BUDGET 2010/2011

Tax proposals

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BUDGET 2010/2011

Tax proposals

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Introduction

The international financial crisis, and the recession that followed, required governments the world over to fund crucial stimulus measures at a time when tax revenues were falling sharply. In South Africa too, tax revenue has fallen as a share of GDP, contributing to a widening budget deficit.

Lower tax revenue is automatically taken into account in government's countercyclical fiscal policy, which adjusts to highs and lows in the business cycle, supporting investment and demand. As the economy recovers, tax revenue will begin to recover, though there is often a considerable lag between an economic recovery and higher corporate tax receipts.

Tax policy will remain supportive of the overall economic recovery by providing relief to individuals to compensate for inflation. The 2010 tax proposals also include initiatives to improve tax compliance and broaden the tax base. In the future, higher tax revenue will be required to help narrow the fiscal deficit.

Overview

The past year has been one of the most challenging periods for revenue collection since 1994. From the fourth quarter of 2008, the economy contracted for three consecutive quarters. A significant slowdown in household consumption expenditure, falling employment, and declining imports and exports led to a steep cyclical reduction in tax revenue.

At the beginning of 2010 there are indications that the worst of the global recession is behind us. South Africa's economy is on the way to recovery, with economic growth turning positive in the third quarter of 2009, and the trend is expected to continue during 2010/11.

The revised estimated tax revenue for 2009/10 is projected to be R68.9 billion lower than the budgeted R659.3 billion announced in February 2009, but R1.4 billion higher than the estimate at the time of the *Medium Term Budget Policy Statement* last October. In line with the economic slowdown, value-added tax (VAT) and customs duty revenues declined substantially in 2009/10, followed by corporate income tax revenues after a lag of two quarters. While both VAT and customs revenues may recover relatively quickly in response to renewed growth, corporate income tax is likely to trail behind.

The 2010 tax proposals provide individuals with relief for the effects of inflation. The taxation of financial instruments, certain aggressive financial transactions, and a comprehensive approach to taxing carbon emissions will be investigated during the course of 2010.

Main tax proposals

The main tax proposals include:

- Personal income tax relief for individuals amounting to R6.5 billion to compensate partially for inflation
- Discontinuation of the SITE system
- Measures to limit tax avoidance through salary structuring
- A limited voluntary disclosure dispensation for taxpayers in default
- Measures to curtail certain aggressive financial transactions
- An increase in fuel taxes
- Increases in excise duties on tobacco and alcohol products
- An amended carbon emissions tax on new motor vehicles.

Relief for individuals

Personal income tax relief

Over the past 10 years government has adjusted income tax brackets to take account of the effects of inflation on income tax paid by individuals. In addition, by adjusting thresholds, real relief has been provided to taxpayers, increasing disposable income and supporting economic growth.

Despite the tight fiscal environment, the 2010 Budget proposes direct tax relief to individuals amounting to R6.5 billion to partially compensate for the effects of inflation. Most of the relief is provided to taxpayers in lower-income brackets. Taxpayers with an annual taxable income below R150 000 will receive 24.6 per cent of this relief; those with an annual taxable income between R150 001 and R250 000 will receive 28.8

per cent; those with an annual taxable income between R250 001 and R500 000 will receive 26.2 per cent; and those with an annual taxable income above R500 000 will receive 20.4 per cent.

South Africa has a progressive income tax system. Registered taxpayers with taxable income below R250 000 account for about 30 per cent of personal income tax revenue; those with taxable incomes of between R250 000 and R500 000, 26 per cent; and those with taxable income above R500 000 account, 44 per cent. In addition, all South Africans contribute to funding government's developmental objectives through taxes such as VAT, the fuel tax and corporate taxes.

The primary rebate is increased to R10 260 per year for all individuals. The secondary rebate, which applies to individuals aged 65 years and over, is increased to R5 675 per year. The resulting income tax threshold below which individuals are not liable for personal income tax is increased to R57 000 of taxable income per year for those below age 65 and to R88 528 per year for those aged 65 and over. The rates of tax for the 2009/10 tax year and those proposed for 2010/11 are set out below.

Personal income tax rate and bracket adjustments

Taxable income	2009/10 Rates of tax	Taxable income	2010/11 Rates of tax
R0 – R132 000	18% of each R1	R0 – R140 000	18% of each R1
R132 001 – R210 000	R23 760 + 25% of the amount above R132 000	R140 001 – R221 000	R25 200 + 25% of the amount above R140 000
R210 001 – R290 000	R43 260 + 30% of the amount above R210 000	R221 001 – R305 000	R45 450 + 30% of the amount above R221 000
R290 001 – R410 000	R67 260 + 35% of the amount above R290 000	R305 001 – R431 000	R70 650 + 35% of the amount above R305 000
R410 001 – R525 000	R109 260 + 38% of the amount above R410 000	R431 001 – R552 000	R114 750 + 38% of the amount above R431 000
R525 001 and above	R152 960 + 40% of the amount above R525 000	R552 001 and above	R160 730 + 40% of the amount above R552 000
Rebates		**Rebates**	
Primary	R9 756	Primary	R10 260
Secondary	R5 400	Secondary	R5 675
Tax threshold		**Tax threshold**	
Below age 65	R54 200	Below age 65	R57 000
Age 65 and over	R84 200	Age 65 and over	R88 528

The proposed tax schedule compensates individuals for the effect of inflation on income tax liabilities and results in reduced tax liability for taxpayers at all income levels. These tax reductions are set out below.

