C

Miscellaneous tax amendments

Tax expenditure statement: February 2012

Introduction

Summarised tax expenditure estimates were published for the first time in the 2011 *Budget Review* (pages 179 to 181). In brief, tax expenditures are provisions in tax legislation that reduce the amount of tax revenue that could otherwise have been collected. Tax expenditures can be defined as deviations from the benchmark of a standard tax legislative framework.

Table C.2 reflects the 2012 tax expenditure statement. Historical tax expenditure estimates reported in the 2011 statement might have changed due to the availability of more reliable data, revised estimating assumptions and other corrections. Some of the major changes between the 2011 and 2012 tax expenditure statements are discussed below.

Personal income tax

The annual *Tax Statistics* provides data on tax revenues, deductions and the percentage of taxpayers assessed. In the 2011 tax expenditure statement, the percentage of individual taxpayers assessed for the income tax years 2008 and 2009 were 83 per cent and 79 per cent respectively. Tax expenditure for contributions to retirement funds (pension funds and retirement annuity funds) and medical schemes was estimated by adjusting the amounts upwards (gross up) to allow for less than 100 per cent assessments at the time the data was extracted. This gross approach resulted in an overestimation of the tax expenditure for retirement fund contributions and has been corrected in the 2012 estimated tax expenditure statement.

Between 2006/07 and 2011/12, medical scheme contributions were subject to monetary caps. For the 2012 tax expenditure report, tax expenditure for medical scheme contributions was estimated based on the number of principal medical scheme members and beneficiaries multiplied by the various monetary caps.

VAT relief on fuel sales

As petrol, diesel and illuminating paraffin are zero-rated for VAT purposes, the resulting deviation is regarded as a tax expenditure. This is calculated by estimating the value for sales and assumptions about the estimated volumes used by final consumers. It was assumed that 20 per cent of petrol sales was used

for business purposes (by VAT vendors) and would have qualified to claim VAT inputs. For diesel, it was assumed that 90 per cent of sales was used for business purposes and would have qualified to claim for VAT inputs.

There is a drop in estimated tax expenditure between 2009 and 2010 due to the decline in average fuel prices in 2010. Average national diesel and petrol prices are shown in the table below.

Table C.1 National average price and national quantity fuel sold (million litres), 2006 – 2010

Fuel	2006		2007		2008		2009		2010	
Type	price (rand/l)	quantity	price (rand/l)	quantity	price (rand/l)	quantity	price (rand/l)	quantity	price (rand/l)	quantity
Diesel	5.01	8 234	5.81	8 977	6.72	9 976	9.00	10 074	6.74	9 236
Petrol	5.40	11 159	6.09	11 400	7.11	11 531	8.57	11 061	7.62	11 333
Paraffin	3.93	763	4.46	714	5.20	694	7.14	506	4.78	776

Estimates of tax expenditure

The following table summarises tax expenditure in terms of the Income Tax Act No. 58 of 1962, the VAT Act No. 89 of 1991 and the Customs and Excise Act No. 91 of 1964.

Table C.2 Tax expenditure estimates, 2006/07 – 2009/10

R million	2006/07	2007/08	2008/09	2009/10
Personal income tax				
Pension and retirement annuity[1]	11 968	12 521	15 629	17 209
-pension contributions employees	*4 379*	*4 579*	*5 799*	*6 470*
-pension contributions employers	*4 925*	*5 150*	*6 522*	*7 277*
-retirement annuity	*2 664*	*2 793*	*3 308*	*3 462*
Medical	8 290	9 460	10 992	12 370
-medical contributions & deductions employees	*4 145*	*4 597*	*5 701*	*6 497*
-medical contributions - employers [2]	*4 145*	*4 863*	*5 291*	*5 874*
Interest exemptions	1 715	2 283	3 033	3 529
Secondary rebate (65 years and older)	1 111	1 254	1 444	1 484
Donations	56	80	109	111
Capital gains tax (annual exclusion)	100	123	74	60
Total: Personal income tax	**23 239**	**25 721**	**31 281**	**34 764**
Corporate income tax				
Small business corporation tax savings	627	747	675	732
Research and development (R&D)	449	358	537	432
Learnership allowances	224	424	397	421
Strategic Industrial Policy	281	228	61	25
Film incentive	194	297	20	1
Urban development zones (UDZ)	82	120	169	203
Total: Corporate income tax	**1 857**	**2 174**	**1 860**	**1 813**
Value-added tax				
Zero-rated supplies				
19 basic food items[3]	11 376	13 107	13 907	14 606
Petrol[4]	7 777	9 185	10 619	9 678
Diesel[4]	730	938	1 269	872
Paraffin[4]	446	505	507	520
Municipal property rates	2 711	3 081	3 122	3 673
Reduced inclusion rate for "commercial" accommodation	85	95	113	120
Subtotal: zero-rated supplies	**23 125**	**26 912**	**29 537**	**29 469**
Exempt supplies (public transport & education)	**682**	**785**	**832**	**922**
Customs duties and excise				
Motor vehicles (MIDP, including IRCCs)[5]	13 179	16 169	12 089	12 673
Textile and clothing (Duty credits - DCCs)[5]	1 563	1 829	2 024	2 231
Furniture and fixtures	145	166	128	153
Other customs[6]	636	1 141	1 231	787
Diesel refund (mining, agriculture and fishing)	811	1 205	1 181	1 286
Total customs and excise	**16 335**	**20 509**	**16 653**	**17 129**
Total tax expenditure	**65 238**	**76 101**	**80 163**	**84 097**
Tax expenditure as % of total gross tax revenue	**13.2%**	**13.3%**	**12.8%**	**14.0%**
Total gross tax revenue	**495 549**	**572 815**	**625 100**	**598 705**
Tax expenditure as % of GDP	**3.6%**	**3.7%**	**3.5%**	**3.4%**

1. Some of this tax expenditure is recouped when amounts are withdrawn as either a lump sum or an annuity
2. Employer contributions are assumed to be equivalent to employee deductions
3. VAT relief in respect of basic food items based on an independent study
4. Based on fuel volumes and average retail selling prices
5. MIDP = motor industry development program, IRCC = import rebate credit certificate, DCC = duty credit certificates
6. Goods manufactured exclusively for exports, television monitors and agricultural goods exempted

Direct tax proposals

Personal income tax rate and bracket structure

The primary rebate has been increased to R11 440 per year for all individuals. The secondary rebate, which applies to individuals aged 65 years and over, is increased to R6 390 per year. The third rebate, which applies to individuals aged 75 years and over, is increased to R2 130 per year. The threshold below which individuals are not liable for personal income tax is increased to R63 556 of taxable income per year for those below the age of 65, R99 056 per year for those aged 65 to 74, and R110 889 for age 75 and over. The rates for the 2011/12 tax year and the proposed rates for 2012/13 are set out in Table C.3.

