

C

Miscellaneous tax amendments

This annexure should be read with Chapter 4 of the *Budget Review*. It provides further details on some of the chapter's proposals, as well as tax proposals to clarify current legislation or proposals of a more technical nature.

■ Tax expenditure statement: February 2014

Introduction

Tax expenditures are provisions in tax legislation that reduce the amount of tax revenue that could otherwise have been realised. Tax expenditures can be defined as deviations from the benchmark of a standard tax legislative framework.

This statement is the fourth summary of tax expenditure estimates. Table C.2 details the 2014 tax expenditure statement, indicating an estimate of just over R108 billion in 2011/12 or 14.6 per cent of total gross tax revenue. Tax expenditure estimates reported in the previous statements may have changed due to availability of more recent data, updated assumptions and other corrections.

Major changes to tax expenditure

Anomalies have been discovered in the way data pertaining to customs and excise duties was previously presented. The 2013 tax expenditure estimates for duties associated with the Motor Industry Development Programme (MIDP), textiles and clothing, furniture and fixtures, and other customs (goods manufactured for exports, television monitors and agricultural goods) for 2009/10 should have been for 2010/11. This has been rectified. In addition, the substantial increases in tax expenditure previously reported for MIDP and other customs for 2010/11 was an overestimate.

In some instances, the value of goods was included as tax expenditure instead of the actual duty value attached to those goods. This has been corrected.

With the exception of the major changes mentioned above, all other adjustments are due to the level of assessment approaching 100 per cent for years up to and including 2010/11. For the outer year (2011/12), some amounts are lower than for 2010/11 – this is due to a lower level of assessment at the time the data was extracted for this exercise.

VAT relief on fuel sales

Because petrol, diesel and illuminating paraffin are zero-rated for value-added tax (VAT) purposes, the resulting difference from a standard rating, when used by final consumers, is regarded as tax expenditure. It was assumed that 20 per cent of petrol sales was used for business purposes (by VAT vendors) and would have qualified to claim input VAT. For diesel, it was assumed that 90 per cent of sales was used for business purposes and would have qualified for input VAT.

Average national diesel, petrol and paraffin prices are shown below.

Table C.1 National average price and quantity of fuel sold (million litres)

Fuel type	2008		2009		2010		2011		2012	
	Price (Rand/l)	Quantity								
Diesel	6.7	9 976	9.0	9 914	6.7	9 570	7.7	10 333	9.7	11 291
Petrol	7.1	11 531	8.6	11 055	7.6	11 319	8.4	11 541	10.3	11 972
Paraffin	5.2	694	7.1	506	4.8	776	5.4	482	7.3	576

Estimates of tax expenditure

The following table summarises tax expenditure in terms of the Income Tax Act (1962), the VAT Act (1991) and the Customs and Excise Act (1964).

Table C.2 Tax expenditure estimates (R million)

	2008/09	2009/10	2010/11	2011/12
Personal income tax				
Pension and retirement annuity contributions ¹	15 818	18 123	21 983	24 189
<i>Pension contributions – employees</i>	5 879	6 834	7 777	8 563
<i>Pension contributions – employers</i>	6 612	7 685	10 033	11 046
<i>Retirement annuity</i>	3 327	3 605	4 173	4 581
Medical	10 483	12 224	14 970	16 729
<i>Medical contributions & deductions – employees</i>	5 825	6 904	14 970	16 729
<i>Medical contributions – employers</i> ²	4 657	5 320	–	–
Interest exemptions	1 649	2 214	2 089	1 845
Secondary rebate (65 years and older)	1 426	1 436	1 719	1 066
Donations	106	113	134	169
Capital gains tax (annual exclusion)	85	63	68	96
Total personal income tax	29 567	34 173	40 963	44 095
Corporate income tax				
Small business corporation tax savings	1 298	1 346	1 412	1 278
<i>Reduced headline rate</i>	1 277	1 328	1 392	1 261
<i>Section 12E depreciation allowance</i>	20	18	21	17
Research and development	594	727	685	241
Learnership allowances	403	646	670	420
Strategic industrial policy ³	61	215	138	374
Film incentive	280	180	287	1
Urban development zones	159	239	364	176
Total corporate income tax	2 795	3 353	3 557	2 490
Value-added tax				
Zero-rated supplies				
19 basic food items ⁴	13 907	14 606	15 962	17 415
Petrol ⁵	10 524	9 463	10 845	13 797
Diesel ⁵	1 249	918	1 107	1 532
Paraffin ⁵	520	356	367	585
Municipal property rates	3 921	3 969	6 029	7 564
Reduced inclusion rate for "commercial" accommodation	138	151	156	175
Subtotal zero-rated supplies	30 258	29 462	34 466	41 068
Exempt supplies (public transport & education)	832	922	1 001	1 079
Customs duties and excise				
Motor vehicles (MIDP, including IRCCs) ⁶	16 169	12 089	12 673	16 306
Textile and clothing (duty credits – DCCs) ⁶	1 828	2 024	2 230	860
Furniture and fixtures	166	128	153	150
Other customs ⁷	1 140	1 230	787	847
Diesel refund (mining, agriculture and fishing)	1 242	1 295	1 283	1 756
Total customs and excise	20 545	16 766	17 126	19 919
Total tax expenditure	83 996	84 676	97 113	108 651
Tax expenditure as % of total gross tax revenue	13.4%	14.1%	14.4%	14.6%
Total gross tax revenue	625 100	598 705	674 183	742 650
Tax expenditure as % of GDP	4.0%	3.7%	4.0%	4.0%

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 for 2008/09-2009/10; tax-free fringe benefit for employer contributions was removed effective 1 March 2012 (2010/11).

3. Tax expenditure for all years is attributable to allowances under the s12G Strategic Industrial Policy (s12I came into effect in 2010, however, no tax expenditure is recorded for 2011/12 because production started in 2012/13).