Income tax payable by individuals younger than 65

Taxable income (R)	2009 rates (R)	Proposed rates (R)	Tax reductions (R)	% reduction
57 000	504	–	-504	-100.0%
60 000	1 044	540	-504	-48.3%
65 000	1 944	1 440	-504	-25.9%
70 000	2 844	2 340	-504	-17.7%
75 000	3 744	3 240	-504	-13.5%
80 000	4 644	4 140	-504	-10.9%
85 000	5 544	5 040	-504	-9.1%
90 000	6 444	5 940	-504	-7.8%
100 000	8 244	7 740	-504	-6.1%
120 000	11 844	11 340	-504	-4.3%
150 000	18 504	17 440	-1 064	-5.8%
200 000	31 004	29 940	-1 064	-3.4%
250 000	45 504	43 890	-1 614	-3.5%
300 000	61 004	58 890	-2 114	-3.5%
400 000	96 004	93 640	-2 364	-2.5%
500 000	133 704	130 710	-2 994	-2.2%
750 000	233 204	229 670	-3 534	-1.5%
1 000 000	333 204	329 670	-3 534	-1.1%

Income tax payable by individuals 65 years of age and older

Taxable income (R)	2009 rates (R)	Proposed rates (R)	Tax reductions (R)	% reduction
85 000	144	–	-144	-100.0%
90 000	1 044	265	-779	-74.6%
100 000	2 844	2 065	-779	-27.4%
120 000	6 444	5 665	-779	-12.1%
150 000	13 104	11 765	-1 339	-10.2%
200 000	25 604	24 265	-1 339	-5.2%
250 000	40 104	38 215	-1 889	-4.7%
300 000	55 604	53 215	-2 389	-4.3%
400 000	90 604	87 965	-2 639	-2.9%
500 000	128 304	125 035	-3 269	-2.5%
750 000	227 804	223 995	-3 809	-1.7%
1 000 000	327 804	323 995	-3 809	-1.2%

Medical scheme contributions and medical expenses

From 1 March 2010, the monthly monetary caps for deductible medical scheme contributions will increase from R625 to R670 for each of the first two beneficiaries, and from R380 to R410 for each additional beneficiary. The proposed conversion of these deductions into non-refundable tax credits will be postponed to 1 March 2012.

Retrenchment package merger

The R30 000 income-tax exemption for retrenchment packages has not been adjusted in many years. It is proposed to merge this exemption into the retirement lump sum tax exemption. In future, all retirement and retrenchment lump sum payments will be treated equally.

Savings

Annual tax-free interest income will be increased from R21 000 to R22 300 for individuals below 65 years, from R30 000 to R32 000 for individuals 65 years and over, and from R3 500 to R3 700 for foreign-interest income. These exemptions will be limited to savings through widely available interest-bearing instruments, such as bank deposits, government retail bonds and collective investment money market funds. The new limits will exclude tax planning aimed at shifting taxable income.

Discontinuation of the SITE system

The standard income tax on employees (SITE) system was introduced in the late 1980s to limit the number of personal income tax returns filed annually, freeing resources to deal with more complicated returns. Administrative modernisation, and the fact that the personal income tax threshold for taxpayers younger than 65 years is approaching the SITE ceiling of R60 000, have eliminated the need for this system. Government proposes to repeal SITE with effect from 1 March 2011. The impact on low-income taxpayers with multiple sources of income will be reviewed, with a view to possible transitional administrative relief measures.

Limiting salary-structuring opportunities

Government aims to make the tax system more equitable and efficient by reducing tax avoidance or structuring opportunities.

Company car fringe benefits

The company car fringe benefit rules will be tightened by increasing the deemed monthly taxable values. This amendment will limit the potential abuse of company car fringe benefits.

Employee deferred compensation and insurance schemes

Companies often protect themselves against revenue shortfalls stemming from the loss of key employees by taking out employee life cover. These policies have over time become methods of creating immediate tax deductions for employers while providing tax-deferred benefit packages on behalf of employees upon retirement or termination of employment. Problems also exist with employer-provided group life insurance schemes. Steps will be taken to ensure that employer deductions match employee gross income. Employee insurance packages will be taxed fully as fringe benefits on a monthly basis.

Closure of sophisticated tax loopholes

Government has achieved lower rates over the past decade by broadening the tax base. One area of concern is the use of sophisticated tax avoidance schemes. The scale of these schemes often presents a substantial loss to the fiscus, even when considered in isolation.

The South African tax system, like its counterparts around the world, is under pressure to lower marginal tax rates, especially the headline corporate income tax rate, for international competitiveness. Government has achieved lower rates over the past decade by broadening the tax base. One area of concern is the use of sophisticated tax avoidance schemes. The scale of these schemes often presents a substantial loss to the fiscus, even when considered in isolation. Below are descriptions of schemes that have been identified for closure.

Cross-border mismatches

The Income Tax Act (1962) will be amended to clarify the tax treatment of unacceptable schemes associated with tax treaties and foreign tax credits. For example, a number of schemes entail the borrowing of funds to acquire financial instruments that generate income, but are subject to a zero rate of tax by virtue of tax treaties. Others generate income, but are arguably not subject to South African tax by virtue of the inappropriate use of foreign tax credits.

Interest cost allocation for finance operations

Interest costs on debt that finances revenue-generating assets are deductible for income tax purposes, while interest costs allocable to non-revenue producing assets are not. Financial institutions are deducting interest expenditure beyond what should be allowed according to tax principles. It is proposed to introduce measures to ensure that interest expenses are allocated proportionately among various financial assets based on a "taxable income/gross receipts and accruals" formula.

'Protected cell' companies

Foreign companies must be more than 50 per cent owned by South Africans to fall within the controlled foreign company (CFC) regime. Taxpayers have sought to bypass CFC legislation through the use of "protected cell" companies. A statutory cell company effectively operates as a multiple limited liability entity, with each cell protected against the other. Investors typically have full control over the cell, but fail to satisfy the requisite CFC ownership requirements in the foreign entity overall. It is proposed to treat each cell as a deemed separate company with the ownership requirements measured separately.

Cross-border insurance payments

Many cross-border insurance payments represent capital investments as opposed to risk-related insurance. The aim of these transactions is to generate an immediate deduction for offshore investments without a corresponding inclusion of income. While the CFC rules target captive insurers, many schemes involve controlled companies of a larger foreign-owned group in which South African operations are a mere subcomponent. It is proposed to deny the deduction in problematic cases.

