MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA

TERMS OF REFERENCE

FOR THE

SOUTH AFRICAN TAX REVIEW COMMITTEE

The Minister of Finance announced in the 2013 Budget that-

"***A tax review will be initiated this year to assess our tax policy framework and its role in supporting the objectives of inclusive growth, employment, development and fiscal sustainability…***"

In providing further details, this Terms of Reference draws from announcements already made in the 2013 Budget Review (BR).

1. Composition Committee

Judge Dennis Davis will chair the committee. The other members are:

Prof. Annet Wanyana Oguttu, Prof Matthew Lester, Prof Ingrid Woolard, Ms. Nara Monkam, Ms. Tania Ajam, Prof N Padia and Mr Vuyo Jack. Two officials, one from the National Treasury, Mr. Cecil Morden, and one from the South African Revenue Service, Mr. Kosie Louw, will serve as ex-officio members in a technical, supportive and advisory capacity. In addition the National Treasury and SARS will provide secretarial support to the Committee and SARS will provide office accommodation and logistical support to the Committee.

2. Terms of Reference

The terms of reference for the Tax Review Committee are to inquire into the role of the tax system in the promotion of inclusive economic growth, employment creation, development and fiscal sustainability. The committee will take into account recent domestic and international developments and, particularly, the long term objectives of the National Development Plan.

The Committee is advisory in nature, and will make recommendations to the Minister of Finance. The Minister will take into account the report and recommendations and will make any appropriate announcements as part of the normal budget and legislative processes. As with all tax policy proposals, these will be subject to the normal consultative processes and Parliamentary oversight once announced by the Minister.

The committee should evaluate the South African tax system against internationally accepted tax trends, principles and practices, as well as recent international initiatives to improve tax compliance and deal with problems of base erosion.

The following aspects should receive specific attention from the committee:

1) An examination of the overall tax base and tax burden including the appropriate tax mix between: direct taxes, indirect taxes, provincial and local taxes. An analysis of the sustainability in the long-run of the overall tax-to-GDP ratio, and the tax-to-GDP ratio for each of the three major tax instruments, personal income tax (PIT), corporate income tax (CIT) and VAT should be undertaken. This in essence requires an evaluation of the economic and social impact of the tax system and an assessment of whether the current tax structure is able to generate sufficient and sustainable revenues to fund government's current and future expenditure priorities.

2) The impact of the tax system in the promotion of small and medium size businesses. An analysis of tax compliance costs, the possible further streamlining of tax administration and simplification of tax legislation.

3) A review of the corporate tax system with special reference to:

   a. the efficiency of the corporate income tax structure;

   b. tax avoidance (e.g. base erosion, income splitting and profit shifting, including the tax bias in favour of debt financing);

   c. tax incentives to promote developmental objectives and;

   d. average (and marginal) effective corporate income tax rates in the various sectors of the economy.

4) As noted in the 2013 Budget Review, the committee will consider

   a) Whether the current mining tax regime is appropriate, taking account of:

      i) the agreement between Government, Labour and Business to ensure that the mining sector contributes to growth and job creation, remains a competitive investment proposition, and all role players contribute to better working and living conditions;

ii) the challenges facing the mining sector, including low commodity prices, rising costs, falling outputs and declining margins, as well as to its current contribution to tax revenues.

b) Various elements of taxation within the financial sector, namely the taxation regime of long term insurers (BR, page 55), the taxation of hedge funds (BR, page 56), the taxation of various innovative financial instruments (BR, page 63), and the VAT treatment of financial services and VAT apportionment within the financial sector (BR, page 63).

5) Value added tax with specific reference to efficiency and equity. In this examination, the advisability and effectiveness of dual rates, zero rating and exemptions must be considered.

6) The impact of e-commerce (especially the use of digital delivery of goods and services) upon the integrity of the tax base, in particular upon value added tax and corporate income tax revenues.

7) The progressivity of the tax system and the role and continued relevance of estate duty to support a more equitable and progressive tax system. In this inquiry, the interaction between capital gains tax and the estate duty should be considered.

8) An evaluation of proposals to fund, for example, the proposed National Health Insurance (NHI) and long term infrastructure projects to boost the growth potential of this economy.

9) An evaluation of the legislative process with a view to both enhancing simplicity and ensuring the protection of the tax base and to recommend how to improve the current process.

The Committee is mandated to study any further tax issues which, in the Committee's view, should be addressed in order to promote inclusive economic growth, employment creation, development and fiscal sustainability. The Committee is required to submit interim reports and a final report which will be published on dates to be determined after consultation between the Committee and the Minister of Finance.

3. Objectives of South African tax system

The committee should take into account the following broad tax policy objectives:

a) Revenue-raising to fund government expenditure is the primary objective of taxation

b) Social objectives, building a cohesive and inclusive society can be met partially through a progressive tax system and by raising revenue in order to redistribute resources.

c) Market failures can be corrected by applying a tax on production and/or consumption to internalise negative externalities, e.g. pollution or consumption of harmful products.

d) The tax system can influence behavioural changes by encouraging certain actions (e.g. savings) and discouraging others (e.g. smoking).

e) Taxes and tax incentives are sometimes used in targeted ways to encourage higher levels of investment to help facilitate economic growth.

f) International competitiveness is important, although the tax system is not the main driver of international competiveness. Innovation and productivity improvements are far more important. We should guard against the ‘race to the bottom’ in our efforts to strive for a “competitive tax system”.

4. Background to the Review

Following the last tax commission (The Katz Commission), South Africa’s tax system and tax administration have undergone significant changes. An independent tax administration, the broadening of the tax base and the lowering of marginal tax rates have all contributed towards a relatively robust and competitive tax system. Today South Africa’s tax policy and tax administration compares favourably with that in many developed and emerging economies.

Given the pace of globalisation, the relatively modest economic growth following the 2008/09 economic recession and significant social challenges such as persistent unemployment, poverty and inequality, there is a need to review the contribution of the tax system (as part of an coherent and effective fiscal policy framework) in order to address these challenges in the future. There is also a need to address concerns about base erosion and profit shifting, especially in the context of corporate income tax, as identified by the OECD and G20.