will be achieved by reducing the variables and complexity of the legislation, in order to promote compliance and enforcement.

It is proposed that the tax-free lump-sum retirement benefits of public sector servants who were previously denied the protection of the retrospective taxing of their pre-1998 retirement benefits will be partially restored. The pre-1998 restored benefit should be treated as tax exempt.

Unrealised gains relating to assets of deceased persons are taxed upon death. The heirs or legatees who acquire these assets are generally not taxed. However, certain assets do not benefit from such relief resulting in additional tax. It is proposed that this unintended duplication of taxes will be removed.

### Corporate tax amendments

*Contributed by Kristen McClarty of the Cape Town office*

#### Tax deductibility of post retirement medical scheme contributions

Currently, some companies are contractually obliged to continue making medical aid contributions for retired employees. Some time ago, the accounting practice was changed to require companies to reflect such future obligations as a liability on their balance sheets. For this reason, some companies prefer to make a once-off payment to settle the obligation, either by making the payment directly to the retired employee or making a once-off contribution towards an insurance type product for the retired employee. The tax deductibility of such once-off contributions/payments is not entirely clear.

It is now proposed that such once-off contributions be deductible immediately, and not spread over time. In order to benefit from this immediate deduction, the company cannot derive any direct benefit from the payment and there can be no possibility that the funds will be returned or redirected to the employer company.

### Miscellaneous income tax amendments

*Contributed by Melanie Milleskie of the Cape Town office*

#### Deductible short-term insurers reserves

Short term insurers are allowed a deduction for certain reserves as regulated by the Financial Services Board. It is proposed that these concessions be extended to reserves in respect of offshore short-term insurance operations provided that the reserves are subject to similar regulation offshore and evaluation by SARS.

#### Application of allowances on leased assets against corresponding recoupments

Currently allowances on assets subject to finance leases may only be set off against rental income, which excludes recoupments arising from the disposal of leased assets. This is an anomaly as the recoupments are often in respect of the same assets which give rise to the allowances. It is proposed that this be corrected to allow for the deduction of allowances on leased assets against both leasing income and against corresponding recoupments in respect of disposed leased assets.

#### Controlled foreign company (CFC) rulings relief

The Income Tax Act was amended in order to allow the Commissioner to issue a ruling to provide relief from the provisions of the Act regarding passive income in a CFC where a transaction does not result in the avoidance of any tax in South Africa.

These provisions have proved difficult to administer as the issues raised are frequently of a policy nature rather than administrative interpretation. It has been proposed that the rulings exemption be re-examined and further objective exemptions be introduced that are easier to administer.

## Liquidating inactive entities

With the introduction of the new dividends tax regime, there is a need for a mechanism whereby entities with inactive real estate can be liquidated without adverse tax consequences. It has been proposed that rollover relief be provided for a transitional period to facilitate the liquidation of these entities.

## Securities lending arrangements

Securities lending has features of both loans and disposals and while the tax law generally treats these as loans, it appears that taxpayers have been treating these arrangements as loans in some instances and as disposals in other instances, generating artificial losses.

The law may be clarified to ensure the consistent tax treatment of all securities lending, either as a loan or as a disposal.

## Company law reform

The impact on income tax of the revisions to the Companies Act that were introduced in 2008 will be considered. Any amendments that are required will generally be introduced in 2010 when the new Companies Act legislation becomes effective.

## Oil and gas companies conducting incidental trades

It is proposed that the oil and gas incentive which was introduced two years ago be extended to oil and gas companies engaged in incidental business activities. This incentive was introduced to encourage domestic oil and gas exploration and production but has been found to be too restrictive as it is currently limited to companies engaged solely in oil exploration and production. The provisions will also be clarified so that the incentive is not extended to oil and gas exploration expenditure outside the Republic.

## Underwater telecommunication cables

Land-based telephone lines and cables currently qualify for a 5 per cent annual depreciation allowance. It is proposed that this allowance be extended to underwater voice and data cables laid off the coast. Consideration is also being given to the extent to which this allowance should be available to other forms of utilisation e.g. where only the right of use has been granted in respect of the cables.

## Telecommunication licence consolidation

The Independent Communications Authority of South Africa intends consolidating the various telecommunications licences into a single licence per company. It is proposed that these legislative consolidations are afforded rollover relief to the extent that the consolidation would otherwise have resulted in capital gains taxation.