4. VAT relief in respect of basic food items based on an independent study, as well as 2010/11 income and expenditure survey data.

5. Based on fuel volumes and average retail selling prices.

6. MIDP = Motor Industry Development Programme, IRCC = import rebate credit certificate, DCC = duty credit certificates.

7. Goods manufactured exclusively for exports, television monitors and agricultural goods exempted.

Direct tax proposals

The primary rebate has been increased to R12 726 per year for all individuals. The secondary rebate, which applies to individuals aged 65 years and over, is increased to R7 110 per year. The third rebate, which applies to individuals aged 75 years and over, is increased to R2 367 per year. The threshold below which individuals are not liable for personal income tax is increased to R70 700 of taxable income per year for those below the age of 65, R110 200 per year for those aged 65 to 74, and R123 350 for individuals aged 75 and over. The rates for the 2013/14 tax year and the proposed rates for 2014/15 are set out in Table C.3.

Table C.3 Personal income tax rate and bracket adjustments, 2013/14 – 2014/15

2013/14		2014/15	
Taxable income (R)	Rates of tax	Taxable income (R)	Rates of tax
R0 - R165 600	18% of each R1	R0 - R174 550	18% of each R1
R165 601 - R258 750	R29 808 + 25% of the amount above R165 600	R174 551 - R272 700	R31 419 + 25% of the amount above R174 550
R258 751 - R358 110	R53 096 + 30% of the amount above R258 750	R272 701 - R377 450	R55 957 + 30% of the amount above R272 700
R358 111 - R500 940	R82 904 + 35% of the amount above R358 110	R377 451 - R528 000	R87 382 + 35% of the amount above R377 450
R500 941 - R638 600	R132 894 + 38% of the amount above R500 940	R528 001 - R673 100	R140 074 + 38% of the amount above R528 000
R638 601	R185 205 + 40% of the amount above R638 600	R673 101	R195 212 + 40% of the amount above R673 100
Rebates		Rebates	
Primary	R12 080	Primary	R12 726
Secondary	R6 750	Secondary	R7 110
Tertiary	R2 250	Tertiary	R2 367
Tax threshold		Tax threshold	
Below age 65	R67 111	Below age 65	R70 700
Age 65 and over	R104 611	Age 65 and over	R110 200
Age 75 and over	R117 111	Age 75 and over	R123 350

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.4, C.5 and C.6. 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.4 Income tax payable, 2014/15 (taxpayers below age 65)

Taxable income (Rands)	2013/14 rates (Rands)	Proposed rates (Rands)	Tax reduction (Rands)	% reduction
75 000	1 420	774	- 646	-45.5%
80 000	2 320	1 674	- 646	-27.8%
85 000	3 220	2 574	- 646	-20.1%
90 000	4 120	3 474	- 646	-15.7%
100 000	5 920	5 274	- 646	-10.9%
120 000	9 520	8 874	- 646	-6.8%
150 000	14 920	14 274	- 646	-4.3%
200 000	26 328	25 056	-1 273	-4.8%
250 000	38 828	37 556	-1 273	-3.3%
300 000	53 391	51 421	-1 970	-3.7%
400 000	85 486	82 549	-2 937	-3.4%
500 000	120 486	117 549	-2 937	-2.4%
750 000	217 685	213 246	-4 439	-2.0%
1 000 000	317 685	313 246	-4 439	-1.4%

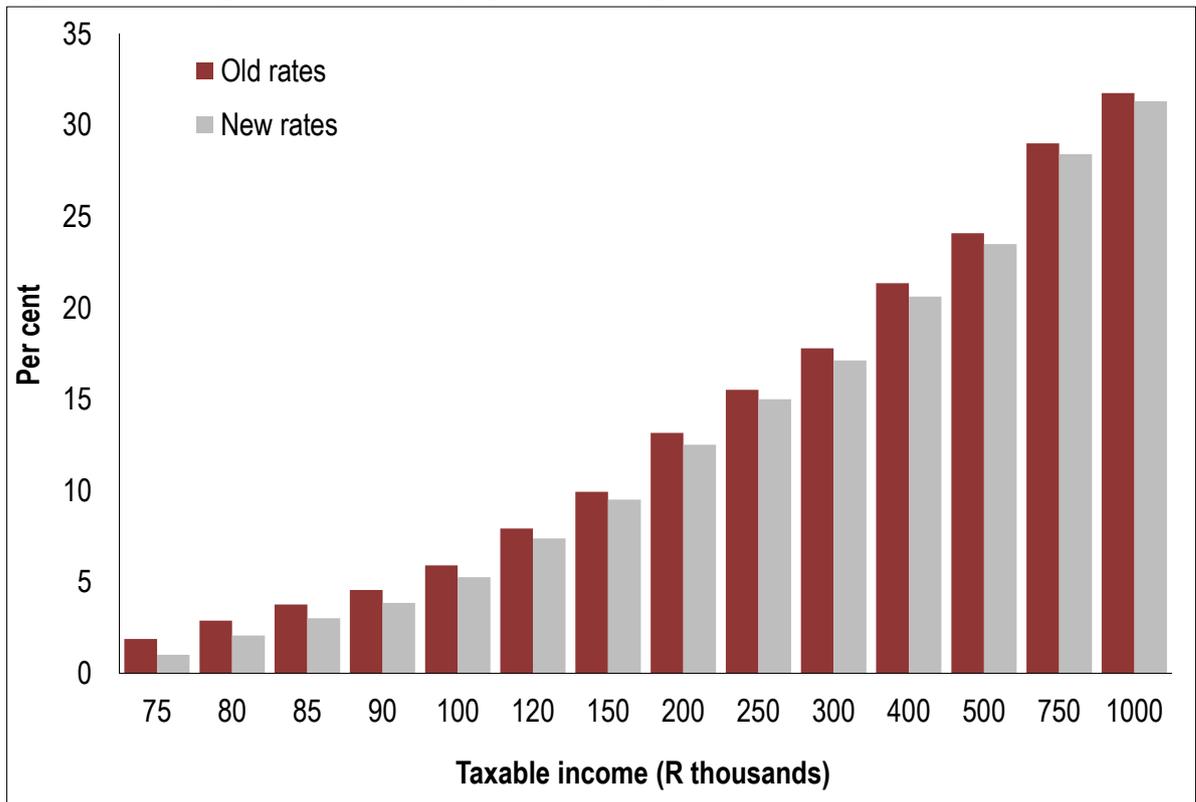
Figure C.1 Average tax rates for taxpayers below age 65