Table C.3 Personal income tax rate and bracket adjustments, 2011/12 – 2012/13

2011/12		2012/13	
Taxable income (R)	**Rates of tax**	**Taxable income (R)**	**Rates of tax**
R0 - R150 000	18% of each R1	R0 - R160 000	18% of each R1
R150 001 - R235 000	R27 000 + 25% of the amount above R150 000	R160 001 - R250 000	R28 800 + 25% of the amount above R160 000
R235 001 - R325 000	R48 250 + 30% of the amount above R235 000	R250 001 - R346 000	R51 300 + 30% of the amount above R250 000
R325 001 - R455 000	R75 250 + 35% of the amount above R325 000	R346 001 - R484 000	R80 100 + 35% of the amount above R346 000
R455 001 - R580 000	R120 750 + 38% of the amount above R455 000	R484 001 - R617 000	R128 400 + 38% of the amount above R484 000
R580 001	R168 250 + 40% of the amount above R580 000	R617 001	R178 940 + 40% of the amount above R617 000
Rebates		**Rebates**	
Primary	R10 755	Primary	R11 440
Secondary	R6 012	Secondary	R6 390
Tertiary	R2 000	Tertiary	R2 130
Tax threshold		**Tax threshold**	
Below age 65	R59 750	Below age 65	R63 556
Age 65 and over	R93 150	Age 65 and over	R99 056
Age 75 and over	R104 261	Age 75 and over	R110 889

Capital gains tax

Capital gains tax inclusion rates for “individuals and special trusts” have been increased by 8.3 percentage points to 33.3 per cent, and the rates for “other persons” have been increased by 16.6 percentage points to 66.6 per cent. The changes are set out in Table C.4 below.

Table C.4 Proposed capital gains tax inclusion rates, 2011/12 – 2012/13

	Current rates 2011/12	Proposed rates 2012/13
For individuals and special trusts	25%	33.3%
For other persons	50%	66.6%

The revised rates for capital gains exclusions are set out in Table C.5.

Table C.5 Proposed capital gains exclusions, 2011/12 – 2012/13

Description	Current thresholds 2011/12	Proposed thresholds 2012/13
Annual exclusion for individuals and special trusts	R20 000	R30 000
Exclusion on death	R200 000	R300 000
Exclusion in respect of disposal of primary residence (based on amount of capital gain or loss on disposal)	R1.5 million	R2 million
Maximum market value of all assets allowed within definition of small business on disposal when person over 55	R5 million	R10 million
Exclusion amount on disposal of small business when person over 55	R900 000	R1.5 million

The revised rates for medical scheme contributions are set out in Table C.6.

Table C.6 Medical scheme contributions, 2011/12 – 2012/13

Description	Illustrative thresholds 2011/12	Proposed thresholds 2012/13
Medical scheme fees tax credit, in respect of benefits to the taxpayer	R216	R230
Medical scheme fees tax credit, in respect of benefits to the taxpayer and one dependant	R432	R460
Medical scheme fees tax credit, in respect of benefits to each additional dependant	R144	R154

The revised rates for employee-related fringe benefits are set out in Table C.7.

Table C.7 Employee-related fringe benefits, 2011/12 – 2012/13

Description	Current thresholds 2011/12	Proposed thresholds 2012/13
Employee accommodation	R59 750	R63 556

Other miscellaneous proposals are summarised in Table C.8 below.

Table C.8 Other miscellaneous proposals, 2011/12 – 2012/13

Description	Current thresholds 2011/12	Proposed thresholds 2012/13
Public-benefit organisations		
Housing provided by a PBO[1]: maximum monthly income of beneficiary household	R7 500	R15 000
Deferral		
Maximum amount of deferral	R80 000	R100 000

1. Refers to public-benefit organisation

There are certain circumstances where the provisions of section 23 (H) of the Income Tax Act will not apply. These include instances where the aggregate of all amounts to be limited by section 23 (H) do not exceed R80 000. It is proposed that the amount or aggregate amount be increased to R100 000.

The proposed tax schedule in Table C.3 compensates individuals for the effect of inflation on income tax liabilities and results in reduced tax liability for all taxpayers. These tax reductions are set out in tables C.9, C.10 and C.11. The average tax rates (tax as a percentage of taxable income) for individuals are illustrated in figures C.1, C.2 and C.3.

Table C.9 Income tax payable, 2012/13 (taxpayers below age 65)

Taxable income (R)	2011 rates (R)	Proposed rates (R)	Tax deduction (R)	% reduction
65 000	945	260	- 685	-72.5%
80 000	3 645	2 960	- 685	-18.8%
100 000	7 245	6 560	- 685	-9.5%
120 000	10 845	10 160	- 685	-6.3%
150 000	16 245	15 560	- 685	-4.2%
200 000	28 745	27 360	-1 385	-4.8%
250 000	41 995	39 860	-2 135	-5.1%
300 000	56 995	54 860	-2 135	-3.7%
400 000	90 745	87 560	-3 185	-3.5%
500 000	127 095	123 040	-4 055	-3.2%
750 000	225 495	220 700	-4 795	-2.1%
1 000 000	325 495	320 700	-4 795	-1.5%