## Depreciation of improvements

It is proposed that the various depreciation allowance provisions be amended to make it clear that, where improvements are made to an asset, the improvements should qualify for the same write-off period as the underlying asset. It appears that this principle does not apply to all assets and the law will be clarified to ensure uniformity.

## Distributions by collective investment schemes

Currently, a collective investment scheme in shares is treated as a company and its distributions are treated as dividends for tax purposes. Such dividends may be exempt from tax or taxable depending on the source of the distribution. For example, the distribution of interest received by the scheme is treated as a taxable dividend in the hands of the investor. In order to do away with certain unintended anomalies and disadvantages of the above, it is proposed that the distribution by these schemes should be treated in line with a conduit principle. For example, the distribution of interest received by the scheme to investors should be treated as interest and the distributions of dividends received as dividends.

In particular, this proposed amendment should have a beneficial effect on the expense deduction ratios of life insurance companies for tax purposes.

## Special circumstances

*Contributed by Philip Fouché of the Cape Town office*

- Companies formed or incorporated as a "Section 21 non-profit company" may be eligible for tax relief. Technically, the same tax relief is not available to an existing "for-profit" company which

converts to a Section 21 company. This position will be amended to extend the tax relief to the latter as well.

- Legislation will be introduced to provide that the Financial Consumer Education Foundation will be eligible for tax-deductible donations, as announced in 2007.
- Currently, some supporting public benefit organisations cannot obtain deductible donations. This status will be reconsidered to the extent that it will not give rise to tax avoidance.
- Clubs created before 1 April 2007 are required to apply for partial tax exemption status by 31 March 2009. This deadline will be postponed to 30 September 2010 to accommodate compliance difficulties.
- The Department of Trade and Industry is seeking to expand the role of cooperatives with legislation that will be fully effective in 2010. The tax legislation will be reviewed to ensure that the tax benefits to cooperatives are maintained.
- Rebates provided by the DTI to film producers for a portion of the costs incurred for producing a South African-located film are exempt from income tax. It is proposed that this tax exemption should be extended to cover the scenario where these rebates are assigned by the film producers to their investor-owners. Furthermore, current anti-avoidance rules relating to film schemes may have to be expanded.
- A recent Tax Court decision held that mining stockpiles could not be regarded as trading stock. SARS intends to appeal against the decision, but in the interim the tax legislation may be amended to prevent other taxpayers from taking the same stance.
- While restraint of trade payments are fully taxable for income tax purposes since 2000, further legislation is proposed in this regard following a decision by the Supreme Court of Appeal involving multiple restraints of trade paid to an individual that went in favour of the taxpayer.

# Employees' Tax and Fringe Benefits

*Contributed by Kristen McClarty of the Cape Town office*

## Possible discontinuation of Standard Income Tax on Employees (SITE) in 2010/2011

Since the tax-free income threshold for taxpayers younger than 65 years is now approaching R60 000 (being the SITE ceiling) the SITE system may be discontinued by 2010/2011. There are already suitable measures in place to take the place of SITE, being pre-populated tax returns and the waiver of annual filing requirements for taxpayers with single employees who meet certain requirements.

## Travelling allowances

The deemed cost tables for travelling allowances have unfortunately not been adjusted for inflation.

It is proposed that the deemed business kilometre method of determining deductible

business travel expenditure be scrapped from 2010/2011, in an effort to remove one of the last remaining means of efficiently structuring total packages. This is apparently in an effort to dissuade households from making motor vehicle and travelling choices based on the claiming of a business travel expenditure deduction based on deemed business kilometres.

Thus, from 1 March 2010, taxpayers who wish to claim business travelling expenses will be required to keep an accurate logbook to quantify business travel kilometres for purposes of the calculation of the deduction.

## Medical scheme contributions

From 1 March 2009, the monetary caps on the tax-free medical aid fund contributions are increased from R570 to R625 for each of the member and the first dependant and from R345 to R380 for each dependant thereafter.

