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Summary of additional tax proposals for 2008/09

Direct tax proposals

Personal income tax rate and bracket structure

The primary rebate is increased to R8 280 a year for all individuals. The secondary rebate is increased to R5 040 a year for individuals age 65 and over. The rates of tax in respect of the 2007/08 tax year and those proposed for 2008/09 are set out in Table C.1.

Table C.1 Personal income tax rate and bracket adjustments, 2007/08 – 2008/09

2007/08		2008/09	
Taxable income	Rates of tax	Taxable income	Rates of tax
R0 – R112 500	18% of each R1	R0 – R122 000	18% of each R1
R112 501 – R180 000	R20 250 + 25% of the amount above R112 500	R122 001 – R195 000	R21 960 + 25% of the amount above R122 000
R180 001 – R250 000	R37 125 + 30% of the amount above R180 000	R195 001 – R270 000	R40 210 + 30% of the amount above R195 000
R250 001 – R350 000	R58 125 + 35% of the amount above R250 000	R270 001 – R380 000	R62 710 + 35% of the amount above R270 000
R350 001 – R450 000	R93 125 + 38% of the amount above R350 000	R380 001 – R490 000	R101 210 + 38% of the amount above R380 000
R450 001 and above	R131 125 + 40% of the amount above R450 000	R490 001 and above	R143 010 + 40% of the amount above R490 000
Rebates		Rebates	
Primary	R7 740	Primary	R8 280
Secondary	R4 680	Secondary	R5 040
Tax threshold		Tax threshold	
Below age 65	R43 000	Below age 65	R46 000
Age 65 and over	R69 000	Age 65 and over	R74 000

The proposed tax schedule eliminates the effects of inflation on income tax liabilities and results in a reduced tax liability for taxpayers at all income levels. These tax reductions are set out in Tables C.2 and C.3. The average tax rates (tax as a percentage of taxable income) for individuals are illustrated in Figures C.1 and C.2.

Table C.2 Income tax payable, 2008/09 (taxpayers below age 65)

Taxable income (R)	2007 rates (R)	Proposed rates (R)	Tax reductions (R)	% change
46 000	540	–	540	100.0%
50 000	1 260	720	540	42.9%
55 000	2 160	1 620	540	25.0%
60 000	3 060	2 520	540	17.6%
65 000	3 960	3 420	540	13.6%
70 000	4 860	4 320	540	11.1%
75 000	5 760	5 220	540	9.4%
80 000	6 660	6 120	540	8.1%
85 000	7 560	7 020	540	7.1%
90 000	8 460	7 920	540	6.4%
100 000	10 260	9 720	540	5.3%
120 000	14 385	13 320	1 065	7.4%
150 000	21 885	20 680	1 205	5.5%
200 000	35 385	33 430	1 955	5.5%
250 000	50 385	48 430	1 955	3.9%
300 000	67 885	64 930	2 955	4.4%
400 000	104 385	100 530	3 855	3.7%
500 000	143 385	138 730	4 655	3.2%
1 000 000	343 385	338 730	4 655	1.4%

