BUDGET
23 FEB 2022

ACCOUNTING FOR IMPLEMENTATION

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BUDGET ANALYSIS AND COMMENTARY

A summary of tax related budget proposals announced by the Minister of Finance today, **Wednesday 23 February 2022**

SAICA

DIFFERENCE MAKERS™

CONTENTS

1. FOREWORD BY SAICA CEO – MR FREEMAN NOMVALO

The Minister of Finance (Minister) in his 2022 Budget Speech reminds us of the precarious position we find ourselves in and that the budget needs to strike a balance between saving lives and livelihoods whilst supporting inclusive growth.

Charting a course towards growth and sustainability and committing to these in the budget is merely a start. Our Minister also reminds us that the budget cannot replace structural changes needed in our economy and the difficult trade-offs that will be required. One of the most critical changes is the effectiveness of implementation of interventions. National Treasury (Treasury) and the Minister cannot do this on their own and will be reliant on the rest of government and society at large.

The Minister quotes: "*You won't realise the distance you have walked until you look around and realise how far you have been."* On the same basis, you need to reflect on where you have been or what has not worked in order to chart a path forward. The status quo of the lack of implementation remains a major concern and how we, as a country, hold people accountable for not delivering the services the country and its people need. Understanding what continues to inhibit implementation and accountability is critical to ensuring that the path we have charted will realise.

SAICA will, together with its members, continue working together with all stakeholders in rebuilding our nation to achieve a better South Africa for all.

2. BUDGET OVERVIEW

The Minister has made a frank assessment of the dire state of both our economy and our fiscal sustainability. Acknowledging the problems has, however, not been an issue in the last decade, but addressing and resolving the problems is where the struggle lies.

The strong message from the Minister is that we need to change things and quickly, though effecting this change which informs the Ministers estimations is where matters come unhinged. SAICA has in this regard analysed various factors of implementation performance to demonstrate our concern and share it with members in our **Accounting for Implementation** analysis set out below. A more detailed analysis will follow in our submission to Parliament which will be shared with members, once submitted.

A significant exclusion by the Minister has been the escalating violence in **Ukraine** and its impact to significantly undermine global and local economic growth should it escalate, given that it has already had a material impact on our currency, markets and energy costs.

The Minister has presented that **total tax collections** are estimated at around **R1.55 trillion** for the year, **R311 billion higher than the prior year**. This improvement in collections is expected to result in the **tax-to-GDP ratio reaching 24.7%** in 2021/22 and is continuing to grow to levels even higher than pre-Covid.

Despite a slow-down in economic recovery, tax revenue exceeded pre-pandemic forecasts with an expectation of a **R181.9 billion in excess of the 2021 Budget estimate** and R61.7 billion in excess of the medium-term budget estimate.

According to Treasury, this was mainly due to:

- elevated commodity prices;
- corporate income and profits being more resilient than anticipated, with tax collections benefiting from strong but temporary increases in the prices of exports relative to imports – specific sectors contributing to this increase in corporate income tax collections include mining, manufacturing and finance;
- personal income tax collection buoyed by a recovery in earnings;
- domestic value-added tax (VAT) collections having grown significantly as household consumption was supported by stronger earnings and low interest rates.

Treasury further noted that economic recovery following the COVID-19 pandemic, has been vastly different to other negative shocks, with tax resiliency being much stronger, possibly due to the artificial nature of the downturn through lockdowns and enforced restrictions on activity, rather than damage inflicted by a recession.

Year on year medium-term revenue increases are estimated to be 2,8%, 4,6% and 6,6%, notwithstanding Treasury's estimation that tax buoyancy will decrease and that GDP growth will decrease and then remain flat. Will these then be realised through future tax increases?

These revenue estimations underpin the revised downwards estimations in the deficit and consequently the projected debt. In addition, factors such as spending control realising should also be reflected on. The below table indicates the inverse bell graph showing that expenditure is estimated high, followed by undertakings to reduce in the medium term and then it starts increasing again the closer we draw to the relevant year end.

Table 3.5 Main budget expenditure ceiling

R million	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
2019 MTBPS	1 307 235	1 404 675	1 493 029	1 591 287	1 673 601		
2020 Budget Review	1 307 119	1 409 244	1 457 703	1 538 590	1 605 098		
2020 MTBPS	1 307 112	1 418 408	1 502 867	1 479 709	1 516 052	1 529 585	
2021 Budget Review		1 418 399	1 504 656	1 514 934	1 521 721	1 530 664	
2021 MTBPS		1 418 456	1 487 399	1 570 890	1 552 268	1 558 725	1 627 154
2022 Budget			**1 487 399**	**1 575 002**	**1 630 905**	**1 613 671**	**1 686 932**

Source: National Treasury

Furthermore, as noted in the previous budget summary, unbudgeted items remain a significant risk to the budget. The 2018 Public Sector Wage Agreement will cost R38 billion plus interest, should the dispute be resolved in favour of unions. As the Minister commented, to pay for a R50 billion item would require a 2% VAT increase or personal income tax marginal rate increase. The perilous state of State-owned Enterprises (SoEs) also means that the R1,17 trillion guarantees are a lot closer to just being government debt, which has realised in 2020 and 2021 and for which government will have continue to provide for with over R300 billion in relief already provided to date.

Crime remains a fundamental problem in growing our economy and the state of the Police remains a concern with effective service delivery decreasing as reflected in the crime statistics. The Police's ability to apply resources effectively is also a concern with more than R3 billion unspent even with all the lack of vehicles and equipment and state of disrepair at most police stations. In this regard the Minister's assessment that the Police will be supported by an increase by R8,7 billion in the medium term requires unpacking.

Table 5.4 Consolidated government expenditure by function[1]

R million	2021/22 Revised estimate	2022/23 Medium-term estimates	2023/24	2024/25	Percentage of total MTEF allocation	Average annual MTEF growth
Police services	108 453	110 220	108 577	114 222	6.0%	1.7%

The 2023 budget will include R2,9 billion to pay for the 2021 wage agreement which means in effect a flat budget, as represented by the budget going back to the 2022 levels in 2023/24. In 2024/25 it increases to R114 billion by which time 3 years of inflation would have resulted in the Police's budget being less than in 2022. It is unclear how an additional 12 000 new recruits will be appointed from this budget.

The Minister noted that whilst poor administration has contributed to poor collections in the past, SARS has been working hard at rebuilding itself, which has also contributed to improved collections and compliance as a result of *inter alia*, recruitment of additional skilled resources and significant investment in improving its ICT infrastructure. Service delivery by SARS and its ability to meet a mandate of fairness and efficiency remains a concern. A structural review of the governance of SARS was promised after the 2018 Nugent Commission, yet no public consultation process was followed, with taxpayers being one of the victims of the governance failures at SARS. The Minister notes that a document will be published for comment, yet concludes that most of the recommendations have been implemented. This is a major oversight by the Minister in ensuring an effective, fair and efficient SARS.

Treasury noted that over the past two years, tax policy has focused on broadening the tax base, improving administration and lowering (rather than raising) tax rates as it was clear from prior years that increasing the tax rate did not increase collections to the extent expected – partly due to poor administration and change in taxpayer behaviour. The intention is, therefore, to continue with recent policy, by avoiding tax rate increases as far as possible, subject to major expenditure decisions.

Given the improvement in revenue collections, government proposes R5.2 billion tax relief to help support the economic recovery, provide some respite from fuel tax increases and boost incentives for youth employment.

Movement in the right direction is planned and intended and the Minister and Treasury should be commended for what they are trying to achieve and the amount of work going into their analysis and support. However, the stark reality may be far removed from what the Minister intends if history is to go by.

Tax proposals – 2022/23

Some of the more significant tax proposals are noted below:

- **Inflationary relief** through a **4.5% adjustment in the personal income tax brackets and rebates**. If these were <u>not</u> adjusted, this would have contributed an additional R13.5 billion in revenue for 2022/23.
- An **expansion of the employment tax incentive**, through a 50% increase in the maximum monthly value, to a **maximum of R1 500** (currently R1 000) for the **first 12 months** and a **maximum of R750** (previously R500) for the **second 12 months** of eligibility.
- **No change** to the **general fuel levy** or the **Road Accident Fund** (RAF) levy.
- Increases of between **4.5% and 6.5%** in **excise duties on alcohol and tobacco**.
- As announced in the 2021 Budget Speech, the **corporate income tax rate** will be reduced from **28% to 27%** – effective for **years of assessment ending on/after 31 March 2023**. Base-broadening measures will be implemented to ensure that there is no effect on revenue – i.e. limitation of assessed loss and interest deduction provisions will be made effective concurrently.
- The carbon tax levy for 2022 will increase by 1c to 9c/litre for petrol and 10c/litre for diesel from 6 April 2021.

3. FOCUS ON IMPROVING TAX ADMINISTRATION AND REBUILDING SARS

As has always been maintained by SAICA and acknowledged via a change in tax policy over the last couple of years, in addition to broadening the tax base, a more efficient and effective tax administration is more conducive to improving collections, as better administration results in improved taxpayer behaviour and improved compliance.

During the 2021 Budget Review, the Commissioner for SARS indicated that SARS had implemented 14 of the 27 Nugent Commission recommendations. Currently, SARS has advised that it has now implemented the majority of the aforementioned recommendations and is now aligning the outstanding recommendations with those of the State Capture Commission. No specifics were provided yet, but the Budget Review indicated that a Treasury discussion document regarding the broader governance and oversight reforms outlined in the recommendations from both commissions will soon be published for public comment. At the same time, legislative amendments will be proposed to give effect to this.