Table C.5 Income tax payable, 2014/15 (taxpayers age 65 to 74)

Taxable income (Rands)	2013/14 rates (Rands)	Proposed rates (Rands)	Tax reduction (Rands)	% reduction
120 000	2 770	1 764	-1 006	-36.3%
150 000	8 170	7 164	-1 006	-12.3%
200 000	19 578	17 946	-1 633	-8.3%
250 000	32 078	30 446	-1 633	-5.1%
300 000	46 641	44 311	-2 330	-5.0%
400 000	78 736	75 439	-3 297	-4.2%
500 000	113 736	110 439	-3 297	-2.9%
750 000	210 935	206 136	-4 799	-2.3%
1 000 000	310 935	306 136	-4 799	-1.5%

Figure C.2 Average tax rates for taxpayers age 65 to 74

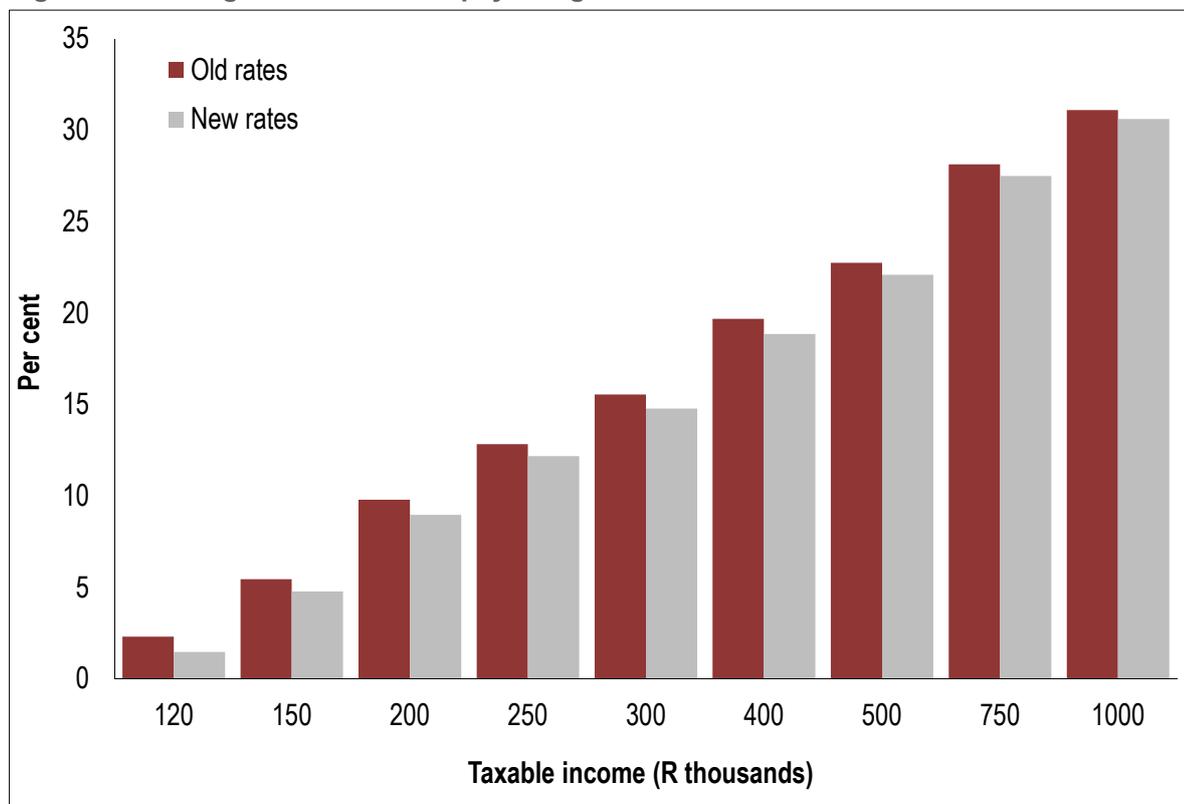
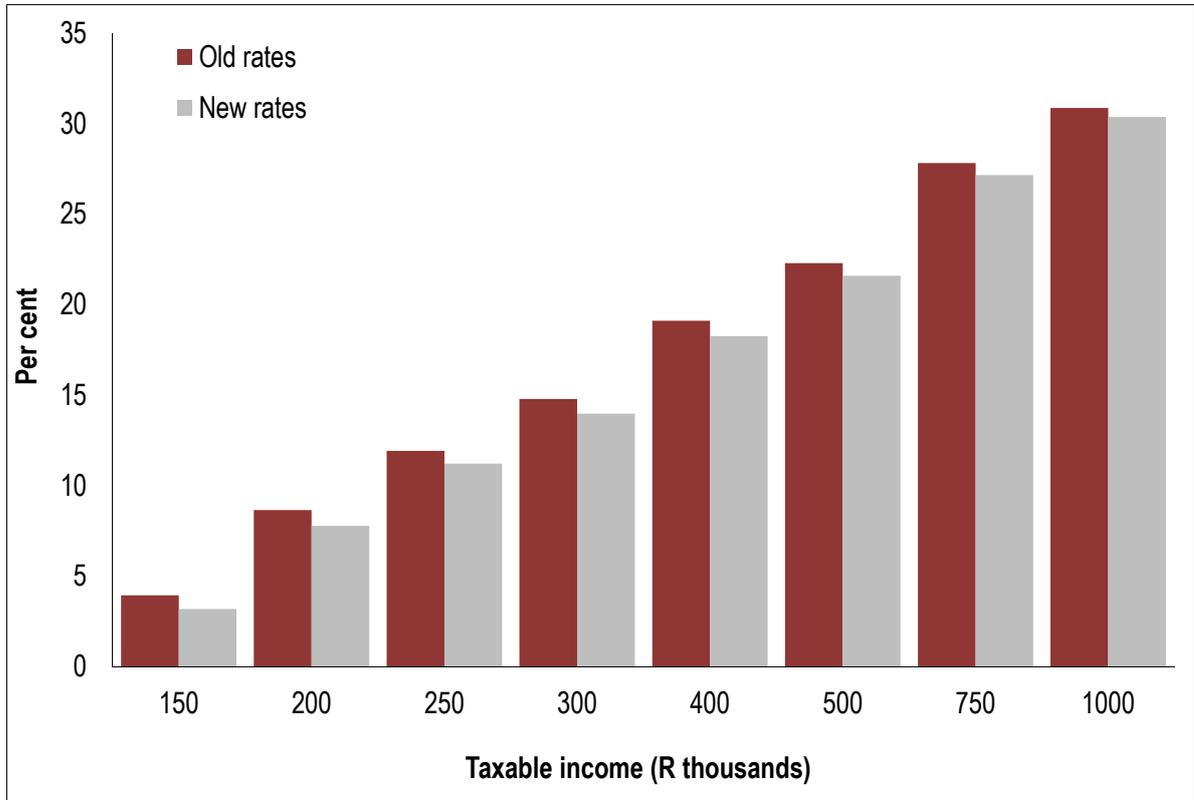