In an effort to move away from the compliance and administrative difficulties experienced by SARS and employers, of applying the above monetary caps, the following two-step process has been proposed:

- Currently, medical scheme contributions up to the above monetary caps are treated as tax-free fringe benefits. It is proposed that this will be changed to a mechanism of the full contribution being taxable and the employee being permitted to claim a tax deduction or credit for contributions up to the cap. This proposed change will be tax neutral when compared to the current treatment.
- It is intended that the monetary caps are replaced with a tax credit of 30% of allowable medical aid contributions and expenses, in about two years' time. A consultation process will begin in 2009 to assess whether this change is in line with broader health policy considerations.

# Other Measures Under Review

*Contributed by Le Roux Roelofse of the Cape Town office*

## Income Tax Act rewrite - phase 1

Government is committed to retirement reform and creating a broader social security net. As part of the reform, it is proposed to simplify the employment income tax base, initially by developing a uniform definition of employment income across all tax instruments. The same definition of employment income should therefore apply to social security and private pensions. It is hoped thereby to reduce compliance costs for employers and to support SARS in its efforts to modernise the taxation of salaried employees.

The proposed revisions to the employment income tax base will be a first step towards rewriting the Income Tax Act. It is intended to release a discussion document and draft legislation for comment by the end of 2010.

## Provident fund, social security and retirement reforms

As part of the broader social security reforms, consideration is being given to phasing out provident funds, possibly by integrating them into pension funds. However, a number of tax issues will first have to be addressed. These and other issues will be explored with stakeholders during 2009.

## Tax administration modernisation agenda

SARS is committed to modernising the income tax system including reforming personal income tax collection and preparing for a future social security tax. The following changes are on the agenda:

- introducing enabling provisions to require employer reconciliation of employees' tax more frequently than once a year and extending reconciliations to skills development levies and UIF contributions;
- reinstating the old IRP2, obliging employers to obtain and maintain certain employee data;
- permitting SARS to provide employees' tax reference numbers and certain other non-financial data to their employers;
- requiring third-party data providers to include taxpayer reference numbers with information they provide;
- aligning estimated assessment, interest and additional tax provisions across personal income tax, the skills development levy and UIF contributions;
- ongoing customs modernisation measures;
- moving to a single taxpayer account across different tax types;
- using a single interest rate on underpayments and overpayments;
- charging compound interest instead of simple interest;
- revising the payment allocation rule to generally set payments off against the oldest outstanding debt.

## Technical corrections

The numerous amendments to the revenue laws over the recent past have resulted in the need to effect various technical corrections to non-revenue impact items (such as typing and grammatical errors, incorrect or misleading headings or definitions, misplaced cross-references) as well as legislative provisions that are clearly not in line with the legislative intent or which are ambiguous in nature. These changes are not intended as a change in policy.

## Completion of the dividend tax reform process

The secondary tax on companies is to be replaced with a dividends tax (at shareholder level) probably during the second half of 2010 once the treaty ratification processes are completed. The dividends tax rate will be 10% but may be reduced to 5% in terms of a double tax treaty. Dividend payments to domestic retirement funds, public benefit organisations and domestic companies will be exempt. Although the basic legislative framework is already in place, certain anti-avoidance measures still need to be legislated. The Budget Review also mentions that anti-avoidance measures will be introduced to prevent companies from converting taxable sales to tax-free dividends.

# Administrative Issues

*Contributed by Philip Fouché of the Cape Town office*

- It will be clarified that the dispute settlement procedures in terms of the Income Tax Act are limited to disputes following assessments and may not be concluded prior to assessments.
- In order to simplify the administration of income tax, it is proposed that employees' tax, provisional tax, foreign tax credits and tax calculated should be rounded off to the nearest rand.
- Currently, if employers fail to

withhold and pay employees' tax to SARS, SARS can enforce such payment by treating the amount as a "penalty". Technically, this has the unintended effect of preventing SARS from charging interest on the late payment. The relevant legislation will be amended to provide for the payment of interest on late payments as well.

- It is proposed that the Income Tax Act and the VAT Act be amended to:
  - clarify that the payment of tax due is not suspended as a result

of an objection lodged by the taxpayer;

- formalise the circumstances where the payment of tax will be required notwithstanding an objection; and
- provide that, following a successful objection, SARS should refund the amount paid by the taxpayer with interest. Currently, SARS is not required to pay such interest to the taxpayer, which is arguably unconstitutional.