Government believes that the impact of the rebuilding of SARS can already be seen in improved revenue collection and compliance trends. Specifically, SARS has recruited an additional 490 staff across various levels and skills areas and has invested R430 million in refreshing and modernising its ICT infrastructure. It was noted that the dedicated new unit focused on high-wealth individuals is making progress. The multi-year customs modernisation programme is still under way, with an initial focus on improving Beitbridge border operations through data driven risk profiling and number plate recognition. SARS noted that it will expand the modernisation programme to other ports of entry over the medium term.

SARS has continued to focus and in fact intensify its work to counter criminal and illicit activity, resulting in over R5 billion being collected through enforcement activities, with the potential for better results. Another measure implemented is the initiation of a review of all businesses that received payments from national and provincial government over the past five years. Such exercise which revealed a number of cases of non-compliance. This has enabled SARS to register businesses that were not previously in the tax base, thereby contributing to increased revenue collection.

4. INDIVIDUALS

Personal income tax

Personal income tax (PIT) contributed R554 billion of the total tax collections of R1.55 trillion – i.e. 36% of total tax revenue.

As noted in the overview, there is an inflationary increase in the personal income tax brackets and rebates, resulting in relief of R13.5 billion. The change in the primary rebate increases the tax free threshold from R87 300 (in 2021) to R91 250, for taxpayers under 65 years old.

Exemption for interest and dividend income

The annual exemption on interest earned by individuals younger than 65 years (R23 800) and for individuals 65 years and older (R34 500) remains the same.

The annual contribution limit to tax-free savings accounts remains R36 000.

Other proposals affecting individuals, employment and savings

Reviewing the timing of accrual and incurral of variable remuneration

Section 7B of the Income Tax Act, 1962 (the Act) allows for the taxation of variable remuneration to be deferred to the date when the amount is paid, rather than when it accrues to the employee. The Act provides that any amount of variable remuneration paid by the employer to the employee is deemed to accrue to the employee on actual date of payment.

'Variable remuneration' includes overtime pay, bonuses or commission; an allowance or advance paid for transport expenses; an amount the employee becomes entitled to as a result of unused leave; any night shift or standby allowance; or any amount paid or granted for a reimbursement as contemplated in the Act.

It has been noted that the definition may not fully cater for all types of variable remuneration. For example, it does not cater for the informal sector, where payments calculated based on units produced do not fit the 'definition' of commission, thereby falling outside of variable remuneration.

Proposal: amend section 7B to cater for these performance-based variable payments.

Apportioning the interest exemption and capital gains tax annual exclusion when an individual ceases to be tax resident

In 2012, section 9H(2)(b) of the Act was clarified to provide that, when an individual ceases to be a South African tax resident, their year of assessment is deemed to have ended on the date immediately before the day their tax residency ceased. The section further provides that the individual's next succeeding year of assessment will start on the day on which tax residency is ceased. As a result, the individual has two years of assessment during the 12-month period, which means that there is an opportunity for duplicate claims of certain exemptions or exclusions that are allowed per year of assessment. This has never been the intention of the legislation.

Proposal: amendment providing for apportionment of the interest exemption and capital gains annual exclusion, in the circumstances.

Tax research and reviews in relation to individuals

Consideration of relief due to remote working arrangements

It was noted that a discussion document will be published in 2022 on a personal income tax regime for remote work. This is encouraging given the costs currently incurred by employees working from home, in respect of which no or limited deductions are currently available.

Review of exemption of foreign retirement benefits in domestic legislation

A review of the exemption of foreign retirement benefits in domestic tax legislation will be conducted.

Adjustment of thresholds for inflation

Government will be reviewing the approach to adjusting thresholds for inflation.

Retirement provisions

Reviewing the transfer of total interest in a retirement annuity fund

The Act allows members of retirement funds to transfer their retirement interest from one retirement fund to another, subject to certain conditions. For example, if the individual is transferring to a similar type of retirement fund or from a less restrictive to a more restrictive retirement fund and – in the case of retirement annuity funds – if the total interest in the transferor fund is transferred. These conditions result in retirement annuity fund (RAF) members with more than one contract in a particular fund being restricted from transferring one or more contracts between RAFs. However, members of a preservation fund are not restricted on the proportion of their retirement interest that can be transferred into another fund.

Proposal: change legislation to allow fund members to transfer one or more contracts in a particular RAF, subject to certain conditions to ensure that the current minimum thresholds are not contravened.

Clarifying the compulsory annuitisation and protection of vested rights when transferring to a public-sector fund

In 2013, retirement fund reform amendments were made to the Act, regarding the annuitisation requirements for provident funds and provident preservation funds. These amendments were intended to preserve retirement fund interests during retirement and to ensure uniform tax treatment across the various retirement funds. This would result in provident funds being treated similarly to pension and retirement annuity funds, and provident preservation funds being treated similarly to pension preservation funds, regarding the requirement to annuitise retirement benefits.

These amendments came into effect on 1 March 2021, subject to the protection of vested rights. As a result, historical vested rights – i.e., those that arose before 1 March 2021 – were segregated from new rights – i.e., those arising after 1 March 2021. The protection of vested rights is:

- Any member of a provident or provident preservation fund as at 1 March 2021 will not be required to annuitise any historic vested rights.
- New vested rights in relation to members who are 55 years or older as at 1 March 2021 will remain protected provided the member remains in that same fund.
- Historical vested rights may be transferred into another retirement fund without forfeiting their vested rights protection (irrespective of the number of transfers effected).

It has come to light that the current provisions would forfeit the protection of historical vested rights if a transfer is made into a public-sector fund. This is because the pension fund and provident fund definitions do not make any reference to the protection of vested rights for individuals who were members of a provident or provident preservation fund as at 1 March 2021.

Proposal: amending the pension and provident fund definitions to ensure that historical vested rights remain protected even if they are transferred to a public-sector fund.

Clarifying paragraph (eA) of gross income regarding public-sector funds

In 2021, the retirement reforms that require mandatory annuities for provident funds came into effect. These reforms included amendments that cater for public-sector pension funds that operate like provident funds. As such, with effect from 1 March 2021, members of provident funds (including public-sector pension funds that operate like provident funds) are required to receive their benefits as annuities on retirement. However, despite the above-mentioned changes regarding the annuitisation of public-sector funds, paragraph (eA) of the definition of gross income in section 1 does not mention public-sector funds that fall within paragraph (a) of the definition of provident fund.

Proposal: paragraph (eA) to be clarified to ensure that gross income includes all public-sector funds. These amendments will take effect from 1 March 2022.

Retirement of a provident fund member on grounds other than ill health

In 2021, the retirement reforms that require mandatory annuities for provident funds came into effect. As a result, it is no longer necessary to differentiate between a pension and provident fund for retirement purposes, as these funds now operate in the same way. Paragraph 4(3) of the Second Schedule to the Act treats pension and provident funds differently. According to this paragraph, if a member of a provident fund who is younger than 55 retires from that fund for reasons other than ill health, any lump sum received shall be taxed as a withdrawal benefit rather than a retirement benefit. This does not apply to members of pension or retirement annuity funds, result in an anomaly.

Proposal: delete paragraph 4(3) of the Second Schedule to the Act.

Clarifying the applicability of tax-neutral transfers from a pension to a provident fund

Before the mandatory annuitisation of provident funds came into effect in 2021, transfers to a provident or provident preservation fund would be taxable if the transfer was made from a fund that hadmandatory annuitisation requirements. From 1 March 2021, in accordance with paragraph 6(1)(a) of the Second Schedule to the Act, transfers to a provident or provident preservation fund would be tax-neutral irrespective of the type of retirement fund from which the retirement interests were transferred. Both before and after 1 March 2021, the policy intent is for these transfers to be tax neutral. Government has realised that the current provisions of paragraph 6(1)(a) create an anomaly, in that transfers from a pension fund to a provident fund related to contributions made before 1 March 2021 are not tax neutral.

Proposal: amendment to provide for contributions to a pension fund before 1 March 2021 to also receive tax-neutral transfer status.

5. COMPANIES

Corporate tax rates

Government indicated in the 2020 Budget Review, that it was restructuring the corporate income tax system in a manner that has no effect on net revenue collections. To give effect to this, effective for tax years ending on or after 31 March 2023, the corporate income tax rate is reduced by 1 percentage point to 27%. Consequently, the 2021 tax amendments legislating limitation of assessed losses and interest deductions will be brought into effect at the same time.

Government has noted that changes to the corporate income tax system has the biggest impact on investor behaviour – which influences jobs, wages and prices – and consequently, can support economic growth. Government's role is to find a balance between a reasonable tax burden that minimises the negative effect on investment and reduces incentives for base erosion and profit shifting, while ensuring that companies and their stakeholders contribute fairly to tax revenues.

The Organisation for Economic Co-operation and Development (OECD) average corporate tax rate is currently 23%. Whilst many other countries have reduced their rates over the last 15 years, South Africa's has remained at 28%. Given that many countries with strong investment and trading ties to South Africa have significantly lower rates, this provides a strong incentive for tax avoidance, which needs to be neutralised.

General corporate tax proposals

Clarifying the tax treatment of collateral arrangement provisions

In 2021, amendments were proposed in the Taxation Laws Amendment Bill (2021 TLAB), to clarify that the use of collateral for purposes other than subsequent collateral arrangements or proposed limited regulated transactions is against the policy rationale for the introduction of these provisions and could result in theavoidance of securities transfer tax or capital gains tax. The effective date for the proposed amendments was 1 January 2022. Following consideration of related public comment, it was decided to postpone the effective date for these amendments to 1 January 2023 to allow Treasury and affected stakeholders more time to consider the impact of the proposed amendments.