Figure C.1 Average tax rates for people under age 65

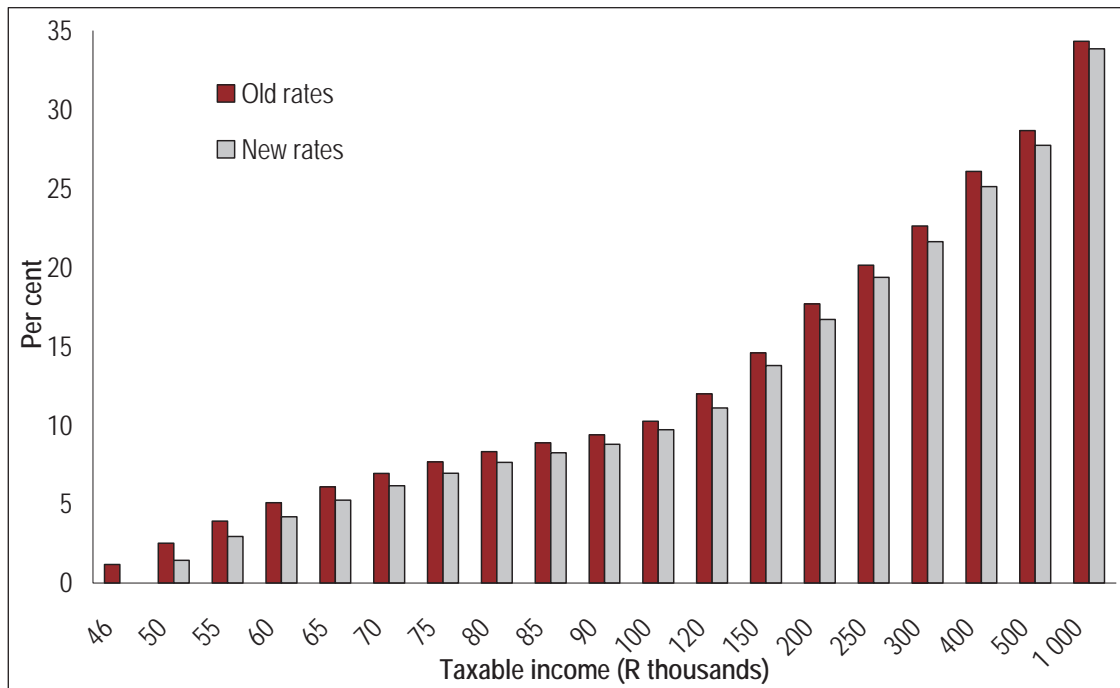
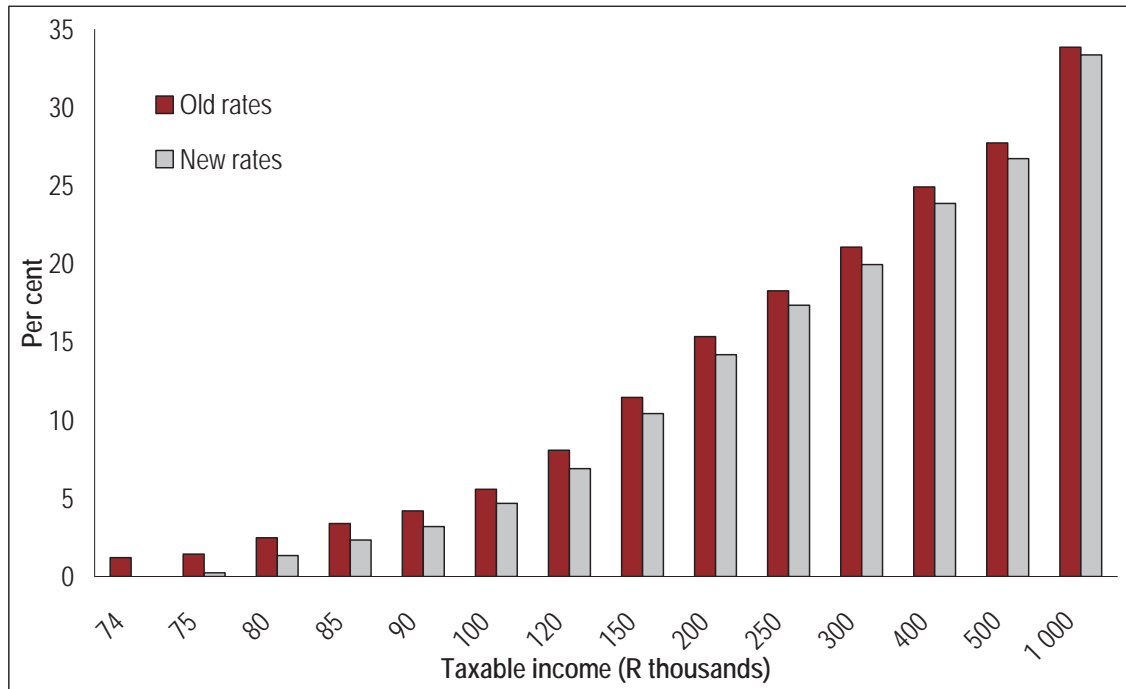


Table C.3 Income tax payable, 2008/09 (taxpayers age 65 and over)

Taxable income (R)	2007 rates (R)	Proposed rates (R)	Tax reductions (R)	% change
74 000	900	–	900	100.0%
75 000	1 080	180	900	83.3%
80 000	1 980	1 080	900	45.5%
85 000	2 880	1 980	900	31.3%
90 000	3 780	2 880	900	23.8%
100 000	5 580	4 680	900	16.1%
120 000	9 705	8 280	1 425	14.7%
150 000	17 205	15 640	1 565	9.1%
200 000	30 705	28 390	2 315	7.5%
250 000	45 705	43 390	2 315	5.1%
300 000	63 205	59 890	3 315	5.2%
400 000	99 705	95 490	4 215	4.2%
500 000	138 705	133 690	5 015	3.6%
1 000 000	338 705	333 690	5 015	1.5%

Figure C.2 Average tax rates for people age 65 and over

■ Indirect tax proposals

Specific excise duties

It is proposed that the customs and excise duties in Section A of Part 2 of Schedule No. 1 of the Customs and Excise Act, No. 91 of 1964, be amended with effect from 20 February 2008 to the extent shown in Table C.4.