Table C.6 Income tax payable, 2014/15 (taxpayers age 75 and over)

Taxable income (Rands)	2013/14 rates (Rands)	Proposed rates (Rands)	Tax reduction (Rands)	% reduction
150 000	5 920	4 797	-1 123	-19.0%
200 000	17 328	15 579	-1 750	-10.1%
250 000	29 828	28 079	-1 750	-5.9%
300 000	44 391	41 944	-2 447	-5.5%
400 000	76 486	73 072	-3 414	-4.5%
500 000	111 486	108 072	-3 414	-3.1%
750 000	208 685	203 769	-4 916	-2.4%
1 000 000	308 685	303 769	-4 916	-1.6%

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 (schedule 1, part 2 of section A) be amended with effect from 26 February 2014 to the extent shown in Table C.7.

Table C.7 Specific excise duties, 2013/14 – 2014/15

Tariff item	Tariff subheading	Article description	2013/14 Rate of excise duty	2014/15 Rate of excise duty
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:		
104.01.10	1901.90.20	Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34.7c/kg	34.7c/kg
104.10	22.03	Beer made from malt:		
104.10.10	2203.00.05	Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82c/li	7.82c/li
104.10.20	2203.00.90	Other	R63.81/li aa	R68.92/li aa
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must (excluding that of heading 20.09):		
104.15.01	2204.10	Sparkling wine	R8.28/li	R9.11/li
104.15	2204.21	In containers holding 2 li or less:		
104.15	2204.21.4	Unfortified wine:		
104.15.03	2204.21.41	With an alcoholic strength of at least 6.5 per cent by volume but not exceeding 16.5 per cent by volume	R2.70/li	R2.87/li
104.15.04	2204.21.42	Other	R122.80/li aa	R137.54/li aa
104.15	2204.21.5	Fortified wine:		
104.15.05	2204.21.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by volume	R4.85/li	R5.21/li
104.15.06	2204.21.52	Other	R122.80/li aa	R137.54/li aa
104.15	2204.29	Other:		
104.15	2204.29.4	Unfortified wine:		
104.15.07	2204.29.41	With an alcoholic strength of at least 6.5 per cent by volume but not exceeding 16.5 per cent by volume	R2.70/li	R2.87/li
104.15.08	2204.29.42	Other	R122.80/li aa	R137.54/li aa
104.15	2204.29.5	Fortified wine:		
104.15.09	2204.29.51	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by volume	R4.85/li	R5.21/li
104.15.10	2204.29.52	Other	R122.80/li aa	R137.54/li aa
104.16	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances:		
104.16	2205.10	In containers holding 2 li or less:		
104.16.01	2205.10.10	Sparkling	R8.28/li	R9.11/li
104.16	2205.10.2	Unfortified:		
104.16.03	2205.10.21	With an alcoholic strength of at least 6.5 per cent by volume but not exceeding 15 per cent by volume	R2.70/li	R2.87/li
104.16.04	2205.10.22	Other	R122.80/li aa	R137.54/li aa
104.16	2205.10.3	Fortified:		
104.16.05	2205.10.31	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by volume	R4.85/li	R5.21/li
104.16.06	2205.10.32	Other	R122.80/li aa	R137.54/li aa
104.16	2205.90	Other:		
104.16	2205.90.2	Unfortified:		
104.16.09	2205.90.21	With an alcoholic strength of at least 6.5 per cent by volume but not exceeding 15 per cent by volume	R2.70/li	R2.87/li
104.16.10	2205.90.22	Other	R122.80/li aa	R137.54/li aa

Table C.7 Specific excise duties, 2013/14 – 2014/15 (continued)