Proposal: Government to review the impact of the 2021 amendments during the 2022 legislative cycle.

Clarifying the definition of contributed tax capital

The 2021 TLAB proposed amendments to address tax avoidance concerns and clarify the definition of contributed tax capital, with an effective date of 1 January 2022. Following consideration of public comments, government decidedto postpone the effective date for these amendments to 1 January 2023 to allow Treasury and affected stakeholders more time to consider the impact of the proposed amendments.

Proposal: Government to review the impact of the 2021 amendments during the 2022 legislative cycle.

Clarifying the rule that triggers recoupment under the debt forgiveness rules

According to the debt forgiveness rules, an additional recoupment is triggered if an asset is disposed of during a year of assessment and the debt that was used to fund the acquisition of that asset is forgiven in a subsequent year of assessment.

Proposal: clarification that this provision is also intended to apply in a subsequent year of assessment if the disposal of the asset in a prior year of assessment resulted in a scrapping allowance or capital loss.

Reviewing the debtors' allowance provisions to limit the impact on lay-by arrangements

Section 24 of the Act makes provision for the debtors allowance to be claimed as a deduction against a taxpayer's income if the taxpayer has entered into an agreement with any other person in which the taxpayer transfers property ownership to that person after the taxpayer has received the whole or a certain portion of the amount payable in terms of the agreement, subject to the condition that the agreement is at least 12 months long and at least 25% of the amount due to the taxpayer is only payable in a subsequent year of assessment.

In terms of this provision, the whole of the amount due is deemed to have accrued to the taxpayer on the day on which the agreement was entered into and included in the taxpayer's income upfront. Government has realised that lay-by arrangements do not benefit from the above-mentioned debtors allowance rules because such arrangements are for periods shorter than 12 months and this needs to be remedied.

Proposal: the current debtors allowance rules be reviewed to limit the adverse effect on lay-by arrangements.

Refinements to the corporate reorganisation rules

Refining the reversal of the nil base cost rules applicable to intra-group transactions

The intra-group transaction rules in the Act allow tax to be deferred when assets are disposed of between companies within the same group. The nil base cost rule aims to limit the ability of taxpayers to cash out on the sale consideration from a tax-deferred intra-group transaction. In 2021, amendmentswere made to these rules in the corporate reorganisation provisions, clarifying the application of the reversal of the nil base cost rules in instances where a group company acquires an asset in terms of a tax-deferred intra-group transaction and disposes of it within 18 months, triggering the reversal of the tax deferral benefit.

Amendments were also made to allow for a reversal of the nil base cost rules when a transferee company is no longer part of the same group of companies as a transferor company. Government has since realised that there are other instances that should result in the reversal of thenil base cost rules that have not been taken into account. For example, when an asset is disposed of beyond an 18-month period outside of the corporate reorganisation rules and a transferee company is no longer part of the same group of companies as a controlling company in relation to a transferor company.

Proposal: Further refinements to be made to the intra-group transactions rules in the corporate reorganisation provisions to account for these instances.

Tax incentives

Tax treatment of mining operations

Interaction between the application of the assessed loss restriction rules and capital expenditure regime for mining operations

In 2021, changes were made to section 20 of the Act to restrict the use of assessed losses carried forward as part of the corporate income tax restructuring to broaden the tax base and reduce the corporate tax rate. Government has realised that there is an anomaly in the interaction between the new assessed loss restriction rules in section 20 and the current capital expenditure regime applicable to mining operations in terms of section 36 of the Act.

Proposal: the legislation must be clarified to ensure that the assessed loss restriction in terms of section 20 is calculated before taking into account the capital expenditure deduction for mining operations in terms of section 36.

Interaction between the application of the interest limitation rules and capital expenditure regime for mining operations

In 2021, changes were made to section 23M of the Act to strengthen the rules dealing with the limitation of interest deductions on debts owed to persons not subject to tax. Concerns have been raised regarding the interaction between the application of the interest limitation rules in section 23M and the current capital expenditure regime applicable to mining operations in terms of section 36 of the Act. At issue is the application of the provisions of section 23M to the interest expense of non-producing mining operations that forms part of capital expenditure of such mining operations.

Proposal: clarification in the legislation that the interest limitation rules in section 23M will not be applied to the interest expense of non-producing mining operations that forms part of capital expenditure of such mining operations in terms of section 36.

Tax treatment of an asset acquired as government grant in kind

The Act provides a tax exemption for any government grant received or accrued under a programme or scheme listed in terms of the Eleventh Schedule or approved under the national annual budget process and gazetted by the Minister of Finance. Furthermore, any expenditure funded by a government grant that has been received or accrued, other than a government grant in kind, must be reduced for the purpose of claiming allowances for trading stock and allowance assets. This reduction is required because a taxpayer receiving a government grant does not incur the expenditure – it is settled by the government grant.

Government has realised that when a government grant in kind is acquired, the provisions for wear and tear allowance in section 11(e) are applicable because they apply to the value of the asset and not the expenditure or cost incurred by the taxpayer. This creates an anomaly in the system as, similar to a cash government grant, the receipt of a government grant in kind is exempt from tax, but the assets received should not qualify for wear and tear allowances.

Proposal: change legislation to align the tax treatment of an asset acquired as a government grant in kind with the tax treatment of assets acquired using a cash government grant.

Financial sector

Impact of IFRS17 insurance contracts on the taxation of insurers

The International Accounting Standards Board issued International Financial Reporting Standard 17 Insurance Contracts (IFRS17) on 18 May 2017 to replace IFRS4 Insurance Contracts, which was issued in March 2004 on an interim basis.

IFRS17 aims to provide a global uniform and comprehensive standard on insurance accounting for insurers. They will be effective for reporting periods starting on/after 1 January 2023. The implementation of IFRS17 may have a material impact on the valuation method for insurance contract liabilities and insurers' cash-flow and profit profiles.

Proposal: to mitigate the abovementioned impact, changes are to be made to the income tax provisions dealing with the taxation of insurers.

Study on the tax treatment of amounts received by or accrued to portfolios of collective investment schemes

In 2018, amendments in the Taxation Laws Amendment Bill were proposed to clarify and provide certainty on the tax treatment for trading profits of collective investment schemes. Government proposed that profits arising from frequent trading by collective investment schemes be treated as income rather than capital. Following consideration of public comments, government decided to withdraw the proposed amendments to allow more time to find solutions with the industry. Over the past two years, further concerns have been raised.

Proposal: a discussion document dealing with the tax treatment of amounts received by or accrued to portfolios of collective investment schemes should be published for public comment before any amendments are proposed to the legislation.

Tax research and review – depreciation and investment allowances

A review of depreciation and investment allowances will take place during 2022/23, followed by the release of a discussion document.

Other

Upstream petroleum tax regime

A review of the tax regime for the upstream petroleum industry was published at the end of 2021, with a proposal to replace the variable royalty rate with a flat-rate royalty of 5%. Given the public comments made, a workshop will be held to engage on the various issues so that a proposal can be included in the 2022 Taxation Laws Amendment Bill.

Fuel levies

For the first time, fuel prices in South Africa exceeded R20/l for inland unleaded petrol in December 2021 due to higher crude oil prices and exchange rate depreciation.

To support consumers and the economic recovery, **no increases will be made to the general fuel levy on petrol and diesel for 2022/23, providing tax relief of R3.5 billion**. There will also be **no increase in the RAF levy**. In combination, these changes will ensure that fuel taxes as a percentage of the price of fuel are below 40%. The last time that the fuel price was not increased due to a change in either the general fuel levy or the RAF levy was in 1990. In 2021/22, taxes accounted for on average 34% of the price of petrol and 38% of the price of diesel – a ratio that is below that of India and Mexico, and far lower than the 60% common in Europe.

6. INCENTIVES

Tax incentives create complexity and preferential treatment for certain taxpayers. In line with the recommendations of the Katz Commission and the Davis Tax Committee, expiring incentives that have not widened social or economic benefits will not be renewed. Government continues to assess existing incentives to enhance transparency and efficiency. Those found to be effective and which create the intended benefits will be retained and, where necessary, redesigned to improve performance.

Research and development (R&D) tax incentive to be extended

A discussion document and an online survey reviewing the R&D tax incentive were published for public comment on 15 December 2021. A workshop will be held with interested parties during 2022. To allow for certainty and planning, **the R&D incentive will be extended in its current form until 31 December 2023**. The extension and potential amendments will be included in the 2022 Taxation Laws Amendment Bill.

Expiry of corporate tax incentives

Following reviews in 2021, including engagement with affected stakeholders, several corporate tax incentives will not be renewed when they reach their sunset date. These include:

- Section 12DA (rolling stock) on 28 February 2022
- Section 12F (airport and port assets) on 28 February 2022
- Section 12O (films), which lapsed on 31 December 2021
- Section 13sept (sale of low-cost residential units through an interest-free loan) on 28 February 2022.

7. INTERNATIONAL TAX

Updating the definitions and terms relating to the Insurance Act in the determination of net income of controlled foreign companies

In general, where a resident shareholder has an interest in the participation rights of a controlled foreign company (CFC), an amount of the CFC's net income will be imputed into the resident shareholder's taxable income. However, there are certain exclusions that result in no imputation to the resident shareholder's taxable income. One of the exclusions relates to the participation rights that are held in a policyholder fund of an insurer. The participation rights can be directly attributable to a linked policy or they are directly attributed to a policy where the amount of the policy benefit is not guaranteed by the insurer and is to be determined solely by reference to the value of the particular assets or categories of assets. With the Insurance Act coming into effect on 1 July 2018, the definitions in the Long-term Insurance Act (1998), such as the "linked policy" definition, have been deleted and new definitions have been inserted in the Insurance Act.