Table C.4 Specific excise duties, 2007/08 – 2008/09

Tariff item	Tariff heading	Description	2007/08		2008/09	
			Present rate of duty Excise	Customs	Proposed rate of duty Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco				
104.01	19.01	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:				
.10		Traditional beer powder as defined in Additional Note 1 to Chapter 19	34.7 c/kg	34.7 c/kg	34.7 c/kg	34.7 c/kg
104.10	22.03	Beer made from malt:				
.10		Traditional beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l	7.82 c/l	7.82 c/l
.20		Other	3 961.25 c/l	3 961.25 c/l	R42.38 /l	R42.38 /l
			of absolute alcohol		of absolute alcohol	
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):				
	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:				
.02		Sparkling wine	512.14 c/l	512.14 c/l	R5.63 /l	R5.63 /l
.04		Unfortified wine	171.53 c/l	171.53 c/l	R1.84 /l	R1.84 /l
.06		Fortified wine	316.67 c/l	316.67 c/l	R3.40 /l	R3.40 /l
104.17	22.06	Other fermented beverages, (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:				
.05		Traditional beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l	7.82 c/l	7.82 c/l
.15		Other fermented beverages, unfortified	198.05 c/l	198.05 c/l	R2.12 /l	R2.12 /l
.17		Other fermented beverages, fortified	401.88 c/l	401.88 c/l	R4.32 /l	R4.32 /l
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	198.05 c/l	198.05 c/l	R2.12 /l	R2.12 /l
.90		Other	401.88 c/l	401.88 c/l	R4.32 /l	R4.32 /l
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength:				

Table C.4 Specific excise duties (continued)

Tariff item	Tariff heading	Description	2007/08		2008/09	
			Present rate of duty Excise	Customs	Proposed rate of duty Excise	Customs
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:				
.10		Wine spirits, manufactured by the distillation of wine	6 100.71 c/l of absolute alcohol	6 100.71 c/l of absolute alcohol	R67.72 /l of absolute alcohol	R67.72 /l of absolute alcohol
.15		Spirits, manufactured by the distillation of any sugar cane product	6 100.71 c/l of absolute alcohol	6 100.71 c/l of absolute alcohol	R67.72 /l of absolute alcohol	R67.72 /l of absolute alcohol
.25		Spirits, manufactured by the distillation of any grain product	6 100.71 c/l of absolute alcohol	6 100.71 c/l of absolute alcohol	R67.72 /l of absolute alcohol	R67.72 /l of absolute alcohol
.29		Other spirits	6 100.71 c/l of absolute alcohol	6 100.71 c/l of absolute alcohol	R67.72 /l of absolute alcohol	R67.72 /l of absolute alcohol
.40		Liqueurs and other spirituous beverages	6 100.71 c/l of absolute alcohol	6 100.71 c/l of absolute alcohol	R67.72 /l of absolute alcohol	R67.72 /l of absolute alcohol
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:				
.10		Cigars, cheroots, and cigarillos, of tobacco or of tobacco substitutes	164 057.97 c/kg net	164 057.97 c/kg net	R1 726.92 /kg net	R1 726.92 /kg net
.20		Cigarettes, of tobacco or of tobacco substitutes	307.82 c/10 cigarettes	307.82 c/10 cigarettes	R3.41 /10 cigarettes	R3.41 /10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:				
.10		Cigarette tobacco and substitutes thereof	16 483.51 c/kg	16 483.51 c/kg	R173.49 /kg	R173.49 /kg
.20		Pipe tobacco and substitutes thereof	8 738.60 c/kg net	8 738.60 c/kg net	R92.15 /kg net	R92.15 /kg net

Ad valorem excise duties

It is proposed that the relevant sections in Section B of Part 2 of Schedule No. 1 of the Customs and Excise Act, No. 91 of 1964, be deleted with effect from 1 April 2008, to the extent shown in Table C.5.

Table C.5 Ad valorem excise duties to be abolished, 2008/09

Tariff item	Tariff heading	Sub heading	Description
124.45	85.19	8519.20	Sound recording or reproducing apparatus operated by coins, banknotes, bank cards, tokens or by other means of payment
		8519.30	Turntables (record-decks)
		8519.81	Sound recording or reproducing apparatus using magnetic media
124.55	85.19	8521.10	Magnetic tape-type (excluding those for use with magnetic tape of a width exceeding 25 mm and video tape duplicators, cassette-type, not incorporating a video reproducing device)
130.10	95.04	9504.90	Video games with self-contained screen and games of skill or chance with an electronic display, including parts thereof

■ Ongoing tax legislative reforms

Below are ongoing tax issues stemming from last year's annual budget cycle. Many of these issues were already subject to analysis but required further information before they could be fully resolved.

South African housing for foreign skilled expatriates

In 2007, legislation was enacted to close unintended loopholes relating to free housing accommodation provided to foreign visiting workers. Without this change, foreign visiting workers arguably could have claimed tax-free employer-provided accommodation for an open-ended period. While the 2007 legislation properly addressed this practice, it is proposed that the legislation be relaxed to permit tax-free employer-provided accommodation for a maximum of two years to cover the likely cost of carrying two homes for short-term secondments. This tax-free treatment will be subject to a ceiling equal to 25 per cent of the employee's salary or R25 000 per month – whichever is lower.