Participation preference and guaranteed shares

Some taxpayers are taking funds offshore through deductible payments (e.g. interest) and bringing those funds back onshore tax-free through foreign dividends eligible for the participation exemption. The goal of the participation exemption is to encourage the voluntary repatriation of funds derived offshore. It is proposed to deny the exemption for preference share dividends, guaranteed dividends and any dividends derived directly or indirectly from South Africa.

Restricting the cross-border interest exemption

South Africa provides a blanket exemption for local interest payments to any foreign legal person, unless the payment is made to a local branch of a foreign legal person. The purpose of this exemption is to attract foreign investment, but the overly broad nature of the exemption means that investors in tax havens can invest in South African debt with little restriction. The exemption will be restricted to contain the leakage. However, none of the changes anticipated will affect foreign investment in South African bonds, unit trusts, bank deposits or the like.

Transfer pricing

It is proposed to provide a uniform set of transfer pricing rules to deal with artificial pricing or the misallocation of prices within the various components of a single transaction. These rules will align the treatment of both onshore and offshore transactions.

Promoting South Africa as a gateway into Africa

South Africa's location, its strength in financial services and its banking infrastructure make it a potential gateway into Africa. Government proposes measures to enhance this role. In 2010/11, further investigations will be done to enhance our attractiveness as a viable and effective location from which businesses can extend their African operations.

Headquarter companies

Relief from exchange control and taxation for various types of headquarter companies located in South Africa will be considered. Currently, funds received from foreign locations cannot be channelled through South Africa to other foreign locations without explicit exchange control approval. These barriers and certain tax rules will be reviewed.

Islamic-compliant finance

The tax system may act as a barrier to certain forms of Islamic-compliant finance, which prohibits payment or receipt of various types of interest. The tax treatment of financial instruments such as forward purchases, financial leasing and purchases of profit shares will be reviewed over the next two years, and tax treaties with relevant countries will be re-examined.

Depreciation allowances

Improvements on leased land

Depreciation allowances, including the accelerated depreciation relief for urban development zones, are available if the underlying land is owned by the party undertaking the improvement. This requirement creates practical problems for development partnerships undertaken by government and the private sector. Government entities often provide long-term use of land in exchange for private development. An enhanced allowance will be considered for private developers who improve another party's land, subject to anti-avoidance mechanisms.

Environmental fiscal reform

We cannot stop development in the developing world, but we can control the emission of greenhouse gases –*Minister of Science and Technology Naledi Pandor*

Carbon dioxide vehicle emissions tax

The 2009 Budget announced an ad valorem CO_2 emissions tax on new passenger motor vehicles. Based on subsequent consultations, it is recommended that the original tax proposal be converted into a flat rate CO_2 emissions tax, effective from 1 September 2010. The main objective of this tax is to influence the composition of South Africa's vehicle fleet to become more energy efficient and environmentally friendly. The emissions tax will initially apply to passenger cars, but will be extended to commercial vehicles once agreed CO_2 standards for these vehicles are set.

The proposed CO_2 vehicle emissions tax will be implemented as a specific tax, instead of the previously proposed ad valorem tax. New passenger cars will be taxed based on their certified CO_2 emissions at R75 per g/km for each g/km above 120 g/km. This emissions tax will be in addition to the current ad valorem luxury tax on new vehicles.

CO_2 vehicle emissions tax – tax incidence

CO_2 emissions g/km	Average CO_2 emissions g/km	Number of vehicles, 12 months	% of vehicles 12 months	CO_2 emissions above threshold: g/km > 120	Tax @ R75 per g/km	Average price	Average tax rate
Below 120	110	342	0.2%	–	–	R 177 000	0.0%
	120	493	0.2%	–	–	R 170 000	0.0%
	130	10 904	4.9%	10	750	R 121 000	0.6%
	140	15 856	7.2%	20	1 500	R 164 000	0.9%
	150	20 794	9.4%	30	2 250	R 169 000	1.3%
	160	21 694	9.8%	40	3 000	R 181 000	1.7%
	170	33 552	15.2%	50	3 750	R 166 000	2.3%
	180	46 664	21.1%	60	4 500	R 164 000	2.7%
	190	24 224	11.0%	70	5 250	R 244 000	2.2%
	200	10 183	4.6%	80	6 000	R 293 000	2.0%
	250	22 928	10.4%	130	9 750	R 391 000	2.5%
	300	8 083	3.7%	180	13 500	R 552 000	2.4%
	350	4 161	1.9%	230	17 250	R 551 000	3.1%
	400	778	0.4%	280	21 000	R 947 000	2.2%
Above 400	450	25	0.01%	330	24 750	R 606 000	4.1%
Average/Total	**178**	**220 681**	**100.0%**	**58**	**4 350**	**R 227 000**	**1.9%**

Further research is being done to expand environmental levies and taxes.

VAT and residential property developers

The sale of residential property by developers is subject to VAT at the standard rate, while the leasing of residential accommodation is VAT exempt. VAT input credits are allowed for standard-rated sales of property, but disallowed for exempted rentals. The temporary leasing of residential units requires a full claw-back of the VAT input credits for leased units.

The current value of the adjustment is disproportionate to the exempt temporary rental income. Options will be investigated to determine an equitable value and rate of claw-back for developers.

Customs and excise duties: tobacco and alcohol

Excise duties on alcoholic beverages will be increased in accordance with the policy objective to target a total consumption tax burden (excise duties plus VAT) of 23, 33, and 43 per cent of the average retail price of wine, malt beer and spirits respectively.

The proposed increases for the various alcoholic beverages vary between 8.1 and 8.9 per cent as indicated below. No increase in the excise duty on traditional beer is proposed.

Given that the tax burden benchmarks for the various alcoholic beverages were set as far back as 2002, and considering the social need to curb alcohol abuse, a consultation process to increase these benchmarks will be initiated during 2010.