<u>Proposal</u>: the abovementioned exclusion is to be amended to refer to the appropriate provisions of the Insurance Act.

Clarifying the deeming provisions in respect of royalties derived by CFCs

The most important rule contained in the CFC provisions is that the net income of the CFC must be calculated as if the CFC is a taxpayer for South African tax purposes and as if the CFC is a resident when applying certain provisions of the Act. For example, a CFC is deemed to be a resident in relation to interest derived from a South African source. However, section 9D(2A) does not mention royalties derived by the CFC.

<u>Proposal</u>: the deeming provision must be extended to cater for royalties.

Clarifying the treatment of amounts from hybrid equity instruments deemed to be income under CFC rules

The CFC rules contain an exclusion applicable to a payor and payee for intra-CFC interest, royalties, rental income, insurance premium or income of a similar nature, provided both the payor and payee are part of the same group of companies. In terms of hybrid equity instrument rules, certain dividends in relation to the recipient are deemed to be income.

Proposal: to ensure neutral tax treatment, specific reference is to be made to the exclusion of the payee company's deemed income for hybrid equity instruments between CFCs.

Clarifying the exclusion of participatory interests in foreign collective investment schemes from the definition of foreign dividend

The Act defines a foreign dividend as an amount paid by a foreign company in respect of a share in that company. Specifically excluded as a foreign dividend are any amounts that constitute the redemption of a participatory interest in a foreign portfolio of a collective investment scheme.

Government has found that, in certain instances, foreign law does not only deal with redemptions but also the sale of units, shares or interest to the foreign management company of the scheme.

Proposal: the term “or other disposal”, must be included to cater for any amounts that constitute the sale of a participatory interest in a foreign collective investment scheme’s portfolio.

8. ENVIRONMENTAL TAXES

Carbon tax

Clarifying the electricity generation levy and renewables deduction for electricity generation from fossil fuels

In terms of section 6(2) of the Carbon Tax Act (2019), taxpayers generating electricity can claim a tax deduction for electricity generation levy payments and additional renewable electricity purchases. To provide clarity to taxpayers on the qualifying activities for which this claim can be made, it is proposed that changes be made to section 6(2) of the Act to clarify that taxpayers will qualify for a deduction if they generate electricity from fossil fuel and conduct fuel combustion activities under the Intergovernmental Panel on Climate Change (IPCC) Code 1A1 energy industries and 1A2 covering manufacturing industries and construction.

Limiting the carbon sequestration deduction for forestry management and harvested wood products to activities within the operational control of the taxpayer

The 2021 TLAB proposed limitations to the carbon sequestration deduction to forestry plantations. After reviewing public comments, the Bill was amended to expand the scope of the carbon sequestration deduction to include emissions sequestered in harvested wood products for the paper and pulp activities under IPCC code 1A2D. Further concerns were raised on the certification and verification of sequestered emissions where forestry management and harvested wood products are owned by third parties. Government proposes to introduce a limitation on the deduction for forestry management and harvested wood product sequestration activities to only those activities within the operational control of the taxpayer conducting paper and pulp activities. This will help to address potential administration challenges where activities are not within the taxpayer’s operational control and to curb potential abuse. In consultation with the Department of Forestry, Fisheries and the Environment, the Treasury will gazette rules for the sequestration deduction for public comment. These amendments will take effect on 1 January 2022.

Carbon tax rates

The carbon tax rate increased from R134 to R144 per tonne of carbon dioxide equivalent, effective from 1 January 2022. **The carbon fuel levy for 2022 will increase by 1c to 9c/l for petrol and 10c/l for diesel from 6 April 2022**, as required by legislation. It is proposed that the carbon tax cost recovery *quantum* for the liquid fuels refinery sector increases from 0.56c/l to 0.63c/l from 1 January 2022.

9. INDIRECT TAXES

Value-added Tax (VAT)

Reviewing section 72 arrangements and decisions

In 2019, changes were made to section 72 of the Value-Added Tax Act, 1991 (the VAT Act), which deals with the SARS Commissioner's discretion to make arrangements or decisions regarding the application of the VAT Act to specific situations where the manner in which a vendor or class of vendors conducts their business leads to difficulties, anomalies or incongruities. These changes affected the arrangements or decisions made on or before 21 July 2019. In the past two years, government reviewed the impact of these decisions to ascertain whether they should be discontinued or extended in accordance with the new provisions of section 72. As a result, changes were made to the VAT legislation in this regard.

Proposal: further changes should be made to account for further reviews of some of the section 72 decisions.

Updating the regulations prescribing electronic services

With effect from 1 April 2019, the regulations prescribing electronic services were amended to broaden the scope of electronic services that are subject to South African VAT, in line with the OECD/Group of 20 Base Erosion and Profit Shifting Action 1 Report.

Proposal: implement a review of the current regulations to account for further developments in this area.

Customs & Excise

Advance rulings under the Customs and Excise Act

There are currently no provisions in the Customs and Excise Act, 1964 (the C&E Act) enabling the SARS Commissioner to issue advance rulings.

Proposal: enabling framework for advance rulings be provided in the C&E Act.

Time of entry for break-bulk cargo imported by sea, air and rail

There is currently no provision in the C&E Act enabling the SARS Commissioner to prescribe the period within which entry must be made in respect of loose or break-bulk cargo imported by sea, air or rail.

Proposal: amend the C&E Act to allow the Commissioner to make rules for the entry time of any category of goods, which may include break-bulk cargo imported by sea, air or rail.

Clarifying the requirements for invoices in respect of import and export goods

Because of existing uncertainty, it is proposed that amendments be made to the C&E Act to clarify the legislative requirements for invoices in respect of import and export goods.

10. TAX ADMINISTRATION/OTHER

Tax Administration Act

Refunds of dividends tax by SARS to regulated intermediaries

It is proposed that the Income Tax Act be amended to allow a regulated intermediary to recover refundable dividends tax from SARS in instances where the refundable amount exceeds the dividends tax withheld by the regulated intermediary at least one year after the amount became refundable.

Review of provisional tax system

Government proposes a review of the provisional tax system given changing circumstances and international developments, with the intention of publishing a discussion paper on this subject.

Once-off electronic services supplies by non-resident suppliers to a recipient in South Africa

It is proposed that a specific exception to the rule that a non-resident supplier register as a vendor when electronic supplies exceed R1 million a year – an exception that already applies to resident suppliers – be considered – with the intention of preventing unnecessary registrations, costs and administrative burden for both non-resident suppliers and SARS.

Review of domestic legal framework to effect joint audits

Government proposes that the South African domestic legal framework, particularly the Tax Administration Act, 2011 (the TAA), be amended to make provision for the full use of joint audits with other tax administrations in order to improve the effective exchange of information under international tax agreements.

Imposition of understatement penalty for employment tax incentives improperly claimed

There appears to be a need to penalise those involved in the abuse of employment tax incentives

Proposal: the Employment Tax Incentive Act, 2013, is to be amended to impose understatement penalties on reimbursements that are improperly claimed.

Removal of statutory recognised controlling body (statutory RCB)

A statutory RCB has indicated that it is no longer appropriate for it to be listed as an RCB in terms of the TAA.

Proposal: this RCB is to be removed from the list.

Tax compliance status for taxpayers under business rescue

SARS cannot reflect a taxpayer as being tax compliant if it has outstanding tax debts unless the taxpayer has entered into an instalment payment agreement or compromise agreement with SARS or, where the tax debt is disputed, a suspension of payment has been granted. This may not be possible in the earliest stages of a business rescue, which may negatively affect the prospects of the rescue being successful.

Proposal: legislative amendments empowering SARS to assist in these cases, under certain conditions, is to be investigated.

11. TAX GUIDE (including tables)

Individuals and trusts

Income tax rates for natural persons and special trusts Year of assessment ending 28 February 2022	
Taxable income (R)	**Taxable rates (R)**
1 – R226 000	18% of each R1
R226 001 – R353 100	40 680 + 26% of the amount above 226 000
R353 101 – R488 700	73 726 + 31% of the amount above 353 100
R488 701 – R641 400	115 762 + 36% of the amount above 488 700
R641 401 – R817 600	170 734 + 39% of the amount above 641 400
R817 601 – R1 731 600	239 452 + 41% of the amount above 817 600
R1 731 601 and above	614 192 + 45% of the amount above 1 731 600

Natural persons

Tax thresholds		
	2022/23	**2021/22**
	R	**R**
Below 65 years of age	91 250	87 300
Aged 65 and below 75	141 250	135 150
Aged 75 and over	157 900	151 100

Tax rebates		
	2022/23	2021/22
	R	R
Primary – all natural persons	16 425	15 714
Secondary – persons aged 65 and below 75	9 000	8 613
Secondary – persons aged 75 above	2 997	2 871

Trusts

The tax rate on trusts (other than special trusts which are taxed at rates applicable to individuals) is 45%.

Retirement fund lump sum withdrawal benefits

Taxable income	Rate of tax
R	R
1 – 25 000	0% of taxable income
25 001 – 660 000	18% of taxable income above 25 000
660 001 – 990 000	114 300 + 27% of taxable income above 660 000
990 001 and above	203 400 + 36% of taxable income above 990 000

Retirement fund lump sum withdrawal benefits consist of lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund on withdrawal (including assignment in terms of a divorce order).