Broad-based incentive shares

As announced in 2007, government surveyed business as to the viability of the current tax incentive for broad-based share schemes. Information yielded from this effort indicates that some requirements are too stringent, thereby preventing full utilisation. Certain of these restrictions will be relaxed without compromising the broad-based objective of the incentive. Key issues at stake are the tax-free ceiling and the percentage of employees required to participate in the scheme.

Streamlining retirement fund registration and changing pre-retirement withdrawal defaults

The 2007 legislative agenda sought to formalise and streamline the various categories of retirement funds for improved administration. These shifts would have allowed the Financial Services Board to assume control over all pension requirements that are regulatory in nature. While significant progress was achieved on this matter, this unfinished aspect of the 2007 agenda will be completed in early 2008. In addition, the proposed changes create the legislative framework for further reforms dealing with retirement withdrawals. One issue to be addressed is the taxation of retirement funds upon employee termination of service, even if that employee fails to withdraw funds from the retirement system. Another issue is the full taxation of retirement funds upon a member's death even if the retirement funds are converted to an annuity for the benefit of the deceased's beneficiaries.

Dividend base definition

In 2007, government announced its intent to broaden the dividend definition base for the Secondary Tax on Companies in order to close significant loopholes. While loopholes were closed, the policy shift required for a proper broadening still needed further analysis. A discussion document is being issued to address the larger policy issues. The ensuing dialogue will allow for the enactment of legislation during the latter part of the year.

Impact of capital distributions

As part of the 2007 effort to close Secondary Tax on Companies loopholes, the taxation of capital distributions was changed to prevent avoidance. Under the change, all capital distributions trigger part-disposal treatment for capital gains purposes. Although this change effectively closed the loophole of concern, other options may have better long-term viability. Depending on time constraints, a short discussion document is anticipated on the subject, followed by possible legislative change.

Intellectual property arbitrage

In 2007, government enacted legislation that seeks to eliminate the deduction for royalty payments to foreign residents if the royalty stemmed from intellectual property initially devised in South Africa. This legislation is based on the premise that taxpayers should not be able to use South African-developed intellectual property to denude the domestic tax base. However, comments from practitioners indicated further discussion was required before implementation. The effective date for the legislation was accordingly delayed until 2009 so that various matters could be addressed.

Revised taxation of public entities

In 2007, it was announced that the income taxation of public entities would be revised. Current legislation predates the Public Finance Management Act (2000), and a new regime should be enacted that reflects this newer public dispensation. The probable essence of the proposal is to mainly treat business entities as fully taxable and regulatory entities as exempt.

Long-term insurers – expense and profit transfer formula

In 1999 a complex formula was introduced to allow a tax deduction for expenses not directly attributable to taxable investment income of the policyholder funds of an insurer. These expenses are generally selling and administration expenses. The underlying principle of apportionment is to exclude that portion of the expenses attributable to non-taxable income. The formula is also used to determine the tax deduction in the various policyholder funds on transfer of “profits” to the corporate fund for tax purposes. Although the formula has been adjusted with the introduction of capital gains tax, it gives rise to a number of anomalies, as the economic environment has changed since it has been introduced. It is proposed that this formula be reviewed for possible legislation so that the formula reflects current business practices (for example, investments through collective investment schemes) and tax policy principles.

Group relief and the de-grouping charge

The 2007 legislative agenda contained a balanced set of changes to the company group relief rules. As part of this balanced set of changes, the legislation narrowed the range of companies eligible for group treatment. This narrowing was not only enacted to prevent avoidance but also to develop a more workable group concept so that further forms of group relief could eventually progress in line with international trends. All 2007 proposed changes were set to become effective as of 1 January 2009. At this stage, the group definition still requires refinement, having been narrowed too much in some respects and not enough in others. Transitional issues also remain an ongoing concern.

Other aspects of the intra-group rollover rules are also of concern. Some taxpayers are misusing group relief to cash out their company interests to independent parties without tax. Intra-group transfers involving debt remain a problem. Lastly, the de-grouping charge must be revisited in respect of double gains as well as trapped losses. A similar set of issues will have to be considered in situations where qualifying ownership unwinds in respect of other rollover reorganisations.

Provisional tax system

The review of the provisional tax system and associated penalty and interest provisions will continue, with a view to improving the system and underpinning the developments in return filing discussed in more detail in Chapter 4.

Administrative penalties

The current penalty tax regime relating to the imposition and remittance of additional tax and other penalties in the tax acts differs from one act to another, and does not appropriately cater for less serious procedural and administrative non-compliance. It is proposed that the administrative penalty regime be revamped and that a more objective penalty system be introduced which would be administered in accordance with a defined set of criteria. This would create more certainty for taxpayers.

E-commerce

In the 2007 Budget, it was announced that the practical implications of requiring e-commerce suppliers of services to register within South Africa would be considered with regard to international practice. The international research has been completed but administrative and operational systems requirements mean that any legislative amendments providing for the registration of these suppliers may require additional consultation. Hence, legislation on this issue may be introduced in 2008 or 2009 (and may be preceded by a discussion document).