Excise duties on tobacco products will be increased in accordance with the policy objective to target a total consumption tax burden (excise duties plus VAT) of 52 per cent of the average retail price of the most popular brand for all categories of tobacco products. The proposed increases for tobacco products vary between 6.2 and 16.1 per cent.

Changes in specific excise duties

Product	Current excise duty rate	Proposed excise duty rate	Percentage change	
			Nominal	Real
Malt beer	R46.41 / litre of absolute alcohol (78.90c / average 340ml can)	R50.20 / litre of absolute alcohol (85.34c / average 340ml can)	8.2%	2.5%
Traditional beer	7.82c / litre	7.82c / litre	0.0%	-5.7%
Traditional beer powder	34.70c / kg	34.70c / kg	0.0%	-5.7%
Unfortified wine	R1.98 / litre	R2.14 / litre	8.1%	2.4%
Fortified wine	R3.72 / litre	R4.03 / litre	8.3%	2.6%
Sparkling wine	R6.16 / litre	R6.67 / litre	8.3%	2.6%
Ciders and alcoholic fruit beverages	R2.33 / litre (79.22c / average 340ml can)	R2.52 / litre (85.68c / average 340ml can)	8.2%	2.5%
Spirits	R77.67 / litre of absolute alcohol (R25.05 / 750ml bottle)	R84.57 / litre of absolute alcohol (R27.27 / 750ml bottle)	8.9%	3.2%
Cigarettes	R7.70/ 20 cigarettes	R8.94/ 20 cigarettes	16.1%	10.4%
Cigarette tobacco	R9.15/ 50g	R9.73/ 50g	6.3%	0.6%
Pipe tobacco	R2.50/ 25g	R2.70/ 25g	8.0%	2.3%
Cigars	R44.88 / 23g	R47.66 / 23g	6.2%	0.5%

It is proposed that the customs and excise duties in Section A of Part 2 of Schedule 1 of the Customs and Excise Act, No. 91 of 1964, be amended with effect from 17 February 2010 to the extent shown on the next page.

Specific excise duties

Tariff item	Tariff heading	Description	2009/10 Present rate of duty Excise	Customs	2010/11 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 African beer powder as defined in Additional Note 1 to Chapter 19	34.7c/kg	34.7c/kg	34.7c/kg	34.7c/kg
104.10	22.03	Beer made from malt:				
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82c/ℓ	7.82c/ℓ	7.82c/ℓ	7.82c/ℓ
.20		Other	R46.41/ℓ of absolute alcohol	R46.41/ℓ	R50.20/ℓ of absolute alcohol	R50.20/ℓ
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	R6.16/ℓ	R6.16/ℓ	R6.67/ℓ	R6.67/ℓ
.04		Unfortified wine	R1.98/ℓ	R1.98/ℓ	R2.14/ℓ	R2.14/ℓ
.06		Fortified wine	R3.72/ℓ	R3.72/ℓ	R4.03/ℓ	R4.03/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 African beer as defined in Additional Note 1 to Chapter 22	7.82c/ℓ	7.82c/ℓ	7.82c/ℓ	7.82c/ℓ
.15		Other fermented beverages, unfortified	R2.33/ℓ	R2.33/ℓ	R2.52/ℓ	R2.52/ℓ
.17		Other fermented beverages, fortified	R4.73/ℓ	R4.73/ℓ	R5.15/ℓ	R5.15/ℓ
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	R2.33/ℓ	R2.33/ℓ	R2.52/ℓ	R2.52/ℓ
.90		Other	R4.73/ℓ	R4.73/ℓ	R5.15/ℓ	R5.15/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:				

Specific excise duties (continued)

Tariff item	Tariff heading	Description	2009/10 Present rate of duty Excise	Customs	2010/11 Proposed rate of duty Excise	Customs
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent; spirits, liqueurs and other spirituous beverages:				
.10		Wine spirits, manufactured by the distillation of wine	R77.67/ℓ of absolute alcohol	R77.67/ℓ	R84.57/ℓ of absolute alcohol	R84.57/ℓ
.15		Spirits, manufactured by the distillation of any sugar cane product	R77.67/ℓ of absolute alcohol	R77.67/ℓ	R84.57/ℓ of absolute alcohol	R84.57/ℓ
.25		Spirits, manufactured by the distillation of any grain product	R77.67/ℓ of absolute alcohol	R77.67/ℓ	R84.57/ℓ of absolute alcohol	R84.57/ℓ
.29		Other spirits	R77.67/ℓ of absolute alcohol	R77.67/ℓ	R84.57/ℓ of absolute alcohol	R84.57/ℓ
.40		Liqueurs and other spirituous beverages	R77.67/ℓ of absolute alcohol	R77.67/ℓ	R84.57/ℓ of absolute alcohol	R84.57/ℓ
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	R1 951.43 /kg net	R1 951.43	R2 072.31 /kg net	R2 072.31
.20		Cigarettes, of tobacco or of tobacco substitutes	R3.85 /10 cigarettes	R3.85	R4.47 /10 cigarettes	R4.47
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	R183.04/kg	R183.04/kg	R194.60/kg	R194.60/kg
.20		Pipe tobacco and substitutes thereof	R100.10 /kg net	R100.10	R108.08 /kg net	R108.08

Gambling taxes

Gambling is subject to various forms of taxation at both provincial and national level. These arrangements will be reviewed to ensure efficient tax collection. In addition, winnings in the hands of gamblers are exempt from personal income tax, a practice that will also be reviewed. Measures will be considered to limit opportunities for money laundering, unlicensed online gambling and other abuses.

Fuel levies

General fuel levy

It is proposed to increase the general fuel levy on petrol and diesel by 10 c/l in line with the expected rate of inflation. An additional 7.5 c/l increase on both petrol and diesel is proposed to help fund the new multi-product petroleum pipeline between Durban and Gauteng. Both increases will take effect on 7 April 2010. The diesel fuel tax refund and biodiesel fuel tax rebate concessions automatically adjust to maintain the relative benefits for qualifying beneficiaries.