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

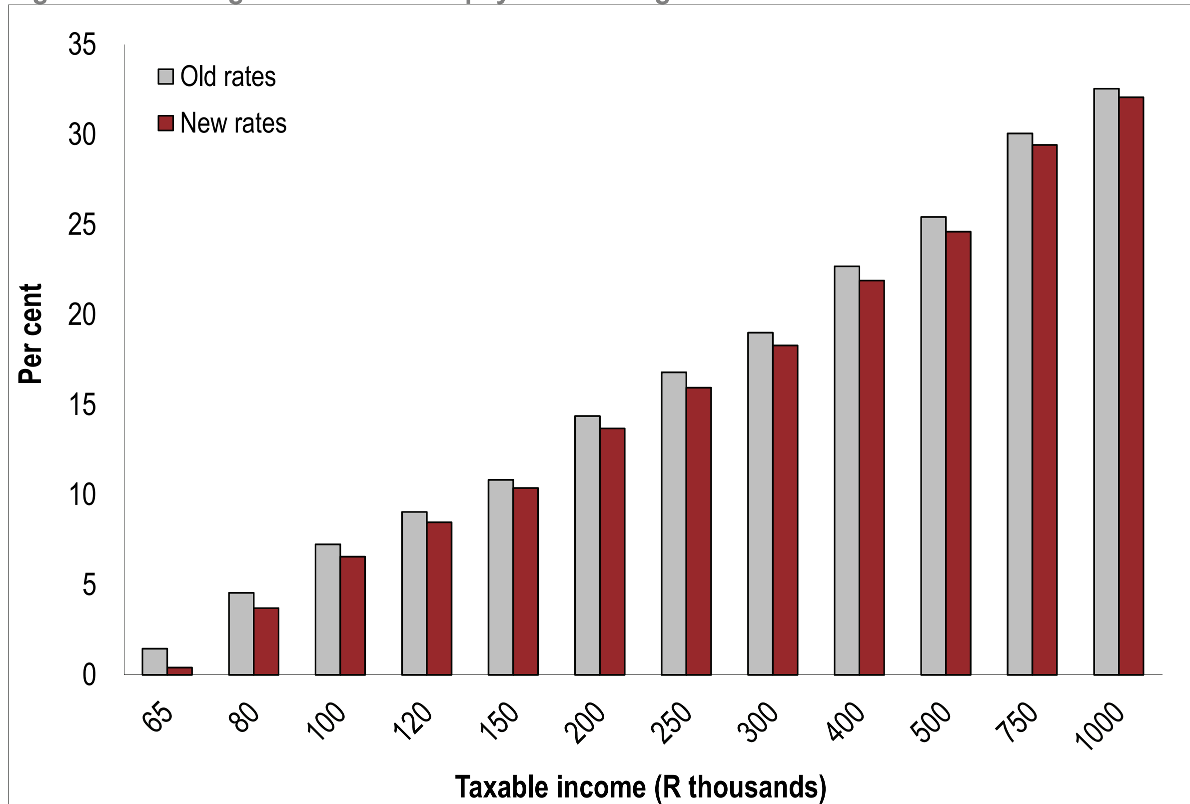


Table C.10 Income tax payable, 2012/13 (taxpayers age 65 and over)

Taxable income (R)	2011 rates (R)	Proposed rates (R)	Tax deduction (R)	% reduction
120 000	4 833	3 770	-1 063	-22.0%
150 000	10 233	9 170	-1 063	-10.4%
200 000	22 733	20 970	-1 763	-7.8%
250 000	35 983	33 470	-2 513	-7.0%
300 000	50 983	48 470	-2 513	-4.9%
400 000	84 733	81 170	-3 563	-4.2%
500 000	121 083	116 650	-4 433	-3.7%
750 000	219 483	214 310	-5 173	-2.4%
1 000 000	319 483	314 310	-5 173	-1.6%

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

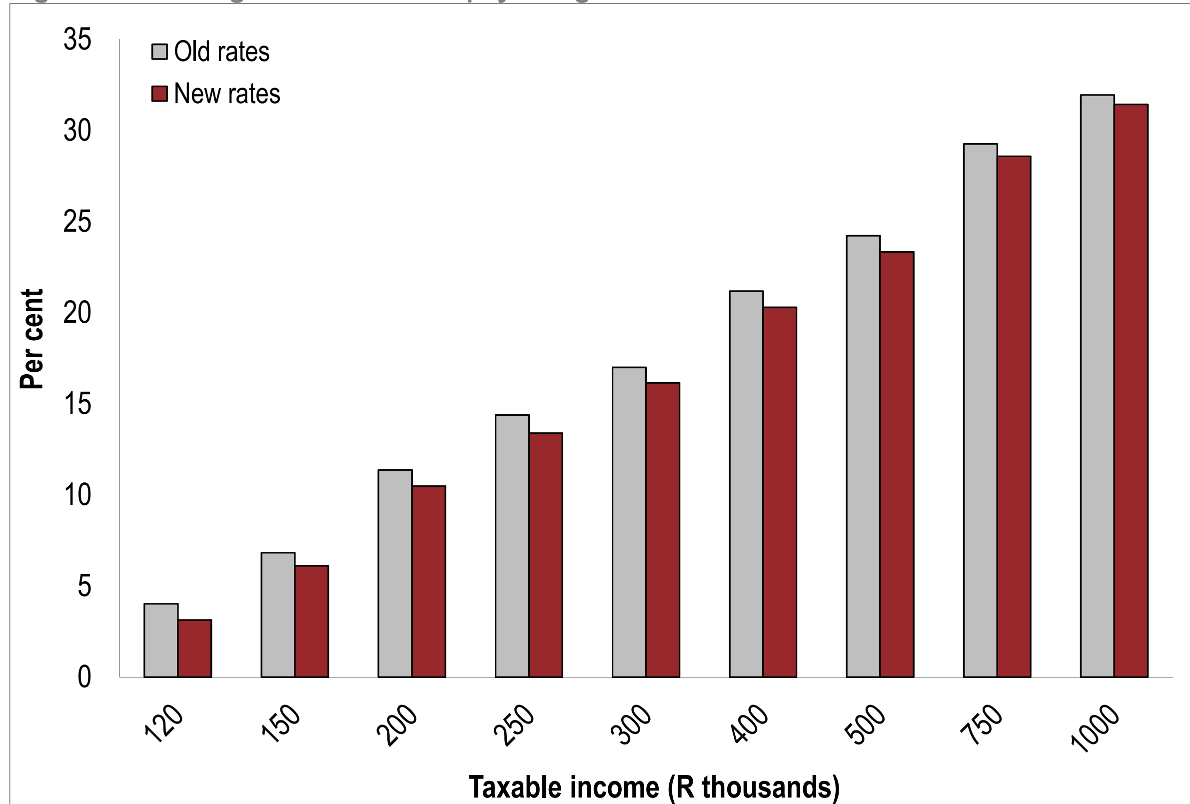
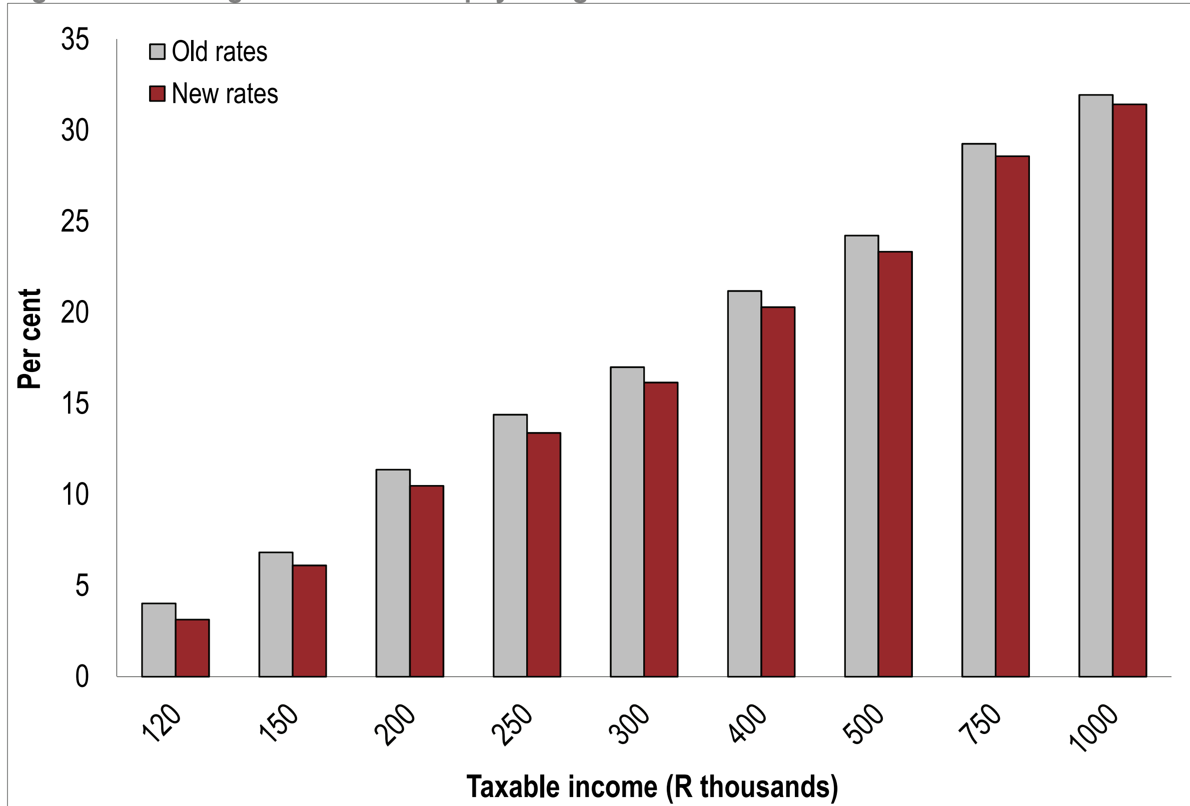