Tax on a specific retirement fund lump sum withdrawal benefit (lump sum X) is equal to –

- the tax determined by the application of the tax table to the aggregate of lump sum X plus all other retirement fund lump sum withdrawal benefits accruing from March 2009, all retirement fund lump sum benefits accruing from October 2007 and all severance benefits accruing from March 2011; less

- the tax determined by the application of the tax table to the aggregate of all retirement fund lump sum withdrawal benefits accruing before lump sum X from March 2009, all retirement fund lump sum benefits accruing from October 2007 and all severance benefits accruing from March 2011.

Retirement fund lump sum benefits or severance benefits

Taxable income	Rate of tax
R	R
1 – 500 000	0% of taxable income
500 001 – 700 000	18% of taxable income above 500 000
700 001 – 1 050 000	36 000 + 27% of taxable income above 700 000
1 050 001 and above	130 500 + 36% of taxable income above 1 050 000

Retirement fund lump sum benefits consist of lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund on death, retirement or termination of employment due to attaining the age of 55 years, sickness, accident, injury, incapacity, redundancy or termination of the employer's trade.

Severance benefits consist of lump sums from or by arrangement with an employer due to relinquishment, termination, loss, repudiation, cancellation or variation of a person's office or employment.

Tax on a specific retirement fund lump sum benefit or a severance benefit (lump sum or severance benefit Y) is equal to –

- the tax determined by the application of the tax table to the aggregate of amount Y, plus all other retirement fund lump sum benefits accruing from October 2007 and all retirement fund lump sum withdrawal benefits accruing from March 2009 and all other severance benefits accruing from March 2011; less

- the tax determined by the application of the tax table to the aggregate of all retirement fund lump sum benefits accruing before lump sum Y from October 2007 and all retirement fund lump sum withdrawal benefits accruing from March 2009 and all severance benefits accruing before severance benefit Y from March 2011.

Dividends

Dividends received by individuals from South African companies are generally exempt from income tax, but dividends tax, at a rate of 20%, is withheld by the entities paying the dividends to the individuals.

Dividends received by South African resident individuals from REITs (listed and regulated property-owning companies) are subject to income tax, and non-residents in receipt of those dividends are only subject to dividends tax.

Foreign Dividends

Most foreign dividends received by individuals from foreign companies (shareholding of less than 10% in the foreign company) are taxable at a maximum effective rate of 20%. No deductions are allowed for expenditure to produce foreign dividends.

Withholding tax on immovable property sales

The rate of withholding tax payable on disposal of immovable property by **non-residents** remains unchanged.

The rate for individuals is 7.5%. Whilst the rate for companies is 10% and a rate of 15% applies to trusts.

Withholding tax on royalties

A final tax, at a rate of 15%, is imposed on the gross amount of royalties from a South African source payable to non-residents.

Interest withholding tax

A final tax, at a rate of 15%, is imposed on interest from a South African source, payable to non-residents. Interest is exempt if payable by any sphere of the South African government, a bank, or if the debt is listed on a recognised exchange.

Withholding tax on foreign entertainers and sportspersons

A final tax, at the rate of 15%, is imposed on gross amounts payable to non-residents, for activities exercised by them in South Africa as entertainers or sportspersons.

Exemptions

Interest

Interest from a South African source earned by any natural person under 65 years of age, up to R23 800 per annum, and persons 65 and older, up to R34 500 per annum, is exempt from taxation.

Interest is exempt where earned by non-residents who are physically absent from South Africa for at least 182 days during the 12 month period before the interest accrues or the debt from which the interest arises is not effectively connected to a fixed place of business in South Africa of that non-resident.

Deductions

Pension, provident and retirement annuity fund contributions

Amounts contributed to pension, provident and retirement annuity funds during a year of assessment are deductible by members of those funds. Amounts contributed by employers and taxed as fringe benefits are treated as contributions by the individual employees.

The deduction is limited to lesser of three items:

1. R350 000; or
2. 27,5% of the greater of a) remuneration and b) taxable income (excluding retirement lump sum benefits, but including any taxable capital gain); or
3. Taxable income (excluding retirement lump sum benefits and excluding any taxable capital gain)

Any contributions exceeding the limitations are carried forward to the next year of assessment, and are deemed to be contributed in that following year. The amounts carried forward are reduced by contributions set off against retirement fund lump sums and against retirement annuities.

Donations

Deductions in respect of donations to certain public benefit organisations are limited to 10% of taxable income (excluding retirement fund lump sums and severance benefits). The amount of donations exceeding 10% of the taxable income is treated as a donation to qualifying public benefit organisations in the following tax year.

Medical and disability expenses

In determining tax payable, individuals are allowed to deduct:

- monthly contributions to medical schemes (a tax rebate referred to as a medical scheme fees tax credit) by the individual who paid the contributions up to R347 (PY: R332) for each of the first two persons covered by those medical schemes, and R234 (PY: R224) for each additional dependant; and
- in the case of
    - an individual who is 65 and older, or if an individual, his or her spouse, or his or her child is a person with a disability, 33.3% of the sum of qualifying medical expenses paid and borne by the individual, and an amount by which medical scheme contributions paid by the individual exceed 3 times the medical scheme fees tax credits for the tax year; or
    - any other individual, 25% of an amount equal to the sum of qualifying medical expenses paid and borne by the individual and an amount by which medical scheme contributions paid by the individual exceed 4 times the medical scheme fees tax credits for the tax year, limited to the amount which exceeds 7.5% of taxable income (excluding retirement fund lump sums and severance benefits).

Allowances

Subsistence allowances and advances

Where the recipient is obliged to spend at least one night away from his or her usual place of residence on business and the accommodation to which that allowance or advance relates is in the Republic of South Africa and the allowance or advance is granted to pay for—

- meals and incidental costs, an amount of R493 (previously R452) per day is deemed to have been expended;

- incidental costs only, an amount of R152 (previously R139) for each day which falls within the period is deemed to have been expended.

Where the accommodation to which that allowance or advance relates is outside the Republic of South Africa, a specific amount per country is deemed to have been expended. Details of these amounts are published on the SARS website.

Travelling allowance

Rates per kilometer which may be used in determining the allowable deduction for business travel, where no records of actual costs are kept are determined by using the table to be provided by SARS. Note, at the time of publishing, this table was not available.

Note:

- 80% of the travelling allowance must be included in the employee's remuneration for the purposes of calculating PAYE. The percentage is reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes.

- No fuel cost may be claimed if the employee has not borne the full cost of fuel used in the vehicle and no maintenance cost may be claimed if the employee has not borne the full cost of maintaining the vehicle (e.g. if the vehicle is the subject of a maintenance plan).

- The fixed cost must be reduced on a pro-rata basis if the vehicle is used for business purposes for less than a full year.

- The actual distance travelled during a tax year and the distance travelled for business purposes substantiated by a log book are used to determine the costs which may be claimed against a travelling allowance.

Alternative simplified method:

- Where an allowance or advance is based on the actual distance travelled by the employee for business purposes, no tax is payable on an allowance paid by an employer to an employee, up to the rate published on the SARS website www.sars.gov.za, under Legal Counsel / Secondary Legislation / Income Tax Notices / Fixing of rate per kilometre in respect of motor vehicles, regardless of the value of the vehicle.

- However, this alternative is not available if other compensation in the form of an allowance or reimbursement (other than for parking or toll fees) is received from the employer in respect of the vehicle.

Other deductions

Other than the deductions set out above an individual may only claim deductions against employment income or allowances in limited specified situations.

Fringe Benefits

Employer contributions to retirement funds for employees' benefit

- The taxable fringe benefit is equal to the actual contribution where the benefits payable to the employee consists solely of defined contribution components.

- Where the benefits payable to the employee do not consist of defined contribution components, the taxable fringe benefit is calculated in terms of a formula.

Employer-owned vehicles

- The taxable value is 3.5% of the determined value (retail market value) per month of each vehicle. Where the vehicle is–
  - the subject of a maintenance plan when the employer acquired the vehicle the taxable value is 3.25% of the determined value; or
  - acquired by the employer under an operating lease the taxable value is the cost incurred by the employer under the operating lease plus the cost of fuel.
- 80% of the fringe benefit must be included in the employee's remuneration for the purposes of calculating PAYE. The percentage is reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes;
- On assessment the fringe benefit for the tax year is reduced by the ratio of the distance travelled for business purposes substantiated by a log book divided by the actual distance travelled during the tax year;
- On assessment further relief is available for the cost of license, insurance, maintenance and fuel for private travel, if the full cost thereof has been borne by the employee and if the distance travelled for private purposes is substantiated by a log book.

Interest-free or low-interest loans

The difference between interest charged at the official rate and the actual amount of interest charged, is to be included in gross income.

Residential accommodation

The value of the fringe benefit to be included in gross income is the lower of the benefit calculated by applying a prescribed formula, or the cost to the employer if the employer does not have full ownership of the accommodation.

The formula applies if the accommodation is owned by the employee, but it does not apply to holiday accommodation rented by the employer from non-associated Institutions.