Road Accident Fund levy

It is proposed to increase the Road Accident Fund levy on petrol and diesel by 8 c/l, from 64 c/l to 72 c/l, with effect from 7 April 2010.

Total combined fuel taxes on petrol and diesel

	2008/09		2009/10		2010/11	
Cents per litre	**93 Octane**	**Diesel**	**93 Octane**	**Diesel**	**93 Octane**	**Diesel**
General fuel levy	127.00	111.00	150.00	135.00	167.50	152.50
Road Accident Fund levy	46.50	46.50	64.00	64.00	72.00	72.00
Customs and excise levy	4.00	4.00	4.00	4.00	4.00	4.00
Illuminating paraffin marker		0.01		0.01		0.01
Total	**177.50**	**161.51**	**218.00**	**203.01**	**243.50**	**228.51**
Pump price: Gauteng (as in February)[1]	750.00	732.30	643.00	649.35	785.00	701.85
Taxes as % of pump price	*23.7%*	*22.1%*	*33.9%*	*31.3%*	*31.6%*	*32.8%*

1. Diesel (0.05% sulphur) wholesale price (retail price not regulated).

Measures to enhance tax administration

Voluntary disclosure

To encourage taxpayers to come forward and avoid the future imposition of interest, a voluntary disclosure programme will be instituted from 1 November 2010 to 31 October 2011. Taxpayers may come forward during this period to disclose their defaults and regularise their tax affairs. In line with greater international cooperation over bank secrecy and enhanced measures to prevent money laundering, the voluntary disclosure period will also enable individuals with unreported banking accounts overseas to fully disclose such untaxed revenue. The full amount of tax will remain due.

A defaulting taxpayer will be granted relief under the programme, provided:

- The disclosure is complete
- SARS was not aware of the default
- A penalty or additional tax would have been imposed had SARS discovered the default in the normal course of business.

In light of this step, government proposes to do away with the discretion of the South African Revenue Service (SARS) to waive interest charged on unpaid provisional tax.

Compliance

The general level of tax compliance appears to have deteriorated during the recession. As a result, SARS is refocusing its enforcement and audit capacity, and modernising its systems.

The key areas for improved tax administration over the next three years are:

- Increased digitisation to enable self-service and voluntary compliance
- Further modernisation of personal income tax, pay-as-you-earn, corporate income tax and VAT systems
- Modernisation of customs systems
- Improved call centres, office operations and payment processes
- Increased system infrastructure to process administrative penalties
- Enhanced focus on large taxpayers and high net worth individuals.

Improved data analysis helps SARS to identify high-risk taxpayers for increased enforcement. This process will be enhanced by the improved collection of third-party data that allows for specific case identification.

Miscellaneous tax amendments

Individual and savings issues

- *Post-retirement conversion of annuities into lump sums:* Retirement savings lump sums may benefit from a special rates table that includes a R300 000 exemption. This table mainly applies when a lump sum payout occurs upon a member's retirement or death. However, lump sum payouts may occur after retirement if a post-retirement annuity is subsequently converted into a lump sum. It is proposed that this post-retirement conversion receive the same treatment under the special rates table (including the aggregation principle).

- *Multiple successions of retirement savings:* The succession of retirement savings lump sums from a deceased member benefits from the special rates table in the same fashion as retirement payouts. In some circumstances, the transfer of retirement savings upon death may occur in the form of an annuity. The annuity may then be converted into a lump sum for the benefit of another party. It is proposed that the special rates table (including the aggregation principle) be extended to cover secondary successions of retirement savings.
- *Partial wind-up of umbrella funds:* Multiple employers may be members of a single occupational pension (or provident) fund, commonly known as an umbrella fund. For various reasons, an employer may terminate its membership of this fund with applicable savings shifted to a preservation fund. However, this receipt by a preservation fund may technically fall outside the preservation fund definitions, making it impermissible. It is proposed that the preservation fund definitions be extended to cover this circumstance.
- *Retirement savings payouts to third parties:* In some circumstances, the Pension Funds Act allows fund administrators to use a member's retirement benefits to make payments to third parties (e.g. such as compensation to lenders for unpaid housing loans guaranteed by the fund). The tax impact of these third-party payouts requires clarification (especially regarding recovery of tax). It is proposed that these payments be treated like other lump sum benefits for the benefit of the member, thereby triggering the special rates table.
- *Employer payment of professional fees on behalf of employees:* Employer payment of professional body subscription fees on behalf of employees does not give rise to a taxable fringe benefit if membership in that body is a condition of employment. It has come to light that other fees that largely benefit the employer may be paid on behalf of employees. It is accordingly proposed that this fringe benefit relief be extended to cover these related employer payments.
- *Refinement of key employee restricted share schemes:* Anti-avoidance legislation introduced in 2004 seeks to tax restricted shares provided to employees at ordinary rates when the restrictions are lifted or when the employee disposes of those shares. The timing of this tax event is critical for ensuring that these rights

are taxed at ordinary rates when those shares have fully appreciated. Because key employee share schemes can involve a variety of forms, the anti-avoidance legislation needs to be refined to cover unintended circumstances. Comments received indicate that shares held in an employer trust may give rise to double taxation. Concerns also exist that share swaps of restricted shares could undermine the anti-avoidance legislation. It is proposed that the above problems and other technical issues be resolved in line with initial anti-avoidance policy.