Table C.11 Income tax payable, 2012/13 (taxpayers age 75 and over)

Taxable income (R)	2011 rates (R)	Proposed rates (R)	Tax deduction (R)	% reduction
120 000	2 833	1 640	-1 193	-42.1%
150 000	8 233	7 040	-1 193	-14.5%
200 000	20 733	18 840	-1 893	-9.1%
250 000	33 983	31 340	-2 643	-7.8%
300 000	48 983	46 340	-2 643	-5.4%
400 000	82 733	79 040	-3 693	-4.5%
500 000	119 083	114 520	-4 563	-3.8%
750 000	217 483	212 180	-5 303	-2.4%
1 000 000	317 483	312 180	-5 303	-1.7%

Figure C.3 Average tax rates for taxpayers age 75 and over



Indirect tax proposals

It is proposed that the customs and excise duties in the Customs and Excise Act No. 91 of 1964 (schedule 1, part 2 of section A) be amended with effect from 22 February 2012 to the extent shown in Table C.12.

Table C.12 Specific excise duties, 2011/12 – 2012/13

Tariff item	Tariff heading	Description	2011/12 Present rate of duty		2012/13 Proposed rate of duty	
			Excise	Customs	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:**				
		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:**				
		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82c/li	7.82c/li	7.82c/li	7.82c/li
		Other	R53.97/li aa	R53.97/li aa	R59.36/li aa	R59.36/li aa
104.15	**22.04**	**Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):**				
104.16	**22.05**	**Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:**				
		Sparkling	R6.97/li	R6.97/li	R7.53/li	R7.53/li
		Unfortified wine of heading 22.04, with an alcoholic strength by volume exceeding 6.5 per cent vol. but not exceeding 16.5 per cent vol.	R2.32/li	R2.32/li	R2.50/li	R2.50/li
		Unfortified wine of heading 22.05, with an alcoholic strength by volume exceeding 6.5 per cent vol. but not exceeding 15 per cent vol.	R2.32/li	R2.32/li	R2.50/li	R2.50/li
		Fortified wine of headings 22.04 and 22.05 with an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 22 per cent vol.	R4.33/li	R4.33/li	R4.59/li	R4.59/li
		Other	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
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:**				

Table C.12 Specific excise duties, 2011/12 – 2012/13 *(continued)*

Tariff item	Tariff heading	Description	2011/12 Present rate of duty		2012/13 Proposed rate of duty	
			Excise	Customs	Excise	Customs
		Sparkling beverages	R6.97/li	R6.97/li	R7.53/li	R7.53/li
		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82c/li	7.82c/li	7.82c/li	7.82c/li
		Other fermented beverages, unfortified, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2.71/li	R2.71/li	R2.97/li	R2.97/li
		Other fermented beverages, unfortified, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2.71/li	R2.71/li	R2.97/li	R2.97/li
		Other fermented beverages, fortified, with an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38.00/li aa	R38.00/li aa	R45.60/li aa	R45.60/li aa
		Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume not exceeding 9 per cent vol.	R2.71/li	R2.71/li	R2.97/li	R2.97/li
		Other, mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, with an alcoholic strength by volume exceeding 9 per cent vol. but not exceeding 15 per cent vol.	R2.71/li	R2.71/li	R2.97/li	R2.97/li
		Other	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
104.21	**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:**	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
104.23	**22.08**	**Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:**				
		Spirits obtained by distilling grape wine or grape marc	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
		Whiskies	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
		Rum and other spirits obtained by distilling fermented sugarcane products	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
		Gin and Geneva	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
		Vodka	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
		Liqueurs and cordials:				
		With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38.00/li aa	R38.00/li aa	R45.60/li aa	R45.60/li aa
		Other	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa

Table C.12 Specific excise duties, 2011/12 – 2012/13 *(continued)*

Tariff item	Tariff heading	Description	2011/12 Present rate of duty Excise	2011/12 Present rate of duty Customs	2012/13 Proposed rate of duty Excise	2012/13 Proposed rate of duty Customs
		Other:				
		With an alcoholic strength by volume exceeding 15 per cent vol. but not exceeding 23 per cent vol.	R38.00/li aa	R38.00/li aa	R45.60/li aa	R45.60/li aa
		Other	R93.03/li aa	R93.03/li aa	R111.64/li aa	R111.64/li aa
104.30	24.02	**Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:**				
		Cigars, cheroots and cigarillos containing tobacco	R2 196.65 /kg net	R2 196.65 /kg net	R2 306.48 /kg net	R2 306.48 /kg net
		Cigarettes containing tobacco	R4.87 /10 cigarettes	R4.87 /10 cigarettes	R5.16 /10 cigarettes	R5.16 /10 cigarettes
		Cigars, cheroots and cigarillos of tobacco substitutes	R2 196.65 /kg net	R2 196.65 /kg net	R2 306.48 /kg net	R2 306.48 /kg net
		Cigarette of tobacco substitutes	R4.87 /10 cigarettes	R4.87 /10 cigarettes	R5.16 /10 cigarettes	R5.16 /10 cigarettes
104.35	24.03	**Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences:**				
		Smoking tobacco, whether or not containing tobacco substitutes in any proportions:				
		Water pipe tobacco specified in Subheading Note 1 to Chapter 24	R119.16 /kg net	R119.16 /kg net	R128.69 /kg net	R128.69 /kg net
		Pipe tobacco, in immediate packings of a content of less than 5 kg	R119.16 /kg net	R119.16 /kg net	R128.69 /kg net	R128.69 /kg net
		Other pipe tobacco	R119.16 /kg net	R119.16 /kg net	R128.69 /kg net	R128.69 /kg net
		Cigarette tobacco	R210.51 /kg	R210.51 /kg	R221.04 /kg	R221.04 /kg
		Other:				
		Other cigarette tobacco substitutes	R210.51 /kg	R210.51 /kg	R221.04 /kg	R221.04 /kg
		Other pipe tobacco substitutes	R119.16 /kg net	R119.16 /kg net	R128.69 /kg net	R128.69 /kg net

Carbon tax proposals

As discussed in Chapter 4 of the *Budget Review*, government will be publishing its second version of a draft policy paper on carbon tax, outlining its revised concept. To minimise adverse impacts on industry competitiveness and effectively manage the transition to a low-carbon economy, temporary thresholds are proposed below which an exemption from the carbon tax will be granted. Table C.13 summarises the proposed emission thresholds for the carbon emissions tax, including a basic percentage tax-free threshold for all sectors, further adjustments to account for the trade exposure of a firm (up to a maximum), a flat allowance for sector process emissions with limited potential for mitigation, and maximum allowable percentage offsets.

Table C.13 Proposed emissions thresholds for sectors

Sector	Basic tax free threshold (%) below which no carbon tax will be payable during the first phase (2013 to 2019)	Maximum Additional allowance trade exposure	Additional allowance for "process" emissions	Total	Maximum offset percentage
Electricity	60%	-	-	60%	10%
Petroleum (coal to liquid)	60%	10%	-	70%	10%
Petroleum – oil refinery	60%	10%	-	70%	10%
Iron and steel	60%	10%	10%	80%	5%
Aluminium	60%	10%	10%	80%	5%
Cement	60%	10%	10%	80%	5%
Glass & ceramics	60%	10%	10%	80%	5%
Chemicals	60%	10%	10%	80%	5%
Pulp & paper	60%	10%	-	70%	10%
Sugar	60%	10%	-	70%	10%
Agriculture, forestry and land use	60%	-	40%	100%	-
Waste	60%	-	40%	100%	-
Fugitive emissions: coal	60%	10%	10%	80%	5%
Other	60%	10%	-	70%	10%

In addition to the proposed percentage thresholds in Table C.13, firms will be encouraged to reduce the carbon intensity of their products during the first phase of the scheme. This could be accommodated by adjusting the basic percentage tax-free threshold by increasing or decreasing it by a factor (Z). The box below explains the formula to be used to determine this adjustment. The overall tax-free allowance for an entity will be capped at 90 per cent of actual verified emissions.

Box 1: The basic percentage tax-free threshold

Percentage thresholds will be used to quantify the carbon tax liability of an entity or firm based on the absolute emissions for that year. A formula is proposed to adjust the basic percentage tax-free threshold to take into account efforts already made by firms to reduce their emissions and to encourage firms to invest in low-carbon alternatives. The basic percentage threshold below which the tax will not be payable may be adjusted using a carbon emissions intensity factor for output compared to an agreed sector benchmark. A formula is proposed to calculate a factor Z, which will then be used to adjust (increase or decrease) the basic percentage tax-free threshold as described below:

$$Z = Y / X$$

X is the average measured and verified carbon intensity of the output of a firm.

Y is the agreed benchmark carbon intensity for the sector.

The adjustment to the tax-free threshold is then determined by multiplying the original percentage threshold by Z.

Example:

Assume that the agreed benchmark carbon emission intensity is 0.9tCO_2e/ton output. Further assume that the absolute level of greenhouse gas emissions for three different firms (A, B & C) is 100 000 tons CO_2e for each firm. The basic percentage tax-free threshold is 60 per cent and the carbon emissions intensity for Firm A is 0.9tCO_2e/ton of output, for Firm B is 0.85CO_2e/t of output and for Firm C is 1.1tCO_2e/ton of output. The factor by which the basic percentage tax-free threshold (Z) should be adjusted for each of the three firms is:

$$Z = Y / X$$

Firm A: Z = 0.91 / 09.1 = 1.00

Firm B: Z = 0.91 / 0.85 = 1.0706

Firm C: Z = 0.91 / 1.1 = 0.8273

The adjusted basic percentage tax-free thresholds for the three firms are as follows:

Firm A = 0.6 × Z = 0.6 × 1.0 = 0.60000 = 60.000 per cent

Firm B = 0.6 × Z = 0.6 × 1.0706 = 0.64236 = 64.236 per cent

Firm C = 0.6 × Z = 0.6 × 0.8273 = 0.49638 = 49.638 per cent

The basic percentage tax-free emissions are:

Firm A = 60.00 per cent of 100 000 tons = 60 000 tons

Firm B = 64.236 per cent of 100 000 tons = 64 236 tons

Firm C = 49.638 per cent of 100 000 tons = 49 638 tons

Given that the carbon emission intensity for Firm A is the same as the benchmark figure, its basic percentage tax-free threshold remains unchanged. Firm B is doing better than the carbon emissions intensity benchmark, therefore it qualifies for a higher basic percentage tax-free threshold. Firm C is doing worse than the carbon emission intensity benchmark. It is penalised for this poor performance. Its basic percentage tax-free threshold is reduced from 60 per cent to 49.638 per cent.