Nominal or passive foreign-controlled local activities

In the 2007 Budget, it was announced that the VAT registration for nominal or certain wholly passive activities of foreign persons is impractical when the supply is made to domestic VAT vendors. Consideration has been given to allowing relief in this regard, but administrative and operational system requirements may require additional consultation. Legislation on this issue may be introduced in 2008 or 2009 (and may be preceded by a discussion document).

Bare dominium financing structures

As noted previously, certain taxpayers enter into *bare dominium* structures designed to claim input credit where none are warranted. Rather than proceed directly to a legislative amendment a short discussion paper on the topic will be issued, to be followed by corrective action.

Newly proposed miscellaneous income tax amendments

Personal issues

- *Repayable employee benefits*: Employees sometimes receive funds (e.g. maternity payouts, retention payments and performance bonuses) from their employers that may have to be returned if certain conditions are not subsequently fulfilled. In each of these circumstances, the tax law treats the initial payment as fully includible as gross income for the employee with the repayment being non-deductible. This failure to allow deductions for these repayments needs to be remedied as a matter of fairness.
- *Personal use of cellular phones and laptops*: Employees are increasingly obtaining home use of employer cellular phones and laptops. This usage is mainly intended to encourage productivity outside the office. However, personal use of these items is ultimately inevitable given home access. In accordance with this trend, it is proposed that incidental private use of cellular phones and laptops should not give rise to fringe benefits taxation.
- *Trust distributions to beneficiaries*: The current regime for the vesting of trust assets potentially triggers a double tax charge. No reason exists for this double charge, which will accordingly be removed.

- *Outside contributions added to estate redistributions:* The capital gains regime was recently changed to allow for the tax-free redistribution of inherited assets among heirs. However, these rules need to be adjusted to cover situations where certain heirs supply outside funds (or assets) in order to equalise differences in values among the inherited assets.
- *Community association governing bodies (body corporates):* A variety of organisations pool funds for community needs (such as sectional title bodies, share block companies and other local home associations). The levies raised by these organisations from their members are currently tax-free, but all other income is generally taxable. In order to alleviate administration and compliance, it is proposed that all non-levy investment income be exempt up to R50 000 per organisation.
- *Traditional communities:* Legally recognised traditional communities established under the Traditional Leadership and Governance Framework Act, 2003, are currently tax-exempt. However, certain traditional communities with more informal structures are taxable even though these structures have a similar purpose. Consideration will be given to restructuring or extending the exemption to these more informal structures.
- *Share incentive schemes:* Several years ago, legislation addressing share incentive schemes was significantly tightened to ensure that these executive schemes were fully taxed. These schemes continue to raise issues in terms of avoidance and anomalies that may require either legislative amendment or interpretive clarification.
- *Submission of supporting documents:* The Income Tax Act contains provisions that require supporting documents to be submitted with final and provisional tax returns. This supporting document requirement is now contrary to the administrative drive for electronic filing. The law will accordingly be changed to remove this submission requirement. Supporting documentation need only be kept as part of the taxpayer's records.

Business issues

- *Consideration for government business licenses:* Certain business activities require government licenses as a legal prerequisite. Many licenses have traditionally required an upfront cash consideration. More recently, certain licenses have instead required various forms of socially related expenditure in lieu of typical cash consideration. Due to various anomalies in the law, neither the cash nor the socially related expenditure can be deducted when paid or over the period of the license.
- *Water pipelines for electrical power generation:* Pipelines used to transport raw water to supply power stations are not eligible for tax depreciation despite ongoing wear and tear. Water pipelines will henceforth be eligible for an annual tax write-off. This write-off will roughly approximate annual wear and tear (i.e. 5 per cent).
- *Depreciation of small business non-manufacturing equipment:* Qualifying small business corporations engaged in non-manufacturing businesses can write-off equipment over three years at a 50:30:20 rate. While this regime acts an incentive, the 50:30:20 rate is occasionally less favourable than the general depreciation regime available to other parties (such as the 100 per cent rate for small assets). It is therefore proposed that small business corporations should be eligible for the general depreciation regime if desired.
- *Removal of the municipal market exemption:* An exemption exists for certain agricultural markets operating under the control of municipalities. This exemption was enacted to assist a particular project, but the proposed project never materialised. Having failed in its stated purpose, the exemption will be removed.
- *Merger of deemed employee regimes:* Two sets of rules exist to prevent employees from avoiding monthly PAYE withholding by artificially characterising themselves as independent contractors.

While the objectives at issue are important, the duplicative set of rules creates an unnecessary burden on small business. The two regimes will be merged.