Corporate tax rates

Companies, PSPs and foreign resident companies

YEARS OF ASSESSMENT ENDING BETWEEN 1 APRIL 2021 AND 31 MARCH 2022 (unchanged since prior year)		
Normal tax		
Companies and close corporations	Basic rate	28%
Personal service provider companies	Basic rate	28%
Foreign resident companies which earn income from a SA source	Basic rate	28%

Small business corporations

Financial years ending on any date between 1 April 2021 and 31 March 2022

Taxable income	Rate of tax
R	**R**
1 – 91 250	0% of taxable income
91 251 – 365 000	7% of taxable income above 91 250
365 001 – 550 000	19 163 + 21% of taxable income above 365 000
550 001 and above	58 013 + 28% of the amount above 550 000

Micro businesses

Financial years ending on any date between 1 March 2021 and 28 February 2022

Taxable turnover	Rate of tax
R	**R**
1 – 335 000	0% of taxable turnover
335 001 – 500 001	1% of taxable turnover above 335 000
500 001 – 750 000	1 650 + 2% of taxable turnover above 500 000
750 001 and above	6 650 + 3% of taxable turnover above 750 000

Effective capital gains tax rates

Capital gains on the disposal of assets are included in taxable income.

Maximum effective rate of tax		
	2022/23	**2021/22**
Individuals and special trusts	18%	18%
Companies	22.4% (will reduce to 21.6%)	22.4%

Other trusts	36%	36%

Other taxes, duties and levies

Value-added Tax (VAT)

VAT is levied at the standard rate of 15% on the supply of goods and services by registered vendors. A vendor making taxable supplies of more than R1 million per annum must register for VAT. A vendor making taxable supplies of more than R50 000, but not more than R1 million per annum may apply for voluntary registration. Certain supplies are subject to a zero rate or are exempt from VAT.

Transfer duty

Transfer duty is payable at the following rates on transactions in respect of acquisition of property **on or after 1 March 2020** which are not subject to VAT.

Value of property (R)	Rate
0 – 1 000 000	0%
1 000 001 – 1 375 000	3% of the value above 1 000 000
1 375 001 – 1 925 000	11 250 + 6% of the value above 1 375 000
1 925 001 – 2 475 000	44 250 + 8% of the value above 1 925 000
2 475 001 – 11 000 000	88 250 + 11% of the value above 2 475 000
11 000 001 and above	1 026 000 + 13% of the value above 11 000 000

Transfer duty is payable at the following rates on transactions in respect of acquisition of property **on or after 1 March 2017, but before 1 March 2020** which are not subject to VAT.

Value of property (R)	Rate
0 – 900 000	0%
900 001 – 1 250 000	3% of the value above 900 000
1 250 001 – 1 750 000	10 500 + 6% of the value above 1 250 000
1 750 001 – 2 250 000	40 500 + 8% of the value above 1 750 000
2 250 001 – 10 000 000	80 500 + 11% of the value above 2 250 000
10 000 001 and above	933 000 + 13% of the value above 10 000 000

Estate duty

Estate duty is levied on property of residents and South African property of non-residents less allowable deductions. The duty is levied on the dutiable value of an estate at a rate of 20% on the first R30 million and at a rate of 25% above R30 million.

A basic deduction of R3.5 million is allowed in the determination of an estate's liability for estate duty as well as deductions for liabilities, bequests to public benefit organisations and property accruing to surviving spouses.

Donations tax

- Donations tax is levied at a flat rate of 20% on the cumulative value of property donated since 1 March 2018, up to R30 million.
- Donations exceeding R30 million is taxed at a rate of 25%, since 1 March 2018.
- The first R100 000 of property donated in each year by a natural person is exempt from donations tax;
- In the case of a taxpayer who is not a natural person, the exempt donations are limited to casual gifts not exceeding R10 000 per annum in total;
- Dispositions between spouses and South African group companies and donations to certain public benefit organisations are exempt from donations tax.

Securities transfer tax

The tax is imposed at a rate of 0.25% on the transfer of listed or unlisted securities. Securities consist of shares in companies or member's interests in close corporations.

Tax on International Air Travel

The tax amounts to R190 per passenger departing on international flights, excluding flights to Botswana, Lesotho, Namibia and Swaziland, in which case the tax is R100 per passenger, remains unchanged.

Skills Development Levy

A skills development levy (SDL) is payable by employers at a rate of 1% of the total remuneration paid to employees. Employers paying annual remuneration of less than R500 000 are exempt from the paying the levy.

Unemployment Insurance Contributions

Unemployment insurance contributions are payable monthly to SARS by employers on the basis of a contribution of 1% by employers and 1% by employees, based on employees' remuneration below a certain amount.

Employers not registered for PAYE or SDL purposes must pay the contributions to the Unemployment Insurance Commissioner.

12. ACCOUNTING FOR IMPLEMENTATION

Background

South Africa has an Economic Reconstruction and Recovery Plan with interventions that are in pursuit of the National Development Plan goals of reducing unemployment, poverty and inequality, with a view to eliminating poverty and reducing inequality by 2030.

According to this plan, South Africa can realise these goals by drawing on the energies of its people, growing an inclusive economy, building capabilities, enhancing the capacity of the state, and promoting leadership and partnerships throughout society.

Charting a course towards growth and sustainability and committing to these in the budget is merely a start. As with any plan, the implementation thereof is a critical component for its success and the feasibility of implementation should be considered at the outset of any plan. It goes without saying, however, that when considering implementation, one also needs to consider who should be accountable for each stage of implementation.

What is going wrong with the plan?

The United Nations University-Wider Working Paper 2022/3[1] and the IMF Report on South Africa[2] highlight that South Africa's policies are sound, but it's the implementation of these policies that is lacking. They state that the key reason for this is the collapse in output and productivity in key State-Owned Entities (SOEs), especially Eskom, and other government Departments and Municipalities.

They recommended ambitious fiscal consolidation to reduce public debt, urging the government to focus *the consolidation mainly on the expenditure side*, complemented by revenue administration enhancements and a credible public sector debt anchor.

Lack of implementation is at the heart of the plan going wrong. These concerns have been lamented by Business, COSATU and SAICA in their previous submissions to Parliament. Thus, although there are certain disagreements on certain policy aspects, the general consensus is that the policy is sound, but implementation and accountability are lacking.

This concern is further evidenced by the yearly Auditor General Reports that continue to show a dismal picture of implementation of policies across the national, provincial and municipal arms of government.

[1] Macroeconomic risks after a decade of microeconomic turbulence, South Africa (2007 – 2020): https://www.wider.unu.edu/publication/macroeconomic-risks-after-decade-microeconomic-turbulence

[2] South Africa: 2021 Article IV Consultation-Press Release: Staff Report; and Statement by the Executive Director for South Africa: https://www.elibrary.imf.org/view/journals/002/2022/037/002.2022.issue-037-en.xml

Where is implementation going wrong?

Findings of the Auditor General South Africa (AG) Report

The Auditor General report is a good place to start as to where implementation is going wrong.

The 2020/21 PFMA General Report states that only 115 auditees (48 departments and 67 public entities) obtained a clean audit outcome. Together, these auditees are responsible for only 19% of the R1,9 trillion expenditure budget managed by national and provincial government.

Thirteen (13) public entities received disclaimed opinions in 2020-21. This is the worst audit outcome an auditee can get, as it means that they could not provide auditors with evidence for most of the important amounts and critical disclosures in their financial statements, which significantly undermines the reliance that users of financial statements can place on the information presented.

Furthermore, more than half of auditees submitted poor-quality financial statements. This means that if the AG had not identified misstatements in these financial statements and given the auditees an opportunity to correct them, only 182 auditees (43%) would have received unqualified audit opinions, compared to the 302 (71%) that ultimately received this outcome.

There were seven (7) SOE audits outstanding for 2020/21 that had material uncertainties on their ability to continue as a going concern in previous years – Alexkor, the Land and Agricultural Development Bank (Land Bank), the Independent Development Trust, the South African Post Office, South African Airways, South African Express Airways and Denel.

The report also highlights the poor financial health of departments as follows:

- The deficit of departments was R41,74 billion;
- 32% of departments were in deficit;
- The cash shortfall (bank overdraft less prepaid expenses/advances plus money to be surrendered to Treasury) was R33,29 billion;
- 61% of departments had a cash shortfall;
- 18% of departments used more than 10% of the following year's budget to fund the current year's shortfall; and
- 19% of departments were in overdraft.

The *2020/21 MFMA General Report* highlights that local government finances continue to be under severe pressure as a result of non-payment by municipal debtors, poor budgeting practices, and ineffective financial management. Further concerns highlighted by the AG are:

- The **financial position** of **just over a quarter** of municipalities is **so dire** that there is **significant doubt** that they **will be able to continue operating** as a going concern in the near future. This effectively means that such a municipality does not have enough revenue to cover its expenditure and owes more money than it has.

- **Almost half** of the other municipalities are **exhibiting indicators of financial strain**, including low debt recovery, an inability to pay creditors, and deficits.
- Some municipalities do not even pay over taxes such as pay-as-you-earn and value-added tax to the South African Revenue Service or transfer contributions to the pension funds of their employees.
- Local government loses billions of rands annually, because of interest and penalties. In 2019/20 alone, the resulting fruitless and wasteful expenditure totalled R3,47 billion.
- The reporting by municipalities on their performance was even worse than their financial reporting. **Not even a quarter** of them could provide the AG with quality performance reports to audit. Even after addressing the AG's findings, just under half of the municipalities still published performance information that was unreliable or had little relevance to what they had promised to do in their strategic planning documents.

The lack of accountability for delivery, including mismanagement of public funds is, in our view, the single biggest problem in government. Understanding how and what needs to be done for implementation to succeed is therefore critical and SAICA is of the view that accountability is key to unlocking the lack of implementation by government.