Miscellaneous tax amendments

Miscellaneous tax amendments proposed for the upcoming tax legislative cycle are set out below.

Employment, individuals and savings

Employee share schemes

Many companies use employee share schemes to motivate employees and to meet black economic empowerment objectives. Most of these schemes are based on the use of employee share trusts. These trusts obtain funding from an employer-company, with a trust holding the shares for the benefit of the employees. While this legitimate practice is to be supported, these schemes are often mixed with executive share schemes that tend to undermine tax. This has resulted in audit controversy and legislative uncertainty. To address these concerns, it is proposed that the various types of employee share schemes

be reviewed to eliminate loopholes and possible double taxation. The review will also consider the interrelationship between employer deductions and employee share scheme income. The incentive regime for low-income earner share schemes also needs to be reviewed and possibly merged into a single employee share scheme regime. These issues will be resolved over a two-year period.

False job terminations

Employees cannot withdraw funds from employer-provided retirement schemes before retirement unless an employee terminates employment with that employer. In some instances, employees terminate their employment solely to gain access to employer-provided retirement funds. In the most egregious circumstances, employees quit employment only to be rehired by the same employer shortly thereafter. Access to withdrawal under these artificial circumstances will no longer be permitted.

Determination of the value of fringe benefits

In certain cases, the Income Tax Act prescribes the use of a formula to calculate the value of a fringe benefit to be taxed in the hands of the employee. However, in these cases, it is sometimes possible for the employer to determine or obtain the actual cost of providing the fringe benefit to the employee (for example, actual business and private kilometres travelled by an employee using a company vehicle, and employers that provide rented vehicles to their employees as “company vehicles”). To create a better match between the employees’ tax withheld and the tax calculation on assessment, it is proposed that, where possible and practical, the employer be allowed to use actual cost to determine the value of the fringe benefit for the employee.

Employer-owned insurance intended to cover a contingent liability

In 2011, the taxation of employer-provided insurance was rationalised. One of the aims of this rationalisation was to ensure that deferred compensation policies are not disguised as key person insurance. One unresolved issue relates to the purpose for which genuine key person insurance is intended. Insurance to cover against operating losses due to the loss of an employee clearly should be deductible for an employer if desired. On the other hand, deducting premiums for insurance to purchase ownership interests of an employee-shareholder or to repay the allocation of debt guaranteed by an employee-shareholder is questionable. The continued allowance of deductible premiums in these latter circumstances will be explored, along with other tax issues relating to this form of insurance. These issues will be resolved in 2012 or 2013 (depending on the press of other matters).

Taxation of payouts from South African or foreign retirement funds

There are currently a number of anomalies in the tax treatment of lump sum and annuity payouts from South African or foreign retirement funds, depending on whether a South African resident or a non-resident receives the payout. An important factor is whether the services that relate to the payout were rendered in South Africa or elsewhere. The issue will receive due consideration during the course of 2012 and 2013.

Taxation of divorce order-related retirement benefits

The “clean-break” principle was introduced to private-sector funds in 2007 so that divorcing spouses could fully separate their pension interests without any ongoing connection. This principle will also form part of the Government Employees Pension Fund (GEPF). The National Treasury proposes that the taxation of retirement interests paid out as a result of divorce orders for the GEPF should roughly mirror private-sector funds:

- In the case of retirement fund payouts stemming from divorce orders issued on or after 13 September 2007, each individual spouse will be responsible for the tax on the portion that they receive.

- The transitional rules applicable to private-sector funds are extended to GEPF payouts, so that retirement fund payouts stemming from divorce orders issued prior to 13 September 2007 will not lead to any tax consequences for either spouse.
- Formula C, which preserves a public-sector fund member's right to a tax-free retirement benefit prior to 1 March 1998, will be extended to the non-member's portion of the pre-1 March 1998 interest.
- The proposed date of implementation is 1 March 2012.

Although the introduction of the "clean-break" principle in private-sector funds has been largely successful, there are still some anomalies that result in continued engagement. It is proposed that these anomalies be addressed so that the overall tax treatment of all divorce-order retirement benefits paid out as a result of a divorce order will fully apply the clean-break principle from 1 March 2012.

Learnership allowances

Employers are eligible for an additional allowance for each registered learnership (in addition to the general deduction for employee expenses). Employers, however, do not qualify for this allowance if the learner did not complete a prior registered learnership. This prohibition will be re-examined. A further problem arises when registration is delayed owing to reasons outside the employer's control, but the allowance begins only upon official registration. The commencement date will be adjusted so that these delays do not undermine the benefit of the additional allowance.

Business

Collateral amendments stemming from the implementation of the new dividend withholding tax

As discussed in Chapter 4 of the *Budget Review*, the dividend withholding tax will become effective from 1 April 2012 at a rate of 15 per cent. This new tax necessitates the following collateral adjustments:

- *Removal of the 33 per cent rate for foreign companies:* Foreign companies with domestic income are subject to a 33 per cent rate of tax, while domestic companies are subject to a 28 per cent rate plus a 10 per cent secondary tax. The additional 5 per cent charge is a proxy for the lack of any secondary tax on foreign companies. This charge will be dropped in light of the repeal of the secondary tax on domestic companies.
- *Removal of the 33 per cent rate for personal service providers:* Personal service providers are similarly subject to a 33 per cent rate, which will also be reduced to 28 per cent.
- *Removal of the higher gold formula rate:* Gold companies have the choice of two gold formula rates – the standard formula or the higher formula. Companies choosing the higher formula are exempt from the secondary tax on companies. With the repeal of the secondary tax on companies, the higher formula will be removed as superfluous.
- *Removal of the proposed passive holding company regime:* Government initially proposed a passive holding company regime to come into effect with the implementation of the dividend withholding tax to correct potential arbitrage between different tax rates. With the dividend withholding tax coming into effect at a 15 per cent rate, these arbitration concerns are greatly reduced. The initially proposed passive holding company regime will be dropped.
- *Shortened period for transitional credits*: The dividends tax contains transitional credit relief stemming from the pre-existing secondary tax on companies. These credits are set to last for up to five years into the new regime. However, given the delayed implementation of the dividends tax (and the fact that the new regime has a higher rate), the transitional credit period will be reduced to three years.