Tariff item	Tariff subheading	Article description	2013/14 Rate of excise duty	2014/15 Rate of excise duty
104.16	2205.90.3	Fortified:		
104.16.11	2205.90.31	With an alcoholic strength of at least 15 per cent by volume but not exceeding 22 per cent by volume	R4.85/li	R5.21/li
104.16.12	2205.90.32	Other	R122.80/li aa	R137.54/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:		
104.17.03	2206.00.05	Sparkling fruit beverages and sparkling mead	R8.28/li	R9.11/li
104.17.05	2206.00.15	Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82c/li	7.82c/li
104.17.07	2206.00.17	Other fermented beverages, unfortified, with an alcoholic strength of less than 2.5 per cent by volume	R63.81/li aa	R68.92/li aa
104.17.15	2206.00.81	Other fermented apple or pear beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by volume	R3.19/li	R3.45c/li
104.17.16	2206.00.82	Other fermented fruit beverages and mead beverages, including mixtures of fermented beverages derived from the fermentation of fruit or honey, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by volume	R3.19/li	R3.45c/li
104.17.17	2206.00.83	Other fermented apple or pear beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by volume	R50.16/li aa	R56.19/li aa
104.17.21	2206.00.84	Other fermented fruit beverages and mead beverages including mixtures of fermented beverages derived from the fermentation of fruit or honey, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by volume	R50.16/li aa	R56.19/li aa
104.17.22	2206.00.85	Other mixtures of fermented fruit beverages or mead beverages and non-alcoholic beverages, unfortified, with an alcoholic strength of at least 2.5 per cent by volume but not exceeding 15 per cent by volume	R3.19/li	R3.45/li
104.17.25	2206.00.87	Other mixtures of fermented fruit beverages or mead beverages and non-alcoholic beverages, fortified, with an alcoholic strength of at least 15 per cent by volume but not exceeding 23 per cent by volume	R50.16/li aa	R56.19/li aa
104.17.90	2206.00.90	Other	R63.81/li aa	R68.92/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:		
104.21.01	2207.10	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher	R122.80/li aa	R137.54/li aa
104.21.03	2207.20	Ethyl alcohol and other spirits, denatured of any strength	R122.80/li aa	R137.54/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:		
104.23	2208.20	Spirits obtained by distilling grape wine or grape marc:		
104.23.01	2208.20.10	In containers holding 2 li or less	R122.80/li aa	R137.54/li aa
104.23.03	2208.20.90	Other	R122.80/li aa	R137.54/li aa
104.23	2208.30	Whiskies:		
104.23.05	2208.30.10	In containers holding 2 li or less	R122.80/li aa	R137.54/li aa
104.23.07	2208.30.90	Other	R122.80/li aa	R137.54/li aa
104.23	2208.40	Rum and other spirits obtained by distilling fermented sugarcane products:		
104.23.09	2208.40.10	In containers holding 2 li or less	R122.80/li aa	R137.54/li aa
104.23.11	2208.40.90	Other	R122.80/li aa	R137.54/li aa

Table C.7 Specific excise duties, 2013/14 – 2014/15 (continued)

Tariff item	Tariff subheading	Article description	2013/14 Rate of excise duty	2014/15 Rate of excise duty
104.23	2208.50	Gin and Geneva:		
104.23.13	2208.50.10	In containers holding 2 li or less	R122.80/li aa	R137.54/li aa
104.23.15	2208.50.90	Other	R122.80/li aa	R137.54/li aa
104.23	2208.60	Vodka:		
104.23.17	2208.60.10	In containers holding 2 li or less	R122.80/li aa	R137.54/li aa
104.23.19	2208.60.90	Other	R122.80/li aa	R137.54/li aa
104.23	2208.70	Liqueurs and cordials:		
104.23	2208.70.2	In containers holding 2 li or less:		
104.23.21	2208.70.21	With an alcoholic strength by volume exceeding 15 per cent by volume but not exceeding 23 per cent by volume	R50.16/li aa	R56.19/li aa
104.23.22	2208.70.22	Other	R122.80/li aa	R137.54/li aa
104.23	2208.70.9	Other:		
104.23.23	2208.70.91	With an alcoholic strength by volume exceeding 15 per cent by volume but not exceeding 23 per cent by volume	R50.16/li aa	R56.19/li aa
104.23.24	2208.70.92	Other	R122.80/li aa	R137.54/li aa
104.23	2208.90	Other:		
104.23	2208.90.2	In containers holding 2 li or less:		
104.23.25	2208.90.21	With an alcoholic strength by volume exceeding 15 per cent by volume but not exceeding 23 per cent by volume	R50.16/li aa	R56.19/li aa
104.23.26	2208.90.22	Other	R122.80/li aa	R137.54/li aa
104.23	2208.90.9	Other:		
104.23.27	2208.90.91	With an alcoholic strength by volume exceeding 15 per cent by volume but not exceeding 23 per cent by volume	R50.16/li aa	R56.19/li aa
104.23.28	2208.90.92	Other	R122.80/li aa	R137.54/li aa
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:		
104.30	2402.10	Cigars, cheroots and cigarillos containing tobacco:		
104.30.01	2402.10.10	Imported from Switzerland	R2 467.83/kg net	R2 690.00/kg net
104.30.03	2402.10.90	Other	R2 467.83/kg net	R2 690.00/kg net
104.30	2402.20	Cigarettes containing tobacco:		
104.30.05	2402.20.10	Imported from Switzerland	R5.46/10 cigarettes	R5.80/10 cigarettes
104.30.07	2402.20.90	Other	R5.46/10 cigarettes	R5.80/10 cigarettes
104.30	2402.90.1	Cigars, cheroots and cigarillos of tobacco substitutes:		
104.30.09	2402.90.12	Imported from Switzerland	R2 467.83/kg net	R2 690.00/kg net
104.30.11	2402.90.14	Other	R2 467.83/kg net	R2 690.00/kg net
104.30	2402.90.2	Cigarettes of tobacco substitutes:		
104.30.13	2402.90.22	Imported from Switzerland	R5.46/10 cigarettes	R5.80/10 cigarettes
104.30.15	2402.90.24	Other	R5.46/10 cigarettes	R5.80/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:		
104.35	2403.1	Smoking tobacco, whether or not containing tobacco substitutes in any proportion:		
104.35.01	2403.11	Water pipe tobacco specified in Subheading Note 1 to Chapter 24	R141.60/kg net	R145.20/kg net