Special relief measures

- *Professional sports bodies:* In 2007, legislative measures were introduced that facilitate the amalgamation of the professional and amateur arms of some sports organisations. This amalgamation effectively allows deductions for operational expenditure incurred by professional sports organisations to develop their amateur arms. The amalgamation tax measure was limited to a two-year period that expired on 31 December 2009. Given the practical difficulties of undertaking these amalgamations, it is proposed that this window period be extended to 31 December 2012, and that consideration be given to addressing other anomalies that may arise.
- *Dissolution or winding up of miscellaneous entities:* Certain entities, such as chambers of commerce, trade unions and fidelity funds, are exempt from income tax. While the exemption for these entities shares features with other more well-known entity exemptions (such as public-benefit organisations and clubs), current law fails to adequately address the dissolution or winding up of such entities. It is proposed that these events trigger recoupment so as to mirror the current treatment of terminating public-benefit organisations and clubs.
- *Extension of deductibility of donations to Peace Parks Foundation:* The Peace Parks Foundation is a public-benefit organisation working to realise the transfrontier parks project along South Africa's border, thereby promoting biodiversity conservation and employment. While the foundation is fully exempt, deductible donations are limited to donations made by the close of 31 March 2010. It is proposed that the cut-off date be removed so that deductible donations can freely be made in future.

Business measures

- *Liquidating company impact on micro and small business relief:* Micro businesses may use the presumptive tax system, rather than normal income tax, to simplify their tax affairs. Special relief (e.g. the 10 per cent rate in lieu of the normal 28 per cent company rate) may also exist for small business companies. To prevent potential income-splitting, common share ownership in more than one company generally prevents either form of relief. This prohibition makes little sense, however, to the extent that share ownership is of a liquidating inactive dormant company, especially if that company has filed for liquidation/deregistration but not yet ceased existence. It is proposed that ownership in liquidating/deregistering companies no longer be grounds for preventing micro and small business relief.
- *Plantations involved in company formations:* The income tax rules allow for tax-free rollover relief when assets are transferred to a domestic company within the context of a company formation and other domestic reorganisations. Plantations technically fall outside this relief. The reorganisation rules will be corrected to eliminate this anomaly.
- *Share-for-share reorganisations of listed companies:* Unlisted and listed share-for-share reorganisations (like other asset-for-share transfers) qualify for tax relief if certain conditions are satisfied. Some of the conditions require the acquiring company to know certain tax information about the target shareholders, such as whether the target shareholder holds the target shares as a capital asset or as trading stock. This level of knowledge is impractical in a listed context given the volume of shareholders and the small share interests typically involved. It is proposed that conditions of this nature be waived in the case of listed share-for-share relief, to the extent this waiver does not create opportunities for tax avoidance.
- *Default elections involving intra-group rollovers:* Taxpayers generally prefer rollover relief when engaged in various reorganisations, including intra-group transfers (i.e. transfers within a 70 per cent owned group of companies). Given this general preference, taxpayers automatically fall within reorganisation rollover relief if certain objective conditions are satisfied unless the parties involved actively elect-out. Although this default largely assists taxpayers, taxpayers engaged in the intra-group transfer of regularly disposed of trading stock prefer to fall outside the relief due to tracing problems. It is proposed that different methodology be provided for this class of intra-group transfers to simplify compliance.

- *Reorganisations and bad debts:* The reorganisation rules are designed so that the acquiring company generally "steps into the shoes" of the party transferring qualifying assets. However, this concept does not technically apply in the case of bad debts. As a result, creditors cannot claim a bad-debt deduction for debts if the creditor claim is acquired in a reorganisation with the default occurring afterward. It is proposed that the reorganisation rules be modified so that bad-debt deductions can be claimed in these circumstances, provided this modification does not give rise to double losses.
- *Financial instruments held as trading stock:* Accounting principles have recognised inventory as a balance sheet asset equal to the lesser of cost or value. The income tax rules for trading stock mimic this rule, allowing taxpayers to reflect devalued trading stock prior to disposal at its reduced value. Only shares are excluded. It is proposed that this exclusion for shares be extended to all financial instruments, because modern financial reporting distinguishes financial instruments from other inventory.
- *Revised taxation of short-term insurers:* Unlike many taxpayers, short-term insurers may deduct a certain level of reserves. The general starting point for these deductible reserves is the level of reserves required by the Financial Services Board (FSB) for regulatory short-term insurance purposes. While some reserves allowed by the FSB are a reasonable starting point for allowable deductions, these reserves may be inflated to protect policy holders to the detriment of the tax base, especially given recent regulatory changes undertaken by the FSB. Moreover, the tax system may implicitly create other mismatches involving premium income versus deductible reserves to the detriment of the fiscus. These issues call into question the current system for taxing short-term insurers, thereby requiring potential change within the current and subsequent tax budget cycle.
- *Further refinement of the proposed dividends tax:* The legislative process for the proposed dividends tax began in 2008. Because of the complexity of the changeover from the secondary tax on companies, the legislative process was intended to occur over a few years to fully test the legislation against public comment before implementation. While most issues have been resolved for implementation, a number of smaller issues remain, including required changes to the current and proposed dividend definition (such as adding a new definition for foreign dividends and remedying certain defects within the current definition

applying to the secondary tax on companies), transitional issues between the current and proposed regimes, practical problems relating to in specie dividends and further refinements to the proposed withholding system.

- *Liquidating residential property entities:* Last year, government announced a three-year window allowing residential property entities to liquidate without triggering additional tax. Many of these entities were initially established to eliminate transfer duty under prior law but have since become very tax-inefficient. On further review, it has been determined that this window is insufficient. A new, more flexible window period is proposed so that these residential property entities are to be liquidated or dissolved with limited compliance and enforcement effort.
- *Coordination with company law reform:* Company law reform has been fully enacted, with implementation pending. Many principles within income tax directly or indirectly depend upon company law principles. For instance, certain company-related definitions may have to be revised along with certain reorganisation rules. Pending company law implementation may accordingly require associated tax amendments during 2010.
- *Micro-business presumptive turnover tax refinements:* An elective presumptive turnover tax was recently implemented for the benefit of micro businesses. This instrument effectively replaces the normal income tax, capital gains tax and secondary tax on companies, simplifying compliance for very small businesses that choose to participate in this tax regime. Recent implementation of the presumptive tax has uncovered certain technical anomalies. These anomalies include transitional issues (i.e. upon entry into the system), coordination with VAT and possible clarification of the professional services definition. It is proposed that these technical issues be remedied without revisiting previous policy decisions.