Debt cancellations and restructurings

Given the weaker economic climate over the past several years, some taxpayers are at risk of becoming insolvent and are seeking to reduce or restructure their debt. In 2011, the National Treasury announced its intention to eliminate the unintended tax impact of debt reductions in the case of debt workouts (the treatment of debt cancellations or reductions as capital gain or ordinary revenue). The goal would be to create a simplified regime to determine the tax impact on the debtor when debt is unilaterally reduced or cancelled without full consideration, and to eliminate adverse tax consequences when the debt relief merely restores the debtor to solvency. Specific rules will also be required to address situations where creditors agree to convert their debt interests into an equity stake as partial compensation.

Company law reform and company restructurings

The comprehensive rewrite of the Companies Act (2008) has given rise to a set of anomalies in relation to tax, especially in the case of reorganisations and other share restructurings. As many of the tax rules relating to company reorganisations have been in place for 10 years, a review is appropriate. Government will hold a series of workshops to review the nature of company mergers, acquisitions and other restructurings to better understand their practical use. These workshops will lay the foundation for tax changes (and possibly changes to company law) over a two-year period. An immediate focus area will be share-for-share recapitalisations of a single company.

Mark-to-market taxation of financial instruments

The taxation of financial instruments on a mark-to-market basis has long been under consideration. This form of taxation aligns the tax treatment to financial accounting, which greatly simplifies audit and compliance. It is proposed that this project begin in earnest, using certain changes as pilot projects. First, the current system of mark-to-market taxation for foreign currency instruments should be moved closer to modern accounting standards. Second, the mark-to-market treatment of other financial instruments for tax purposes should be expanded and revised. Changes include expanding the elective regime to cover a wider set of financial assets and liabilities. However, the revised system will be subject to explicit SARS approval so that the regime can be fully controlled during the pilot phase. Ongoing changes can be expected in this area over the next few years based on practical experience.

Review of tax system for insurers

The global insurance industry is undergoing reforms associated with solvency assessment and management projects. These rules will change the way insurers determine their reserves. There are several related tax issues:

- In the case of short-term insurers, certain reserves form the basis for tax deductions while providing a safety cushion for the insurers. To date, the regulatory and tax impact of these reserves has not been fully coordinated, leading to anomalies that have both positive and negative effects for short-term insurers. Captive insurers have also raised longstanding issues for the fiscus.
- The principles of the four fund trustee system of taxation relating to long-term insurers has long been in need of review, Long-term insurers hold and administer assets on behalf of various categories of policyholders, in addition to managing assets for the benefit of shareholders. In recognition of these relationships, long-term insurance products are subject to the four funds system, with the insurer being taxed on return on assets as trustee for the policyholder. However, once the system moves beyond basic theory, it is often unclear whether issues should be determined from a policyholder perspective or a corporate shareholder perspective, and how the two perspectives can be combined. The system also lacks any correlation with the system of accounting, making factual verification and reconciliation difficult, if not impossible.

These concerns necessitate a comprehensive review of the tax system for insurers. To simplify the task, it is proposed that the tax system for calculating short-term insurance reserves be addressed in 2012, with

long-term insurers being addressed in 2013. A short paper on long-term insurers will be circulated for comment by mid-2012.

Government grants

Unless a specific exemption exists, government grants are subject to tax when paid to a taxable entity. A comprehensive review is being undertaken to determine which grants should be exempt to avoid undue taxation (or unintended additional administration). This review will result in an explicit legislative list of exempt grants, updated annually, to improve transparency and ease of administration. The current regulatory regime will also remain in place in the interim. It should be noted, however, that tax expenditure related to tax-exempt grant funding will not be deductible, depreciable or allowed as any other tax offset against the grantee's taxable income, because government, not the grantee, bears these costs.

Sales of trading stock to connected persons

The tax system has rules to prevent character mismatches through related (connected) person sales. Under these rules, taxpayers purchasing assets from connected persons receive a tax cost that is the lower of the purchaser's or the connected person's tax cost. While this anti-avoidance rule can be supported from a capital gains tax perspective, it does not need to apply to trading stock because connected persons' sale of trading stock is unlikely to give rise to manipulation. Trading stock will accordingly be removed from the anti-avoidance connected-person sale rules.

Contingent liabilities associated with the sale of business operations

In 2011, concerns were raised about the tax effect of the sale of a business subject to potential contingent liabilities. These liabilities were giving rise to concerns of potential double taxation or double non-taxation. After much debate, the proposed legislation was withdrawn in favour of an interpretative approach. Interpretative guidance, with legislative refinements, is expected later in the year.

Share issue mismatches

The issuing of shares by a company does not give rise to ordinary or capital gain because any amounts received represent a cash contribution. However, it has come to government's attention that certain taxpayers are seeking to use this rule to shift value to new shareholders without paying the full tax due. Most of these schemes rely on the receipt of consideration in excess of the value of the shares issued. It is proposed that the exemption for the issue of shares be limited to their value, with the excess being subject to tax.

Share block conversions to sectional title

Company liquidations are generally subject to tax to preserve the company dual-level tax system (a tax on company income plus distribution of that income). The conversion of share block companies into sectional title schemes can create a tax problem. In form, this conversion is a company liquidation, but in substance it is merely a change to direct interest from an indirect interest in the underlying property. In these situations, the property owner has swapped interests in favour of a more modern approach. It is proposed that these liquidations receive tax-free rollover treatment.

Supporting structure for energy projects

Energy projects such as wind, solar and hydroelectric facilities are eligible for accelerated depreciation on a 50:30:20 basis. At issue are the foundations and supporting structures associated with these arrangements. Accelerated depreciation will be extended to these ancillary structures.

Extension of the urban development zone incentive

The incentive for buildings (new and renovated) in urban development zones is set to expire in 2014. Government is considering extending this incentive, subject to the receipt of current legislatively

required municipal progress reports and a review of their effectiveness. In addition, the cut-off date poses a problem because it is based on when buildings are brought into use rather than the date of initial construction. It is proposed that the cut-off date be re-examined along with any other anomalies associated with the incentive.

Captive finance vehicles

Some taxpayers use artificial financing vehicles to eliminate income. In some of these schemes, the parent company transfers trade receivables at discounted rates, followed by the return of the discount via tax-free preference share dividends. Other schemes provide for the same manipulation through the artificial over-payment of insurance, services or other deductible payments. These schemes give rise to income tax concerns, and they may also be problematic for VAT. It is proposed that these schemes be reviewed for potential elimination.