## Other Taxes

### **Ratification of transfer duty and STT rates and exemptions**

*Contributed by Philip Fouché of the Cape Town office*

Following the relevant ministerial announcement, the rate changes and new exemptions for transfer duty and security transfer tax take effect on 1 March or shortly after the Budget speech and apply from these dates until the expiration of a 6-month period. It is proposed that this period be extended to a 12-month period to allow for the required processes to promulgate the necessary tax legislation.

### **Estate duty**

*Contributed by Kristen McClarty and Hanmeri Ferreira of the Cape Town office*

Various miscellaneous amendments relating to estate duty have been proposed.

### **Portable R3.5 million deduction between spouses**

Currently both spouses are entitled to an estate duty deduction of R3.5 million. A common estate duty planning mechanism is for each spouse to remove assets to the value of R3.5 million from his/her estate to a trust, which enables him/her to still keep some control of the assets via the trust mechanism for the benefit of the other spouse.

It has now been proposed that spouses be given flexibility in using the combined estate duty deductions without having to

resort to an often complex and costly trust mechanism. In terms of the new proposal, the surviving spouse's estate will automatically benefit from the unused deduction of the deceased spouse, with the total deduction for the couple consequently amounting to R7 million.

### **Timing and recovery of additional assessments**

Initial estate duty assessments or deemed assessments for estates with a value of more than R3.5 million are issued when the assets are distributable, while additional assessments can be raised by SARS within the following 5 years. After the closure of the estate, however, enforcement becomes difficult as the executor no longer has control over the assets of the estate.

It has now been proposed that the 5 year rule be reconsidered, so as to reach finality upon the closure of the estate, while still protecting the fiscus against fraud, misrepresentation and non-disclosure.

### **One-year usufructuary interest schemes**

The Budget Review refers to the existence of a one-year usufructuary scheme that undermines estate duty. In terms of the scheme, a duty-free transfer of a life-time usufructuary interest to a spouse takes place, while the children receive the bare dominium in the property. Once the spouse dies, the usufructuary interest is transferred with a one-year interest to a third party, whereafter the remaining rights are transferred to the intended heirs. The Budget Review notes that the scheme basically relies on the misapplication of the 12 per cent per annum valuation presumption in the context of a one-year interest.

It is proposed that legislation be introduced to close this scheme.

### **Mineral and petroleum royalties**

*Contributed by Philip Fouché of the Cape Town office*

Due to the adverse economic circumstances experienced by the mining sector, it has been decided to postpone the implementation of the mineral and petroleum royalties in terms of the Mineral and Petroleum Resources Royalty Act from 1 May 2009 to 1 March 2010. The Minister has expressed the hope that this will mitigate the retrenchment of workers.

### **Environmental fiscal reform**

*Contributed by Melanie Milleskie of the Cape Town office*

As a measure to deal with environmental challenges that are aggravated by economic growth, a number of incentives and levies have been proposed in order to promote energy efficiency and to discourage pollution respectively. A number of these measures (incentives for energy efficiency, emission reduction credits, the plastic bag levy and motor vehicle ad valorem excise duties) are dealt with under the Tax Incentives and the Customs and Excise sections contained elsewhere in this issue. Further proposed taxes aimed at environmental fiscal reform are:

### **Taxation of incandescent (filament) light bulbs**

It is proposed that an environmental levy on incandescent light bulbs be introduced in order

## Other Taxes (continued)

to promote energy efficiency and to reduce electricity demand and greenhouse gas emissions.

It is recommended that a levy of between 1 and 3 cents per watt which equates to about R3 per bulb be levied at the manufacturing level and on imports from 1 October 2009.

### International air passenger departure tax

The international air passenger departure tax is proposed to increase from R120 to R150 per passenger on flights to international destinations and from R60 to R80

per passenger on flights to Southern African Customs Union member states. This will be effective from 1 October 2009.

## Tax Incentives

*Contributed by Newton Cockcroft and Christo Engelbrecht of the Johannesburg office*

### Incentives introduced in 2008

- R20 billion allocated for tax incentives for large industrial projects (section 12I) - these tax incentives will be implemented in 2009.
- The introduction of the Enterprise Investment Programme comprising of the Tourism Support Programme (TSP) and the Manufacturing Investment Programme (MIP).
- Amendments to the Capital Projects Feasibility Programme.