International measures

- *Thin capitalisation as applied to foreign-owned South African branches:* The thin-capitalisation rules do not appear to apply to foreigners with unincorporated South African branch operations. Foreign parties can therefore form a foreign company with excessive amounts of debt while remaining free from the thin-capitalisation restriction, even though the main operations of the foreign company are contained within a South African branch. Interest on this excessive debt can strip the tax base to the same extent as excessive debt in a foreign-owned South African company.

Certain taxpayers have sought to exploit this loophole, which this proposal now seeks to close (while being mindful of treaty non-discrimination limitations).

- *Country change of currency:* The conversion of one foreign currency into another is a taxable event. Countries may occasionally convert their entire currency into another currency. This form of currency change will technically trigger a potentially massive currency gain or loss for foreign operations, even though the conversion is wholly outside taxpayer control. It is proposed that relief be provided in these unique circumstances.
- *Currency translation in the context of multiple reporting currencies:* The income tax system uses foreign reporting currency as the starting point for its tax calculations and then translates this amount into a rand amount. The tax rules assume that the parties at issue are using a single foreign currency for all reporting purposes. Foreign operations may use different foreign currencies for different purposes. It is proposed that the reporting currency for income tax be clarified.

Indirect tax measures

- *Movable goods supplied to foreign-going ships (VAT):* The current zero rating for supplies (such as food) made by a domestic vendor to a locally stationed foreign-going ship (or aircraft) for consumption during transport only applies if the transport is commercial. A number of foreign-going ships that temporarily station at local ports are not covered by this zero rating (military ships, for example). The zero rating will be extended to cover this scenario.
- *Intra-group supplies on loan account (VAT):* Vendors must pay back input tax deductions claimed to the extent that they have not paid (within a 12 month period) for the supply made to them. If a group of companies is involved, the one-year payback period may prove too restrictive. Many groups that operate intra-group loan accounts for commercial reasons often do not clear these loan accounts within the required 12 months. Relaxation in this area will be considered to prevent unintended anomalies.
- *Double charge on deregistration (VAT):* As stated above, a VAT payback provision exists for supplies on which the vendor has claimed an input tax deduction that remain unpaid after a 12-month period. Additionally, if a vendor deregisters from the VAT system, the vendor makes a deemed supply of all assets or rights associated with the vendor's enterprise at the time of deregistration. As a result, a vendor may

be liable for VAT under two different but interlinked provisions (for example, if deregistration occurs with respect to a deregistering enterprise with unpaid asset purchases). It is proposed that this potential double charge be removed.

- *Commercial accommodation (VAT):* The supply of commercial accommodation is taxable at the rate of 14 per cent, while the supply of residential accommodation is exempt. The supply of commercial accommodation (such as a motel or a hotel) usually consists of lodging together with domestic goods and services. It has come to light that certain entities that supply exempt residential accommodation have (as a result of definitional technicalities) crossed over into supplying commercial accommodation. An example of this crossover is the supply of student accommodation with furniture and other fittings, without any services. This supply marginally pushes this accommodation into the ambit of commercial accommodation, on which VAT must be charged. The VAT treatment of commercial and residential accommodation will be reviewed. During 2011, legislation may be introduced to address these shortcomings.
- *Pooling arrangements (VAT):* The VAT Act permits certain farming and rental arrangements between multiple parties to be treated as a single scheme for VAT purposes (i.e. as a single vendor). The South African Revenue Service (SARS) receives a number of requests for rulings that grant permission for various other classes of vendors to account for VAT using the pooling concept (such as the betting, trucking and shipping industries). SARS has granted some of these rulings to simplify administration without causing enforcement difficulties. It is proposed to formally extend this pooling concept to other industries.
- *Documentary proof for claiming a notional input tax deduction (VAT):* A vendor can claim an input tax deduction when acquiring a non-taxable supply of second-hand goods, but only to the extent that the vendor has paid for these goods. Currently, the documentary requirements to corroborate the notional input tax deduction do not include proof of payment for second-hand goods. A proof of payment requirement will accordingly be inserted to rectify this anomaly.
- *Payment of VAT in respect of imported services (VAT):* Vendors are required to declare VAT payable for imported services on a special VAT form within a 30 day period. Certain vendors, for administrative and practical reasons, have requested that SARS grant permission to declare this VAT payable on the standard VAT 201 returns. SARS has allowed certain vendors to account for VAT on imported services in this way. An amendment will be made to provide vendors with an option of

using either method without obtaining permission from SARS.

- *Claiming input tax deductions in the case of de minimis acquisitions (VAT):* A vendor does not require a tax invoice to claim input tax for a supply within the VAT net that does not exceed R50. The VAT Act does, however, require a vendor to possess a tax invoice (or other specified documentary proof) in order to claim a VAT input deduction. The R50 de minimis rule (which was intended to simplify the administration for the seller) does not specify the documentary proof needed. An amendment is proposed to eliminate this anomaly and to prescribe alternative documentary proof (i.e. a till slip) for these de minimis situations.
- *Mineral and petroleum resources royalty refinements:* The mineral and petroleum resources royalty will become operational from 1 March 2010. Close examination of the Mineral and Petroleum Resources Royalty Act (2008) has revealed a number of technical anomalies that need correction. These anomalies include issues on how unincorporated joint ventures are to be treated, how information is to be stored between SARS and the Department of Mineral Resources, coordination with the Income Tax Act as applied within the context of the royalty act, and clarifying the specified condition determination for certain minerals that allow for a range of specified conditions.