- *Increased exemption threshold for the spreading of deductions:* Deductions for payments relating to goods, services and other benefits must be spread over the economic life that these items are provided. This spreading prevents artificial upfront payments. However, a R50 000 *de minimis* threshold exists for administrative and compliance ease. This exemption threshold, set in the year 2000, will be increased to R80 000 in line with inflation.
- *Inward foreign research and development (R&D) investment:* In 2006, government created a 150 per cent allowance for R&D to stimulate these important activities. As part of this package, special rules apply in the case of outside funding so that the funding party will obtain the 150 per cent allowance if an independent technical team is performing R&D on the funding party's behalf. Although this allocation of the 150 per cent allowance is largely preferred by industry in domestic settings, allocation of the 150 per cent allowance to foreign parties engaged in funding is of little value because the foreign funding party generally lacks a meaningful South African tax base. Subject to anti-avoidance concerns, consideration will therefore be given to switching the 150 per cent allowance to the independent domestic technical team in these circumstances.
- *Inward foreign JSE listings:* Dividends from a company with foreign shares listed on the JSE are tax exempt as long as South African residents own more than 10 per cent of the foreign company's shares. This 10 per cent threshold unfairly discriminates against smaller listed companies and will be removed.
- *Repatriations from foreign cooperatives:* The South African tax system provides a special exemption for dividends repatriated back to South Africa from 20 per cent controlled foreign subsidiaries. This exemption encourages the repatriation of funds by owners of the subsidiary that have a meaningful say in that subsidiary's affairs. While this exemption applies to traditional companies, the exemption does not apply to cooperatives. Because the objective of repatriating funds is the same, this exemption will be extended to cover foreign cooperatives to the extent the member's interest effectively mirrors share equity.
- *Multi-tier controlled foreign companies (CFCs):* South African taxation of CFCs operates on an imputation basis. All imputed CFC income triggers corresponding upward base cost adjustments in the CFC shares. These corresponding adjustments need to be amended to better account for multi-tier situations where less than 100 per cent share ownership exists between CFC tiers.
- *Debt cancellation between offshore group CFCs:* The CFC regime eliminates income and loss for offsetting transactions between CFCs that are part of the same offshore group. This exclusion covers items such as interest and foreign currency adjustments pertaining to intra-group CFC debt. It is proposed that the offsetting tax impact of debt cancellations between intra-group CFC members be eliminated on the same basis.
- *Refinement of share distributions and recapitalisations:* Share distributions and recapitalisations generally enjoy the benefit of rollover treatment for capital gains tax purposes. However, the regime is not integrated with the Chapter II, Part III reorganisation rollover rules (which include trading stock rollovers) and will be altered accordingly.
- *Extended tax-preferred liquidation period:* Taxpayer relief is potentially afforded when companies liquidate. One condition for this relief is that the liquidation occurs within an automatic six-month period (or a later date upon SARS approval). It is now proposed that the automatic period be extended to 18 months given the fact that many larger-scale liquidations take more than six months.
- *Reorganisations involving depository receipts:* The Part III reorganisation rules provide rollover relief upon the restructuring of equity shares. It is proposed that the definition of equity shares be expanded to accommodate depository receipts (i.e. foreign-listed instruments backed by shares).

- *Intra-group capital distributions:* Dividends (i.e. profit distributions) between companies within the same group are tax-free, and sales between these companies are eligible for rollover relief. However, no relief exists if one group company makes a capital distribution to another. Consideration will be given to providing comparable relief in this area as long as the relief amounts to deferral (as opposed to a permanent exemption).
- *Foreign takeovers and unbundlings:* Foreign taxpayers are seeking to utilise group unbundlings to transfer subsidiaries to newly formed holding companies. These transactions step up the purchase price as the means for eliminating any further gain as the subsidiaries are sold to unconnected parties (or in respect of businesses dropped into newly formed subsidiaries). Efforts will be made to eliminate this concern.
- *Share-issue anomalies:* Special rules exist for determining the base cost of items received by a company when that company issues shares in exchange. While the law in this area is fully settled, possible consideration will be given to eliminating unintended anomalies.
- *Capital gains 2001 effective date issues:* The taxation of capital gains continues to generate effective date anomalies. The greatest set of issues relate to the time-apportionment method of allocating gain/loss to pre-2001 years and post-2001 years, especially in relation to the capital distribution rules. As in prior years, these issues will be addressed as they arise.
- *Financial year end:* As a technical matter, taxpayers may only close their accounts on a specified date (e.g. 30 June) for income tax purposes. Unlike the value-added tax, accounts may not be closed on a specified day (e.g. the last Friday of the month). The flexibility to utilise specified days will be added to the income tax.
- *Retirement savings lump sums and provisional tax calculations:* As a general matter, provisional tax payments cannot fall below the “basic amount” calculation. This “basic amount” calculation excludes capital gains because capital gains are not viewed as recurring amounts. A similar exclusion should exist for retirement lump sums and pre-retirement withdrawals.
- *Process and tax treaties:* The process provided for the collection of debt on behalf of another tax administration will be reviewed as it has not kept abreast with international treaty practice.
- *Election for tax-free rollover reorganisation treatment:* The Income Tax Act provides tax-free rollover treatment for a variety of company restructurings. Most of this relief is elective. Unfortunately, no formal election procedure exists even though substantive reorganisation relief was enacted some time ago. To alleviate these concerns, reorganisation relief will be made automatic with taxpayers given the option of electing out if desired.