Table C.7 Specific excise duties, 2013/14 – 2014/15 (continued)

Tariff item	Tariff subheading	Article description	2013/14 Rate of excise duty	2014/15 Rate of excise duty
104.35	2403.19	Other:		
104.35.02	2403.19.10	Pipe tobacco, in immediate packings of a content of less than 5kg	R141.60/kg net	R145.20/kg net
104.35.03	2403.19.20	Other pipe tobacco	R141.60/kg net	R145.20/kg net
104.35.05	2403.19.30	Cigarette tobacco	R243.20/kg	R260.60/kg
104.35	2403.99	Other:		
104.35.07	2403.99.30	Other cigarette tobacco substitutes	R243.20/kg	R260.60/kg
104.35.09	2403.99.40	Other pipe tobacco substitutes	R141.60/kg net	R145.20/kg net

Other fermented beverages under tariff heading 22.06

Budget 2013 introduced changes to tariff heading 22.06 to align the excise duty rate structure for fruit fermented alcoholic beverages with the requirements of the Liquor Products Act (1989). As a result, fermented alcoholic beverages that are not mainly derived from fruit will be included in the “other” tariff band. The intention was to increase the excise duty rate of this band to the highest excise rate – the full spirits rate – from February 2014 onwards. However, after further consultation it is proposed that this increase be postponed to Budget 2015. The possibility of providing for grain fermented alcoholic beverages will also be explored.

Excise duties

Alcoholic beverages tariff classification for excise duty purposes: Liquor manufacturers may currently request tariff determinations from SARS to obtain certainty on the appropriate tariff classification and excise duty rate applicable to their products. These voluntary applications for tariff determinations will in future be made compulsory to ensure that all alcoholic beverages are over time accurately and consistently classified. Any new alcoholic product or modification in the production process or alteration in the recipe of an existing liquor product will be subject to a compulsory SARS tariff determination. Proof of compliance with the requirements of the Liquor Products Act will also have to be submitted to promote harmonisation with agricultural legislation. These compulsory tariff determinations will be phased in to ease its administrative burden.

Miscellaneous tax amendments

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

Individuals, employment and savings

Personal insurance policies: The tax treatment of life and disability premiums and policy proceeds was aligned in 2013, with effect from 1 March 2015. The premiums will not be deductible and the policy proceeds will be tax free. However, the wording prohibiting the deduction of the premium for tax purposes does not cover all circumstances, which may allow providers to argue that certain structured products fall outside the ambit of the legislation. It is proposed that the wording be clarified so that premiums paid on all personal insurance policies not be allowed as a deduction against income, and that the policy proceeds from such policies are tax free.

The “loss” requirement for keyperson policies: “Keyperson” refers to a person who is key to the success of a business. In 2011, the tax regime for keyperson policies was changed to allow the taxpayer to elect a deduction for the premium on incurral and taxable policy proceeds or to accept the default non-deductible premium with tax-free policy proceeds. Most employers opted to accept the default option. One of the requirements for an employer policy on a keyperson to qualify for the election is that the

employer must be insured against any loss due to the death, disablement or severe illness of an employee or director. The policy will therefore not qualify if it protects the employer against, not a business loss, but a contingent liability such as the repayment of a loan should the employee or director die before the loan is repaid. A deduction relating to the cession of that policy contradicts the policy intent. It is proposed that the wording relating to the policy cession be deleted to confirm that an insurance policy will not qualify if it is not intended to insure the employer against a loss suffered as a result of the death, disablement or severe illness of an employee or director.

Employer-provided residential accommodation: The value of the fringe benefit for employer-provided accommodation is determined in relation to the “rental value” representing the value of the use of the accommodation. Depending on the circumstances in which the employer provided the accommodation, different methods are used to calculate the rental value. It is either calculated according to a specific formula using the income of the employee, known as the “remuneration proxy”, and the period that the employee used the accommodation; the aggregate of the total rentals payable and other associated costs; or the portion of the accommodation costs borne by the employer that pertains to the use by the employee. It is proposed that the valuation of the fringe benefit resulting from employer-provided accommodation be reviewed. As a first step, the focus will be on accommodation rented from an unconnected third party, and shared accommodation.

Should the actual value of the use of the accommodation be less than the calculated rental value, the employer may apply for a tax directive from SARS for a lower amount. In instances where the employer provides rental accommodation sourced from a third party to an inbound expat employee, the calculated rental value is often higher than the actual value. As a result, employers often apply for a tax directive to ensure that the employee is taxed as a fringe benefit on the actual (market) value of the use of the accommodation. It is proposed that if employer-provided accommodation is rented by the employer from an unconnected third party, the value of the fringe benefit should be the cost to the employer in providing the accommodation.

In addition, there is no apportionment available where employees share employer-provided accommodation. It is proposed that a form of apportionment be considered.

Cross-border retirement saving: South African residents working abroad and foreign residents working in South Africa regularly contribute to local and foreign pension funds. With overall retirement reform now in effect, cross-border pension issues need to be reconsidered. Given the complexity of the issues involved, it is proposed that the review take place over two years, with extensive consultation.

On a related matter, certain provisions in the Income Tax Act refer to “pension” or to “pensions or an annuity”. The wording excludes lump sum retirement fund benefit pay-outs. It is proposed that the provisions be amended to apply equally to annuities and lump sums.