General administration

- *Proposed exemption from provisional tax registration:* Technically, persons who are exempt from the payment of provisional tax are still provisional taxpayers. Although the practice of SARS is not to treat these exempt persons as provisional taxpayers, it is proposed that the definition of provisional taxpayer be amended to clarify that these exempt persons are not provisional taxpayers, eliminating unnecessary provisional registrations. Consideration may also be given to adjusting the exemption to ensure that taxpayers with little or no provisional tax to pay, but who are currently considered to be provisional taxpayers (such as dormant companies), are exempted.
- *Advance tax rulings for compliant taxpayers:* Since 2006, SARS has been issuing binding advance tax rulings to taxpayers. It is proposed that this service only be available to compliant taxpayers. Therefore, a requirement will be introduced that the tax affairs of applicants for an advance tax ruling must be in order (submission of returns and payment of outstanding tax) for the advance tax ruling facility to be available.

- *Assessment of employers for employees' tax:* Employers have an obligation to deduct or withhold employees' tax from the value of fringe benefits granted to employees. A recent judgment has created the impression that an incorrect determination by an employer of PAYE on fringe benefits can only be remedied on assessment of the individual employees. To enable SARS to effectively administer employees' tax in these situations, an amendment is proposed that SARS be allowed to raise an assessment on an employer if the value of a fringe benefit has not been taken into account (or undervalued) for employee tax purposes. Collateral amendments may also be required to ensure employer payments do not result in a further taxable fringe benefit.
- *Transfer duty electronic returns and payments:* As a strategic matter, SARS has prioritised the replacement of manual processes with electronic processes, including the phasing out of cash payments by taxpayers. To achieve this result in the administration of transfer duty, an amendment is proposed so that SARS will only process transfer duty returns and payments that are submitted electronically.
- *Sharing of information among Ministry of Finance-related agencies:* Several regulatory and enforcement agencies operate under the umbrella of the Minister of Finance. Each of these agencies is subject to secrecy provisions that limit their ability to disclose information to one another, hampering enforcement. It is proposed that the secrecy provisions of the various agencies be revised to allow for some exchange of information within a legislative framework.
- *Third-party information reporting for Customs:* In line with developments in the income tax arena, amendments will be considered to provide for the reporting of information by third parties for the purpose of verifying information submitted to SARS.
- *Electronic communication for Customs:* The current provisions of the Customs and Excise Act set strict requirements for user agreements and digital signatures. Further development of SARS systems has highlighted the need for more flexible alternative measures to secure user identification and access. Although the current provisions provide a basic framework for alternative measures, it may be necessary to expand and clarify the framework.

Technical corrections

In addition to the miscellaneous amendments above, the 2010 tax amendment bills will contain various technical corrections. The main thrust of these technical corrections is to cover inconsequential items. These items remedy typing errors, grammar, punctuation, numbering, misplaced cross-references, misleading headings and definitions, differences between the two language texts of legislation, updating or removing obsolete provisions, the removal of superfluous text and the incorporation of regulations as well as secondary interpretations into formal law. Technical corrections further include changes to effective dates as well as proper coordination of transitional tax changes.

A final set of technical corrections relates to modifications that account for practical implementation of the tax law. Although tax amendments go through an intensive comment and review process, new issues arise (including obvious omissions and ambiguities) once the law is applied. Issues of this nature typically arise when returns are being prepared for the first time after legislation is implemented. Technical corrections of this nature are generally limited to recent legislative changes, or older changes with more recent implementation, such as the provisions relating to the 2010 FIFA World Cup.

Tax policy research agenda

Over the year ahead, several issues will be researched for possible attention in tax proposals for 2011 and 2012.

Taxes upon death

Both estate duty and capital gains tax are payable upon death, which is perceived as giving rise to double taxation. The estate duty raises limited revenue and is cumbersome to administer. Moreover, its efficacy is questionable: many wealthy individuals escape estate duty liability through trusts and other means. Taxes upon death will be reviewed.

Financial instruments and aggressive financial transactions

In line with the global reassessment of financial regulation, government will conduct an extensive review of the taxation of financial instruments (such as derivatives) and measures that deal with debt/equity arbitrage. The new era of financial regulation that seeks to prevent the recurrence of an international crisis will require South Africa to follow global best practice without undermining our tax sovereignty or our competitiveness.

Environmental fiscal reform and the pricing of carbon

The electricity levy announced in 2008 was the first step towards a carbon tax in South Africa. A discussion document exploring the feasibility of a more comprehensive carbon tax will be published for public comment during the first half of 2010.

Various lobbying efforts are underway to expand the carbon market to include the developing world. Although government's preference is for a carbon tax, a discussion document on the possible scope and administrative feasibility of emissions trading in South Africa will also be released for public comment towards the end of 2010.
The following environmental taxes and charges will also be investigated:

- A waste water discharge levy in terms of the Water Act
- Pollution charges in terms of the new Air Quality Act
- Levies on the waste streams of various products
- A landfill tax at municipal level
- Traffic congestion charges.

Conclusion

Tax revenue, which fell sharply over the past year, will recover as the economy recovers, but with a lag. Tax policy will remain supportive of the overall economic recovery by providing relief to individuals to compensate partially for inflation. The 2010 tax proposals also include initiatives to improve tax compliance and broaden the tax base.

Summary of the effects of the 2010 Budget tax proposals

R million	Effect of tax proposals	
Taxes on individuals and companies	**-6 750**	
Personal income tax	-5 400	
Adj ustment in personal income tax rate structure	*-6 500*	
Adj ustment in monetary thresholds	*- 700*	
Reform of taxation of travel allowance	*1 800*	
Business taxes	-1 350	
Industrial policy incentives	*-1 000*	
Energy-efficient savings incentive	*- 350*	
Indirect taxes	**6 300**	
Increase in general fuel levy	3 600	
Increase in excise duties on tobacco products and alcoholic beverages	2 250	
CO_2 motor vehicle emissions tax	450	
Budget 2010/11 proposals		**- 450**

NOTES

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