Industrial policy incentives – section 12 (I)

Section 12 (I) of the Income Tax Act provides a tax incentive for qualifying companies in respect of investment and training. The experience gained thus far in administering the programme has revealed two areas in which legislative adjustments will result in a more streamlined process. First, the requirement for tax clearance certificates of all connected parties is an administrative burden. A relaxation of this requirement is under consideration. Second, it is proposed that companies should submit monitoring reports until the allowance is exhausted or until all requirements of the programme are met.

International

South African investment into Africa

Over several years, South Africa has introduced several initiatives to reduce potential double-tax costs when investing into Africa. Management services have been an issue, especially the question of whether foreign withholding taxes on these services are eligible for foreign tax credits. Besides clarifying further anomalies in this area, active South African management over controlled foreign subsidiaries may trigger dual-residence tax status, even though all day-to-day operational activities are being conducted abroad. This situation arises because there are practical difficulties associated with local conditions. It is proposed that this dual-residence tax status be removed if the tax of the foreign country is roughly on par with otherwise applicable South African tax. Alternatively, the issue can be resolved as a matter of interpretation.

Many South African loans to foreign African subsidiaries essentially operate as additional share capital contributions – their purpose is to provide for a more flexible use of capital, not to avoid South African tax. However, the formal use of a loan often gives rise to transfer pricing concerns because these loans do not generate annual interest. It is proposed that these loans be treated as shares in line with the decision to treat certain forms of debt as shares.

Local managers of foreign funds

Foreign investment funds often rely on active managers in South Africa for direction regarding African fund assets. However, this form of guidance often raises tax risks, especially the risk that this form of management will be viewed as South African effective management in tax terms, giving rise to a worldwide tax on all fund assets. This risk has deprived local fund managers of foreign investment fund business and has even forced certain local fund managers to relocate abroad. It is proposed that a legislative carve-out be created for foreign investment funds so that these funds are not inadvertently subject to worldwide taxation.

Ongoing refinements to headquarter company relief

Over the past two years, special rules have been enacted that provide tax and exchange control relief for South African headquarter companies. While most issues have been resolved, some outstanding problems are being uncovered as foreign investors seek to use the regime. These anomalies mainly focus on transfer-pricing concerns and headquarter companies that rely on foreign currency for their operations. These anomalies will be addressed to encourage regional headquarter company investment.

Value-added tax

Clarification of the date of liability for VAT registration

A person that becomes liable to register for VAT (on account of reaching the compulsory threshold of R1 million) must apply to SARS for registration as a vendor within 21 days. That person cannot charge VAT on supplies until they have been registered as a vendor by SARS. There are no transitionary rules in the VAT Act that address this issue. It is proposed that the liability date for VAT be clarified to streamline the transition from a non-vendor to a vendor.

Bargaining councils

Bargaining councils regulate collective agreements and conduct dispute resolution for their members. These councils levy an administration fee that is payable by employees. However, the activities of a bargaining council do not fall within the ambit of an employee organisation, and are arguably subject to VAT. These activities are similar to that of an employee organisation and should similarly be exempt from VAT.

Instalment credit agreements

Movable goods supplied through an instalment credit agreement take the form of a sale or a lease. Depending on the form, finance charges and/or insurance (the lessee accepts the full risk of destruction of the asset) is payable. Shariah law prohibits the charging of interest or the placing of risk or insurance responsibilities on the client, owing to the element of chance. It is proposed that the provisions governing instalment credit agreements in the VAT Act be amended to accommodate products that are compliant with Shariah law.

Debit and credit notes

The VAT Act contains specific scenarios that justify the issuing of a credit or debit note. For instance, if a vendor issues a tax invoice for an incorrect amount (for example, R100), the vendor cannot justify the issue of a credit note (the invoice amount was R50 and not R100) within the specified conditions in the VAT Act. It is also unlawful to issue more than one tax invoice for the same supply. It is proposed that the specified conditions in the VAT Act under which a vendor can issue credit or debit notes to correct incorrect tax invoices be extended.

VAT double charge for goods removed from an industrial development zone

Movable goods imported into a customs controlled area (CCA) of an industrial development zone are exempted from customs duty and VAT. A deemed VAT charge is triggered if the goods are temporarily removed from the CCA and not returned within 30 days. For customs purposes, the removal of the goods leads to a voucher of correction, processed by customs, and VAT on importation is payable. The result is that double VAT is charged. It is proposed that this double charge be eliminated.

Political parties

The receipts and accruals of any political party registered in terms of the Electoral Act (1998) are exempt from income tax. The VAT Act does not contain a specific provision for political parties, which results in uncertainty. As a result, it is unclear whether the receipts and accruals of a political party can be construed as “consideration” for taxable supplies or a “donation”. The latter view seems more consistent

with the nature and mandate of political parties as there is no reciprocal performance between the political party and the donor(s) concerned. It is proposed that the receipts and accruals of political parties be exempted from VAT.

Imported goods sold prior to entry for home consumption

A foreign company that sells goods that enter South African territorial waters may be required to register for VAT if this activity is continuous or regular. The recipient (buyer and vendor) is liable for import VAT on the clearance of the goods for home consumption. As a result, the recipient is liable for two VAT charges on the same amount. It is proposed that the VAT provisions relating to goods sold by foreign companies prior to entry for home consumption be reviewed.

Customs

Implementation of one-stop border post agreement with Mozambique

The agreement between South Africa and Mozambique on combined border control posts on the Mozambique-South Africa border and its implementing annexures have been submitted to Parliament for ratification. Although the Customs Act contains provisions for implementing such an agreement, ratification by Parliament will necessitate amendments to a wide range of legislation regulating the movement of people, goods and means of conveyance into and out of South Africa. These amendments will be proposed after ratification of the agreement and consultation between the affected organs of state.

Technical corrections

In addition to the amendments described above, the 2012 Tax Amendment Bill (like all annual amendment bills) will contain various technical corrections. These technical corrections mainly cover inconsequential items – typing errors, grammar, punctuation, numbering, misplaced cross references, updating or removing obsolete provisions, the removal of superfluous text, and the incorporation of regulation and commonly accepted secondary interpretations into formal law. Technical corrections also include changes to effective dates and the 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. These issues typically arise when returns are prepared for the first time after legislation is implemented. Technical corrections of this nature are almost exclusively limited to recent legislative changes.