### Carbon-reducing changes

- South African companies are encouraged to take advantage of the Clean Development Mechanism (CDM) opportunities of the Kyoto Protocol. There has been uncertainty with regard to the tax treatment of CDM's. In this regard it is recommended that revenue derived from primary Certified Emission Reductions (CERs) (from CDM projects) be given favourable tax treatment – either as tax exempt or subject to capital gains tax instead of normal income tax- with secondary carbon credits to be treated as trading stock (carbon abatement projects which earn 'carbon credits' through the CDM process) of the Kyoto Protocol.
- There are also recommendations that

the existing duties on motor vehicles be amended to include CO2 emissions as an environmental criterion from 1 March 2010.

### Incentives in 2009

- Recommendations have been made that investment by companies in energy-efficient equipment be given an additional allowance of up to 15% on condition that there is documentary proof of the resulting energy efficiencies (after a 2 or 3 year period) certified by the Energy Efficiency Agency.
- R17 billion of the budget has been set aside for industrial support, including tax incentives for particular sectors, and R1.6 billion has specifically been allocated for industrial development and support to small enterprises.

## Value-Added Tax

*Contributed by Chris Eagar of the Cape Town office*

This year's Budget introduces no significant proposed amendments to the VAT Act. The proposed amendments relate mainly to refining and clarifying existing provisions of the Act in order to introduce greater certainty and to reduce the risk of fraud.

### Voluntary registration threshold

With effect from 1999, vendors with a taxable supply turnover exceeding R20 000 over a twelve month period were entitled to register for VAT on a voluntary basis. The Budget Review states that it is unlikely that a viable business requiring VAT registration would have a turnover below R50 000 per annum, therefore it has been proposed that this be set as the threshold for voluntary VAT registration as from 1 March 2010. Presumably vendors whose annual turnover falls below the R50 000 will be required to deregister once the new threshold is introduced.

### False statements on VAT forms

In order to deter false representations on SARS forms, such as VAT registration ap-

plications, the making of false statements on any form submitted to SARS will now be considered an offence. Currently this applies only in respect of false statements on returns submitted.

A conviction for an offence carries a sanction of a fine or imprisonment for a period not exceeding 60 months.

### Verifying applicants for VAT registration

It has been proposed that enabling provisions be introduced to allow the use of biometric measures (for example, fingerprints) to verify the identity of applicants for VAT registration.

### VAT treatment of business reorganisations

In terms of the rollover relief provided in the VAT Act in respect of various reorganisations and intra-group transfers, the parties to these transactions are deemed to be one and the same person. As a result, no supply takes place for purposes of the VAT Act on the transfer of

any goods or services as part of and amongst the parties to such a transaction. Presumably, because no supply would be made and input tax credits may only be claimed if the relevant goods and services were acquired for the purposes of making taxable supplies, uncertainty may have arisen as to whether input tax credits may be claimed by a vendor who incurs costs like commissions and legal costs in respect of such a business reorganisation. There also appears to have been uncertainty as to when organisations involved with the making of both taxable and non-taxable supplies (for example, banks and insurers) would be required to make change-in-use adjustments flowing from such business reorganisations. It has been proposed that these uncertainties be addressed and clarified in an interpretation note (with legislative amendments, if necessary).

### Taxpayer relief from late payment interest charges

SARS levies interest on the late payment of tax or on excessive refunds claimed but has the discretion to waive such interest in part or in full provided that the taxpayer can either show that:

- (i) there was no financial loss to the state; or
- (ii) there was no financial benefit for the taxpayer.

Apparently, the choice of which of these grounds should be applied complicates the application of this provision and it is proposed that clarification be provided to

eliminate the potential for inconsistent application.

### Share block schemes

Where the owner of a share in a share block company transfers such share in the course or furtherance of an enterprise, such supply

is subject to VAT. Where this is not the case, transfer duty would be payable where applicable. In certain instances neither VAT nor transfer duty may be payable. The law will be clarified to ensure that at least one form of indirect tax applies.

## Customs and Excise

*Contributed by Jed Michaletos of the Johannesburg office*

The following changes have been announced to the current Customs and Excise legislation.

### Specific Excise Duties ("Sin Taxes")

Increases in the rates of excise duties payable on tobacco products and alcoholic beverages were announced, in line with annual trends and inflation.