■ Newly proposed VAT amendments

- *VAT filing threshold:* The monetary thresholds for agricultural, pastoral or other farming activities (which file on a six-monthly basis) will be increased from R1.2 million to R1.5 million. Small businesses that file a VAT return on a four-monthly basis will also be subject to the threshold increase from R1.2 million to R1.5 million. These increases take into account the effects of inflation.
- *Reforming the VAT treatment of business reorganisations:* The Income Tax Act provides extensive rollover treatment for various reorganisations as well as intra-group transfers. Although a modest set of rules was similarly added to the VAT Act, these rules are not fully in line with rollover principles. It is proposed that the VAT rules be amended to improve the alignment.
- *Vocational training:* The VAT Act provides for the supply of vocational training to an employer who is not a resident of the Republic to be zero-rated. The term vocational training is not defined, resulting in difficulty in interpretation. Accordingly, the term vocational training needs to be

defined in order clarify the intention and to align it with international practice. Legislation on this issue may be introduced in 2008 or 2009 (and may be preceded by a discussion document).

- *Destroyed goods:* Imported goods destroyed under customs supervision are eligible for full customs rebates. However, this destruction is not eligible for comparable VAT relief, thereby requiring legislative amendment.
- *Transformation of imports:* Imported goods may not be subject to VAT if processed, manufactured, finished, equipped or packed in South Africa for export. Relief in this area, however, continues to be subject to technical difficulties in relation to the customs rules. These issues will be clarified and synchronized with the customs rules.
- *Imports of oil and gas drilling rig equipment:* The previous OP 26 lease regime for oil and gas exploration/production provided various tax incentives to encourage investment. These incentives included relief from VAT (and customs) import charges for oil and gas drilling rig equipment imports. With the termination of the OP 26 lease system, comparable and more transparent relief will be legislatively afforded in line with the initial intention of the former OP 26 lease regime.
- *Termination of refunds into third-party bank accounts:* The VAT Act currently provides SARS with the authority to make refunds to VAT vendors via bank accounts held by third-party nominees. This practice may be withdrawn or restricted given the risks involved.

■ Newly proposed Customs and Excise amendments

- *State warehouses:* For various reasons, imported goods may not be secured in a state warehouse, but at the place where the goods are found. Amendments to the Customs and Excise Act will be considered to provide for a more equitable distribution of state warehouse rent that becomes due to the owners of rental premises.
- *Alignment with the World Trade Organisation Valuation Agreement:* The Customs and Excise Act will be amended to enhance its alignment to the articles of the World Trade Organisation Valuation Agreement.
- *Counterfeit goods:* In 2007, the customs provisions relating to counterfeit goods were published but not promulgated. Consideration will be given toward refining some of these provisions in line with the amendments to the Counterfeit Goods Act, 1997.
- *Tobacco strategy:* Amendments to the Customs and Excise Act will be considered in order to further curb the illicit trade in tobacco products. These changes will support the implementation of the SARS tobacco strategy.
- *Waste and scrap remaining after destruction:* After goods are destroyed, some waste or scrap could remain. The Customs and Excise Act will be amended so that any duty thereon will be assessed as if the waste or scrap were imported.
- *Refunds against prevailing practice:* In the Income Tax and Value-added Tax Acts, SARS is not authorised to issue refunds if the initial amount was paid in accordance with practice generally prevailing. As a matter of consistency, a similar provision dealing with refunds must be added to the Customs and Excise Act.
- *Advance Passenger Information (API):* API is collected by the carrier at departure and electronically sent to the destination border control authorities. Empowering provisions to make compulsory the electronic furnishing of API to SARS will be considered.
- *Periodic clearance and electronic warehouse management system:* Amendments to the Customs and Excise Act will be considered to provide for the periodic clearance of goods imported into a

licensed customs and excise warehouse. An electronic warehouse management system is also under consideration.

- *Small, medium and micro enterprises:* The Customs and Excise Act will be amended to provide for simplified excise procedures for small, medium and micro enterprises.
- *Review of Schedule No. 8 – Licensing:* SARS will review the provisions within Schedule No. 8 to the Customs and Excise Act.
- *Submission of documents:* Amendments to the Customs and Excise Act will be considered to align the documents required to be produced upon the import or export of goods by declarants.
- *Administration over bulk goods:* The customs procedures relating to storage and movement of bulk goods will be simplified. These changes will reduce industry compliance costs while easing SARS administration.