To unpack what is going wrong in implementation, SAICA focused on 2 matters, namely:

- 3 departments historical performance and their implementation; and
- the realisation of macro and fiscal policy as reflected in the SARS statistics.

Who is responsible for oversight and accountability?

The concept of accountability refers to the institutionalised practices of giving account of how assigned responsibilities are carried out. In history, the concept of accountability was "closely linked to accounting in the financial sense. It has, however, moved far beyond its origins and has become a symbol of good governance both in the public and private sectors."[3] Accountability thus refers to institutionalised practices of giving account of how assigned responsibilities are carried out.

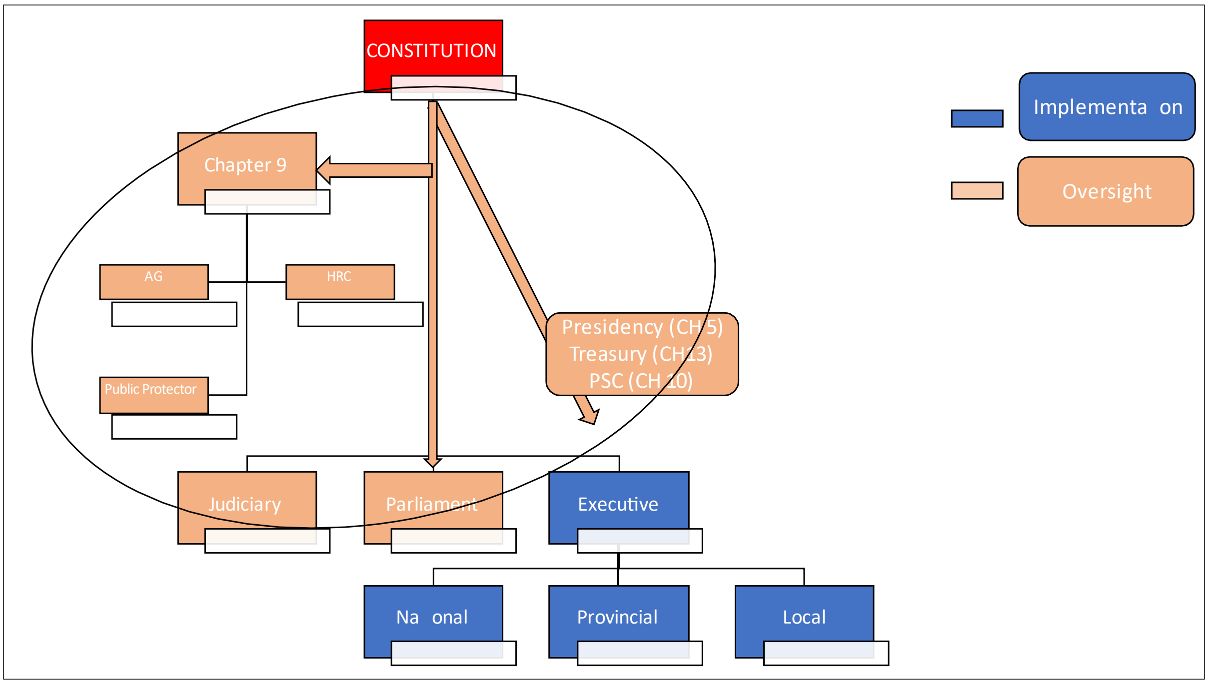
The question that this then evokes is: Who bears the responsibility for ensuring that there is implementation especially as to fiscal sustainability? Should it be the –

- *Standing Committee on Finance*, which is responsible for oversight of the countries' macro-economic and fiscal (tax) policy as drafted and implemented by National Treasury and SARS;
- *Standing Committee on Appropriations* which is responsible for oversight as to how budgeted money is appropriated to the various levels of government and relevant departments and entities and how it is spent;

[3] Oversight and Accountability Model *Asserting Parliament's Oversight Role in Enhancing Democracy* (page 8)

- *Standing Committee on Public Accounts* which is the key parliamentary tool for advancing accountability and acts as Parliament's watchdog over the way taxpayers' money is spent by the Executive;
- *Auditor General* who checks the spending of public funds and resources by looking at whether these were used for the intended purposes with regard to economy, efficiency and effectiveness;
- *The Presidency* which derives its mandate from the Constitution and is accountable to lead Cabinet, implement national policy and legislation and coordinate the functions of state departments;
- *National Treasury* which is accountable to set the accounting standards for departments, but is also compelled to enforce compliance therewith; or
- *Accounting Officers of Departments* who are accountable to implement financial systems, proper procurement and risk, a system to evaluate capital projects and ensure settlement of all debts and payment of money owing.

Based on the above, the accountability for oversight and implementation at the national, provincial and local levels of government can graphically be depicted as follows:

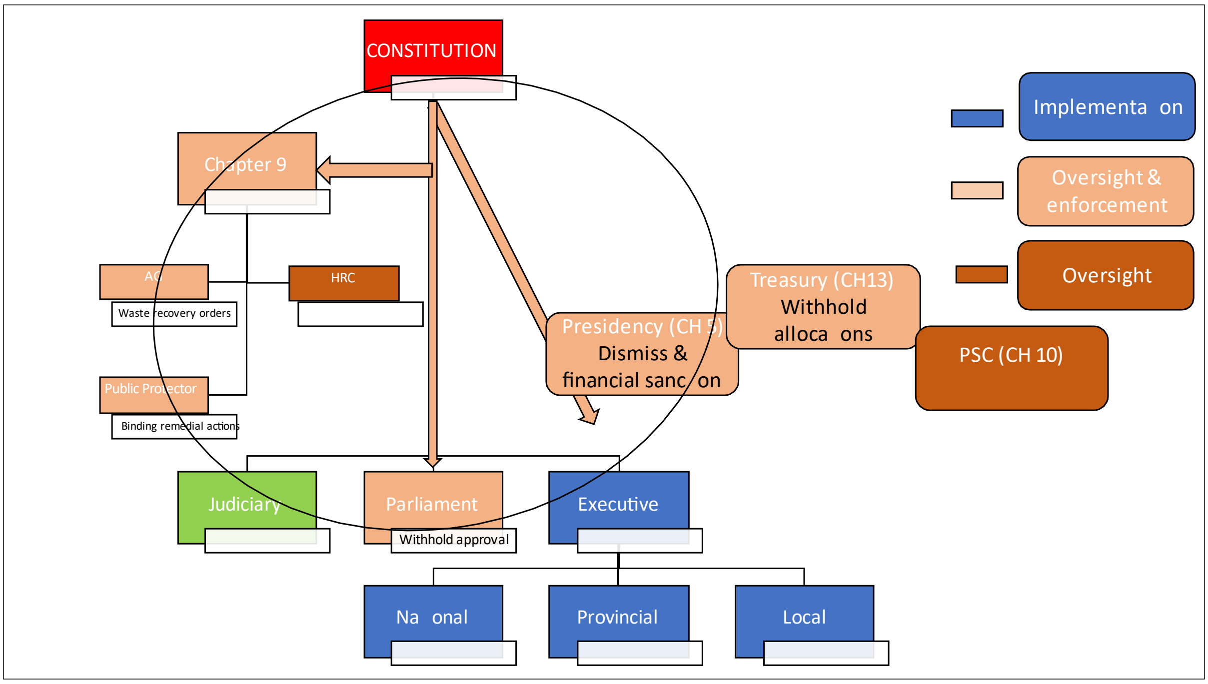


When delving further into who has the right of enforcement once oversight over implementation has been conducted, it was found that only a few "entities" have enforcement power. These include:

- The Public Protector that can enforce binding remedial action;
- Parliament that can withhold approval for appropriating legislation;

- The Presidency that can dismiss individuals and call for financial sanctions of the Executive; and
- The National Treasury that can withhold allocations from Departments (section 216 of the Constitution).

The above is depicted graphically below:



So, given that there are numerous persons and entities tasked with oversight, how is performance reflected?

Implementation reflected in the Minister's Performance Agreements

SAICA welcomed the introduction of **Performance Agreements for Ministers** and their availability to the public for scrutiny[4]. Yet when we analysed 3 of the Departments' Minister's performance agreements (Minister of Finance, Minister of Education and Minister of Water and Sanitation) in more detail, we found the following concerns:

- No dates for certain targets are provided in the agreement.
- Quantitative rather qualitative targets are provided.
- No interim milestones are provided in relation to targets to measure progress to date.
- It appears that no new performance agreements been signed where there has been a change in Minister.

[4] https://www.gov.za/ministers-performance-agreement

- Changes on deliverables (included in Annual Reports) have not been incorporated into Ministerial Performance Agreements and reasons for these changes were not provided.
- The agreements are not aligned exactly to the Departmental Performance targets.

Implementation reflected in the Departments' performance

Furthermore, the question still remains – How many of the performance targets set, have in fact been met given the AG PFMA[5] and MFMA[6] reports? This is particularly pertinent considering that when the **AG reports were analysed** for the above **three mentioned departments,** the following was found:

	Finance	Education	Water & Sanitation ***2020/2021 audit not finalised**
Continuous attainment of an unqualified audit opinion with no findings	X	X	X
Irregular expenditure not increasing/ not occurring.	X Dispute with AG	X	X
Fruitless & wasteful expenditure not increasing /not occurring.	✓	X	X
Good human resource management.	✓	X	X
Budgets utilised and targets met.	✓	X	X
Procurement inefficiencies & delays due to: Lack of procurement & project implementation plans.	✓	X	X

[5] PFMA 2019-2020 (agsa.co.za)
[6] MFMA 2019-20 Report V11 01.indd (agsa.co.za)

Implementing agents' constraints and non-compliance.	√	X	X
No delay in tabling of Annual Reports	√	√	X

Given the above, it seems that inadequate accountability and oversight has been exercised.