The excise duty on malt beer increases by 9.5% from R42.38 to R46.41 per litre of absolute alcohol, which equates to an average tax of 79c per 340ml can.

For the third consecutive year, no changes have been announced to the excise duty on traditional African beer and traditional African beer powder, which remain at 7.82c per litre and 34.7c per kg respectively.

Increases have been announced in excise duties in relation to wine of 7.6% unfortified, 9.4% fortified and 9.4% in respect of sparkling wine. This has resulted in the rates per litre on these products equalling R1.98 per litre unfortified, R3.72 per litre fortified and R6.16 per litre sparkling.

Ciders and alcoholic fruit beverages received an increase in excise duty of 9.9% on unfortified and fortified.

Spirits and liqueurs also increase by 14.7% from R21.84 to R 25.05 per 750ml bottle. Smokers will also face increased prices as a result of increases in the excise duties - 12.9% on cigarettes, 5.5% on cigarette tobacco, 8.6% on pipe tobacco and 13% on cigars.

These duty amendments to the specific excise duties above are effective from 11 February 2009.

### Plastic bag levy

The levy on plastic bags, introduced in 2004/5 at 3c per bag, has been increased to 4c per bag with effect from 1 April 2009.

### Fuel Taxes

The fuel levy is increased by 23c and 24c per litre for petrol and diesel respectively, resulting in increases to 150c and 135c per litre for petrol and diesel respectively. The diesel fuel levy refund relief for the primary sector remains unchanged in percentage terms and its monetary value will be adjusted.

Furthermore, the Road Accident Fund ("RAF") levy is increased on both petrol and diesel by 17.5c per litre from 46.5c to 64.0c per litre. This increase is intended to strengthen the Fund's financial position and effectiveness.

In summary the fuel levy on petrol has increased by 18% on the prior year, by 21% on diesel and by 37% on the RAF. This has resulted in the total taxes on petrol equating to 34% and 31% on diesel in relation to the pump prices. In the prior year, the comparative increase was 24% on petrol and 22% on diesel. These are substantial increases. The rationale behind these increases is ostensibly an attempt to limit fuel consumption, road congestion and environmental impact, and to promote the use of public transport.

The above proposals become effective from 1 April 2009.

### Ad Valorem Excise Duties

No abolishment of ad valorem duties on luxury items has been provided for except that there will be an adjustment (reduction) to the ad valorem excise duty on motor vehicles while incorporating an additional tax component to take into account carbon dioxide emissions.

The existing ad valorem excise duties on motor vehicles will be adjusted to incorporate Carbon Dioxide emissions as an environmental criterion from 1 March 2010. The "luxury" ad valorem excise duty rate on the sale of new motor vehicles will be reduced whilst introducing an additional tax (also ad valorem) component to take into account Carbon Dioxide emissions (referred to as an "emission" tax).

### General Customs and Excise Amendments

- Customs dispute resolution: Amendments to align remission and miti-

gation provisions within customs dispute resolution to ensure that a single procedure is to be followed will be considered. Other amendments will be considered taking into account the results of a review by SARS of its dispute resolution processes.

- Warehouse policies and procedures: Amendments will be considered to provide for simplified clearance of goods from licensed warehouses to assist with the administration of ship stores.
- Advance passenger Information ("API"): Following the enactment of the empowering provisions for the compulsory electronic furnishing of API to SARS, SARS anticipates that consequential amendments may be necessary subsequent to implementation.
- Customs transit procedures: Amendments will be considered for improved provision for interruptions to goods in transit.
- Customs enforcement at the border: As additional support for the Customs Border Control Unit, the Customs and Excise Act will be amended to provide for powers of officers to patrol and carry out surveillance, to question and search persons, and for equipment and facilities to be used in detecting illicit goods concealed on persons.
- Treatment of duty free VAT exempt goods: The Customs and Excise Act is to be amended to provide for the clearance of duty free goods which are VAT exempt under rebate in terms of Schedule 4.
- 2010 FIFA World Cup: Amendments relating to the FIFA World Cup rebate item (including the 2009 Confederations Cup) will be considered as required, to provide for procedural or administrative matters as a result of the tournament or for its duration.
- Customs modernisation: In support of the rapidly changing trade environment, improved use of technology and third-party information to authenticate data and reduce the need for supporting documentation, work is continuing in relation to the modernisation of key customs measures.

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