Newly proposed amendments to various duties and levies

- *General anti-avoidance rule to protect the estate duty:* Unlike other tax acts, the estate duty does not contain a general anti-avoidance rule to protect against estate duty avoidance. This general anti-avoidance rule will be added as well as specific anti-avoidance rules to prevent the artificial manipulation of estate values through the use of short-term trusts and similar arrangements.
- *Estate duty assessment:* Under current law, SARS can raise an initial assessment for an indefinite time after death. A time limit exists only upon additional assessment occurring after the initial assessment. Measures to limit the open-ended assessment window will be investigated.
- *Life insurance/pension benefits and estate duty:* The estate duty is levied on life insurance payouts, but only if certain structures are used. This disparity creates a premium on sophisticated tax planning (frequently enjoyed by the wealthy) while creating an inadvertent trap for the unwary. To rectify this, an explicit exemption will be added for life insurance up to a specified threshold (as long as that policy is not created shortly before death). As a related matter, disparities also exist for pension benefits on death depending on the structure used. Uniform relief will accordingly be explored that similarly eliminates traps for the unwary.
- *Stamp duty on leases:* Stamp duty has been mainly repealed except for leases of more than five years. Under consideration is the outright repeal of the remaining aspects of the stamp duty in order to simplify administration and compliance. At issue is whether this repeal could lead to the undermining of the transfer duty, and whether the transfer duty should be legislatively applied to the full range of long-term leases.
- *Industrial Development Zones (IDZs):* Customs and VAT relief already exist as an incentive for foreign investment into IDZs. At issue is whether IDZ management companies are eligible for tax-free treatment. Other issues of concern are the potential non-deductibility of tenant improvements to leased IDZ improvements and the Stamp Duty on long-term leases.
- *Reversing the burden of proof for the intent to evade:* Various tax acts presently provide that a taxpayer is presumed to have an intent to evade an assessment or taxation if that taxpayer makes a false statement or entry. This presumption can be overcome if the taxpayer provides proof to the contrary. The constitutionality of this presumption will be reviewed.
- *2010 FIFA World Cup:* Parties associated with the 2010 FIFA World Cup are eligible for a variety of tax-relief measures as part of the agreement to attract the World Cup to South Africa. Technical amendments will be added to ensure that these relief measures operate in full as initially intended. Issues slated for legislative change involve the exemption for the host broadcaster, application of employment related taxes and tax-free area adjustments.

- *Diamond export levy*: The Diamond Export Levy Act was promulgated into law in 2007 and is awaiting implementation via ministerial approval. In preparation for this implementation phase, it has been determined that the purchase of diamonds by foreign persons needs to be considered so as to properly regulate the collection and accounting of the levy that may be payable on these diamonds. Administrative implementation issues may also have to be considered.

■ Technical corrections

In addition to the miscellaneous amendments above, the 2008 legislation will contain various technical corrections. These technical corrections will address non-revenue impact items, such as typing and grammatical errors, incorrect or misleading headings or definitions, misplaced cross-references, differences between the English and Afrikaans texts, obsolete provisions (e.g. updating the tax acts in the light of other non-tax legislative changes), incorporation of regulations into law and problems relating to effective dates. These technical corrections may also occasionally include changes to legislation clearly at odds with legislative intent as well as obvious ambiguities and omissions, especially in respect of legislation introduced in 2007. All technical corrections described herein are not intended as a change in policy.

■ Announcements and future website request for further information

In addition to the agenda described in Chapter 4 and Annexure C of the 2008 *Budget Review*, a number of future tax legislative items will be analysed as works in progress for possible finalisation after 2008. Even though many of these items are merely in need of internal review, certain items call for early public participation. Below are some items in which public participation will be requested.

- *Property investment vehicles*: It was announced in the 2007 *Budget Review* that the regulatory and tax regimes relating to property holding entities will be analysed during the course of 2007. A discussion document was released on 3 December 2007 with the comment period ending on 31 January 2008. A response document will follow which will cover detailed design features and draft legislation.
- *Collective investment schemes and hedge funds*: An international trend exists to provide collective investment schemes in securities with a more flexible mandate. This flexibility offers foreign funds a competitive advantage over South African domestic funds. In view of the complexities related to hedge funds, it is proposed that the regulatory and tax policy issues relating to collective investment schemes and hedge funds be reviewed during the course of 2008. This review will entail the release of a high-level policy statement as a precursor to a more comprehensive discussion document.
- *Future website request for comment*: Taxpayers frequently make requests for legislative changes. In the past two years, the National Treasury has regularised these requests by sending out a formal invitation for comment a few months before the annual tax budget process is complete. These requests often result in amendments, some of which have been described above. Others are rejected. Still others raise issues of policy interest but the arguments raised often fail to contain sufficient motivation. To maintain momentum on this latter group of issues, the National Treasury will issue a website request later this year for public comment on issues that warrant further consideration. Based on the comments received, some of these items may be added to the budget proposal process for 2009.