Analysis of 2021 Tax Statistics

Implementation of policy and accountability has become South Africa's proverbial Achilles heel. Tax revenues not only fund the most significant portion of government expenditure, they in fact reflect the implementation of our country's macro and fiscal policy. Over the last 10 years or so, our Government's fiscal policy has, amongst others, focused on containing the budget deficit and slowing the pace of debt accumulation to "*maintain spending programmes and promote confidence in the economy.*"[7] Most importantly, Government has continuously reiterated the notion that our fiscal policy seeks to support structural reforms of the economy which are consistent with **long run growth**, **employment creation** and an equitable distribution of income. Further, it has been noted that the fiscal policy aims to promote investment and **export expansion** while enabling Government to finance public services, redistribution and development in a sustainable budget framework.

The 2021 Annual Tax Statistics issued by SARS ("**SARS Tax Statistics**") have given us some insights into how this fiscal policy is implemented and what the outcomes are. In an attempt to determine how the SARS Tax Statistics tie up with fiscal policy, we have focused our analysis to the aforementioned fiscal policy principles of economic growth, employment creation and export expansion.

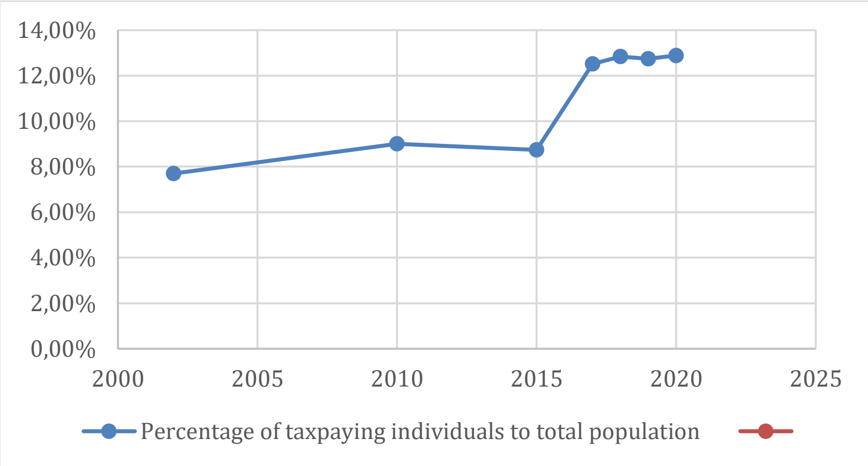
A. Taxpayer base

The SARS Tax Statistics note that SARS is continuing to broaden the tax base and expand the tax register by, amongst others, ensuring an effective administration. For instance, SARS has increased registration compliance by continuing to provide bulk registration at places of employment and providing an online facility that enables employers to register staff when submitting their monthly Pay-As-You-Earn (PAYE) returns.

To assess the broadening tax base, it has to be taken into context of a broadening population i.e. is the tax base growing faster than the population?

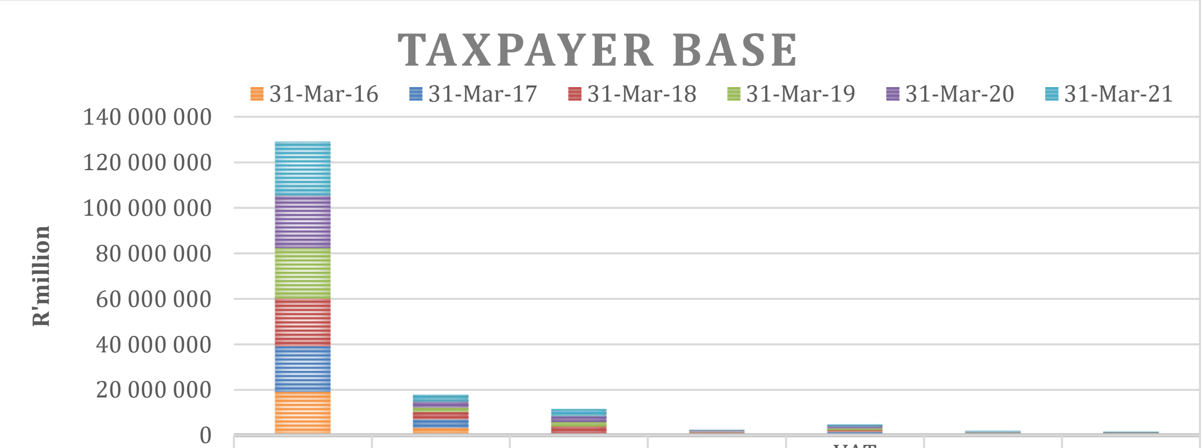
[7] National Treasury's 2017 Budget Review, Chapter 3, page 1.

The below graph shows the number of taxpaying individuals as a percentage to the total population of the South Africa:



It is clear that the number of taxpaying individuals, as a percentage of population, increased until 2010. The spike in 2015 may be attributable to how the data is compiled though it continues to show a flat growth. This indicates that the nominal increase in taxpayers paying tax is not broadening the tax base i.e. every income taxpayer is contributing for the same or more people in the country and not less.

B. Taxpayers on register vs contributing taxpayers



	Individuals	Companies	Trusts	Employers	VAT Vendors	Importers	Exporters
31-Mar-21	23850 668	3112 509	3112 509	367 540	880 553	333 204	299 941
31-Mar-20	22919 701	2548 975	2548 975	363 860	831 821	329 820	297 448
31-Mar-19	22170 513	2020 759	2020 759	357 859	802 957	319 949	288 604
31-Mar-18	21104 375	3202 007	3202 007	351 564	773 783	312 241	282 243
31-Mar-17	19980 110	3732 416	345 048	489 445	742 388	301 746	272 951
31-Mar-16	19075 270	3278 708	340 000	458 048	706 874	289 922	262 162

Taxpayer types

The tax statistics notes that the taxpayer base constitutes:

- 23 850 668 Individuals
- 3 112 509 Companies
- 880 553 VAT vendors

However, in the detail it is clear that these are merely the taxpayers on register and not necessarily those paying taxes. When unpacking it:

- Only 7 643 157 of these individuals are actually liable to pay tax (32%)
- Only 197 279 Companies actually had assessable income and paid tax (6,3%)
- Only 448 361 VAT vendors are in fact active (50.9%)

The actual tax base is therefore considerably smaller than the tax register. It also indicates that less than 50% of the companies in South Africa that are trading are earning more than R1 million turnover as the active VAT vendors are less than half the active companies and this does not even include those that are voluntarily registered for VAT and individuals and trusts.

C. Corporate taxpayers

With reference to the number of companies on the tax register and their expected returns, there are more that 3.1 million companies on the tax register as at 31 March 2021, an increase of 563 534 (22.1%) when compared to the 2019/20 fiscal year. The SARS Tax Statistics has noted that the broadening of the tax base, through education, outreach and enforcement initiatives, has contributed to the increase in the number of companies on the register in the past. The interactive link between SARS and the Companies and Intellectual Property Commission (CIPC) that automatically registers all companies for tax purposes when they register with CIPC also facilitated this significant growth in the tax register. Yet only 812 306 companies were assessed in 2019, while the rest were inactive or dormant. Also, only 821 999 companies are expected to submit returns in 2020. Out of the 812 306 companies assessed, only 24.0% declared a positive taxable income, whilst 48.3% had taxable income equal to zero and the remaining 27.7% reported an assessed loss. These are our employers and play a critical role in job creation and assist the Government to attain this goal from a fiscal policy perspective. Furthermore, the concentrated nature of the South African economy is evident as only 381 large companies (0.2% of the companies with positive taxable income) had a taxable income of more than R200 million and were liable for 55.9% of the CIT assessed.

Companies are taxed as Small Business Corporations ("**SBCs**") for a particular tax year if they meet specific criteria, namely:

- gross income of not more than R20 million;
- limitations on shareholding in the company; and
- the taxpayer must indicate on the annual tax return that it qualifies to be taxed as an SBC.

Interestingly, the number of SBCs is declining – 178 107 (2017) and 123 461 (2020). It is therefore evident that although this is a favorable regime, taxpayers are not using it, or alternatively, the entry criteria are too stringent. Another concern is that 40.6% of SBCs are making losses (TI<R0) (increased from 2017) – so they are actually not benefitting from the reduced tax rate.

Other factors relevant to indicate employment creation

Employment Tax Incentive: The purpose of the employment tax incentive is to encourage employers to appoint young employees. The incentive is based on new employees appointed by an employer and is given over a two-year period.

The total amount of the employment tax incentive paid to employers has increased since introduction other than in respect of the first two years and the 2017/2018 period.

Whilst the amount of the incentive is based on the number of young employees appointed, the amounts in respect of the periods after inception do not show that the rate of employment of the youth increased.

The increase in the amount for the 2020/2021 period is most likely attributable to an increase in the amount of the incentive as part of the Covid-19 disaster relief measures.

The Covid-19 relief was extended to employees who are not under the age of 30. It is therefore unclear from the numbers of the total incentive whether the rate of employment did increase in the 2020/ 2021 period either. It is also unclear how these numbers will be impacted should the abusive scheme participants fall outside of the ETI.

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Please note that while every effort is made to ensure accuracy, SAICA does not accept responsibility for any inaccuracies or errors contained herein.

NOTE: A word version of this document is available on the SAICA Budget 2022 webpage.

Compiled by:

No picture available

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