Alignment between the Unemployment Insurance Act (2001) and the Unemployment Insurance Contributions Act (2002): The Unemployment Insurance Amendment Bill (2013) proposes that the Unemployment Insurance Act be amended to extend unemployment insurance benefits to learners in learnership training, civil servants and foreign workers in South Africa. It is proposed that the Unemployment Insurance Contributions Act be aligned with the amended legislation where required. It is not envisaged that civil servants will contribute towards the Unemployment Insurance Fund. However, the fiscus will make funds available to the Unemployment Insurance Fund to cover the cost of government workers that become eligible to claim from the fund.

Business (general)

Refinancing of third-party backed shares: The third-party backed shares anti-avoidance rule concerns preference shares with dividend yields backed by third parties. The dividend yield of third-party backed shares is treated as ordinary revenue. This anti-avoidance rule also applies to the refinancing of third-party backed shares. However, there are certain exceptions to this rule – it does not apply if the preference shares are used to fund equity share acquisitions in operating companies, because the net

impact of the funding is generally neutral to the fiscus. This is also common in the case of preference share funding for black economic empowerment (BEE). Refinancing of third-party backed shares originally used to fund equity acquisitions in operating companies is not covered under the exceptions. Because there is no policy rationale for excluding refinancing in structures covered under the exceptions to the rule, it is proposed that the refinancing of qualifying transactions be allowed.

Third-party backed shares used to acquire equity shares in exploration companies: The third-party backed shares anti-avoidance rule does not apply if the funds derived from preference shares are used to acquire equity shares in an operating company. An operating company conducts continuous business activities that result in the provision of goods and services for consideration. Exploration companies do not meet the requirement of operating companies because their business activities do not result in the provision of goods and services for consideration. As a result, preference shares issued to acquire equity shares in an exploration company (usually by BEE parties) fall foul of the rules. It is proposed that exploration companies be specifically included in the definition of “operating company”.

Limited pledges in respect of third-party backed shares: Preference share funders often require limited pledges, especially when funding certain company acquisition transactions. In these cases, the funder requires a pledge of the shares associated with the deal, without requiring any further enforcement rights or obligations. For the third-party backed shares anti-avoidance rule not to apply, a shareholder of the acquiring company (i.e. the preference share issuer) pledging its shares must hold at least 20 per cent of the equity shares in the preference share issuer. However, many of the acquiring company equity shareholders in these cases hold less (directly or indirectly) than 20 per cent in the underlying operating company. As a result, the funder bears all the risk because the value of the preference shares depends on the underlying operating company. It is proposed that the third-party backed shares anti-avoidance rule should not apply where the security provided to the funder is limited to equity shares held by acquiring company equity shareholders directly or indirectly in the underlying operating company.

Limited interest deductions for reorganisation and acquisition transactions: This rule was introduced to reduce the significant risk to the economy and the fiscus emanating from the use of excessive debt for funding company acquisitions. The rule uses a percentage of an amount calculated for tax purposes representing earnings before interest, tax, depreciation and amortisation (EBITDA) to limit interest deductions used in reorganisation and acquisition transactions. Certain unintended anomalies in the application and impact of these rules have been identified. For example, the taxpayer’s adjusted taxable income for the tax year preceding the transaction is not taken into account in determining the limitation, and the limitation percentage is only adjusted when the average repurchase rate exceeds a level of 10 per cent, not 8 per cent. It is proposed that these anomalies be addressed.

In addition, the formula used to calculate the limitation of the interest deduction currently takes assessed losses carried forward from previous years into account. This results in a further limitation on the base from which the overall limitation is calculated. It is proposed that the interest deduction limitation calculation should not take assessed losses brought forward from previous years into account.

Dividends tax refinements: An anomaly has been identified concerning the operation of the refund mechanism for non-cash dividends. It is proposed that new provisions addressing this anomaly be introduced.

Contributed tax capital roll-over for deferred shares: Contributed tax capital is a notional amount derived from contributions made to a company as consideration for its issue of shares. It is reduced by any amount that is subsequently transferred by the company back to one or more shareholders (commonly known as capital distribution).

Contributed tax capital roll-overs are permitted where shares are transferred in certain reorganisation transactions. The law also provides for roll-over treatment in instances where shares of a certain class are converted or substituted for shares of another class.

Deferred shares are issued at a premium and converted to ordinary shares once a company has achieved certain milestones. Roll-over treatment does not apply to deferred shares. As a result, the contributed tax capital on deferred shares will be lost because the class of shares to which it relates differs from the class of shares after conversion. This type of conversion was not considered when the concept of contributed tax capital was introduced. It is proposed that roll-over relief be granted when deferred shares are converted to ordinary shares.

Business (financial institutions)

Excluding policies issued by an insurer from the provision dealing with the incurral and accrual of interest on instruments (section 24J of the Income Tax Act): Insurance companies issue policies, such as endowment policies and smoothed or stable bonus products that have a guaranteed value for policyholders. These types of products may inadvertently be treated as instruments in terms of section 24J, which was never the intention. It is proposed that these policies be excluded from the scope of the interest accrual rules.

REITs (real estate investment trusts): One of the tests determining whether a company is a property company refers to the percentage value of the assets attributable to immovable property, as reflected in its financial statements in accordance with the Companies Act. However, the act does not apply to foreign companies. To rectify this, financial statements in line with international financial reporting standards prepared for foreign property companies will be taken into account.

Business (incentives)

Further refinements to the oil and gas incentive: An oil and gas company holding an exploration or production right may assign all of its fiscal stability rights to another oil and gas company. Oil and gas companies may wish to enter into a joint venture and only assign a portion of the fiscal stability rights so that both parties are covered by the original fiscal stability agreement. It is proposed that part-assignments of fiscal stability rights be allowed.

Research and development tax incentive – clinical trials: A recent amendment to the Income Tax Act aims to make the first three phases of clinical trials eligible for the research and development tax incentive. However, further amendments will be made to address a barrier to this objective. Recent amendments also led to unintended consequences for entities funding research and development activities carried out by another party. These anomalies will be removed and both proposals will apply retrospectively of 1 January 2014.

Depreciation allowances for transmitting electronic communications: Government will review the conditions under which and the period over which depreciation allowances are claimable for lines or cables used to transmit electronic communications.

Environmental conservation: The incentive for land owners to enter into an agreement with government to declare land as a nature reserve or a national park will be streamlined. A proposal is under consideration to delink this incentive from the provisions of section 18A of the Income Tax Act and allow for a straight line deduction of the adjusted value of the land – at the time of entering into the agreement – over a period of 25 years.

International

Secondary adjustment for transfer pricing: Applying the secondary adjustment in the form of a deemed loan is an administrative burden, both for the taxpayer and SARS.

The accounting treatment of the deemed loan's repayment and interest is difficult, because there is no legal obligation to repay the loan. It is recommended that the transfer pricing provision be amended to state that the secondary adjustment is deemed to be a dividend or capital contribution depending on the facts and circumstances.

Foreign dividends of controlled foreign companies owned by individuals: If a resident individual's controlled foreign company receives a taxable foreign dividend, the effective tax rate on the dividend is 21 per cent. It is proposed that the ratio be changed to reflect the fact that an individual, not a company, is taxed with reference to the foreign dividend.

High tax exemption for controlled foreign companies: The structure of section 9D of the Income Tax Act, which attributes the net income of a controlled foreign company, requires a high foreign tax exemption to be tested before certain amounts can be excluded. The high tax exemption involves a hypothetical South African tax calculation based on the transactions of a controlled foreign company as if it had been a South African tax resident. If the actual foreign tax is at least 75 per cent of the hypothetical South African tax, then no amount under section 9D is taxed in the hands of the South African resident controlling the foreign company.

In the case of a South African resident company that owns many foreign companies, it is cumbersome to establish whether the high tax exemption applies if most of the income of the controlled foreign companies is attributable to a foreign business establishment. It is proposed that an option be provided to deem the net income of a controlled foreign company to be nil if either the high tax or the foreign business establishment test, when applied to aggregate taxable amounts, is met.

Currency of reacquisition of assets of individuals ceasing to be resident: A person who ceases to be a resident is subject to a deemed disposal and reacquisition of shares in a property company owning property in South Africa. However, it is not clear in which currency the shares reacquisition takes place. This has an effect on the tax calculation when the shares are sold or otherwise disposed of by the non-resident. It is proposed that this should be clarified.

Fishing vessels registered in South Africa: In 2013, a new tax regime for international shipping was introduced. The rule providing for an allowance for repairs to ships has inadvertently been deleted. Reinstatement of this provision from the date of its repeal (12 December 2013) is proposed.

Value-added tax

Going concerns: VAT legislation and an accompanying interpretation note (number 57) on the VAT treatment when a going concern is sold require clarification. The legislation requires the supply to be made to a registered vendor. According to the interpretation note, the recipient must agree that at the effective date it will be a vendor. The legislation will be amended to remove the uncertainty regarding whether a person must be a vendor before the acquisition of the going concern.

Documentation: The customs modernisation programme has eliminated the need for paper-based documents to be generated and issued to taxpayers. The documents that are legally required will be aligned with the modernised customs processes and procedures.

Tax invoices, debit and credit notes: A supplier, being a registered vendor (the principal), is required to issue a tax invoice within 21 days of the date of the supply. This time limit will be extended to agents. However, there is no specific time limit in which the credit or debit note must be issued. The legislation will be amended to set a time limit.

Agents: There is uncertainty as to which documentation is acceptable as proof of payment to entitle a vendor to deduct input tax in respect of VAT paid on the importation of goods. Clarity will be provided on which documentation is acceptable.

Contract prices: A supplier of goods or services is able to recover from the recipient an amount of VAT "imposed" on the supply after the agreement is concluded. The legislation will be amended to exclude suppliers who failed to register as VAT vendors.

Bargaining councils: Goods and services provided by a bargaining council to its members, based on membership contributions, are exempt from VAT. This will be amended to include the supply of

administration services for which the bargaining council receives a separate fee (the interest that it is entitled to in terms of the main collective agreement).

Zero-rating of goods for agricultural, pastoral or other farming purposes: The VAT Act provides for zero-rating where the supply of goods are used or consumed for agricultural, pastoral or other farming purposes. This concession was intended to provide cash-flow relief to the agricultural sector. However, evidence suggests that some suppliers entered into transactions to obtain fraudulent input tax deductions. This zero-rating provision will be reviewed in consultation with relevant stakeholders for possible replacement with VAT at the standard rate.

VAT treatment of legal tender or money: Money issued by the Reserve Bank is exempt from VAT. The definition of money or legal tender in the context of this exemption will be reviewed, taking into account that the printing of money is subject to VAT at the standard rate. The zero-rating of the supply of legal tender or money is under consideration.

Customs

Protection of trade information: SARS has a responsibility to protect the merchandise trade information that it receives from travellers and traders. In the absence of the Protection of Personal Information Bill being implemented, it is proposed that the Customs and Excise Act be amended to provide for such data protection. Section 101B of the Customs and Excise Act relating to travellers is already aligned with the anticipated requirements of the Protection of Personal Information Bill, but additional measures are needed to similarly address traders and cargo.

Technical corrections

In addition to the amendments described above, the 2014 tax legislation will effect various technical corrections, which mainly cover inconsequential items – typing errors, grammar, punctuation, numbering, misplaced cross-references, updating and removing obsolete provisions, removing superfluous text, and incorporating regulations and commonly accepted 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 once the law is applied (including obvious omissions and ambiguities). These issues typically arise when returns are prepared for the first time after legislation is applied. Technical corrections of this nature are almost exclusively limited to recent legislative changes.