Building towards a sustainable future

SA Budget Review 2022/23

February 2022

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Building a better working world

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01 Summary

Overall given the challenges to the South African outlook, the Minister of Finance delivered a balanced budget, with a smaller than expected budget deficit and debt stabilisation counteracted with some relief to individuals and corporates.

The Minister had reason to be optimistic while delivering his 2022 Budget speech, thanks to the windfall from the continued strength in commodity prices and higher than anticipated corporate, personal tax and VAT revenue collections. The Treasury is using this space to reduce its debt and reach a primary surplus in 2023/24, which will signal the end to fiscal consolidation. At the same time, the Treasury is giving individuals and corporates some breathing room, while also supporting small businesses and Covid-19 relief grant recipients for another year. Despite this good news, the Budget weaves a warning of austerity throughout. The Treasury has revised its 2021 GDP projections slightly downwards from 5.1% to 4.8% due to the unrest in July last year, as well as global volatility and the return of load-shedding. While we are on the path to recovery, with the economy expected to reach 2019 GDP levels this year and a slight upward revision in 2022 GDP growth forecast, the global and domestic economy remain vulnerable to the trajectory of the pandemic, supply bottlenecks, rising global inflation, and higher lending rates.

02 Personal Taxes

Highlights

R5.2 billion in tax relief to support households and the economy, while fully adjusting the personal income tax bracket and rebates for inflation.

Disclosure of specific assets at market value by provisional taxpayers with assets above R 50 million from the 2023 year of assessment.

50 per cent increase in maximum monthly value of Employment Tax Incentive.

Renegotiation of certain double tax agreements aimed at the cross-border tax treatment of retirement funds.

Public comments on the tax treatment of contributions to the two pots retirement system are being reviewed in preparation for public consultations.

Personal income and savings

Employment Tax Incentive

The Minister of Finance announced a 50 per cent increase in the value of the benefit which can be claimed by employers in respect of qualifying employees from a maximum of R 1,000 to R 1,500 per month during the first 12 months and from R 500 to R 750 per month during the following 12 months. This increase is effective 1 March 2022.

Further changes are proposed to expand the eligibility criteria for qualifying employees. Details are currently unclear, but these changes will most likely come into effect on 1 March 2023.

This will not only benefit smaller employers but also large corporations who make use of this incentive.

Cross-border tax treatment of retirement funds

During the 2021 Budget and the 2021 legislative cycle, the Government proposed to introduce tax on a deemed withdrawal from South African retirement funds upon ceasing tax residency in South Africa. After consultation it was decided to withdraw the proposed legislation and National Treasury advised that they would start the process of entering the renegotiation of the affected double tax agreements.

This was confirmed in the 2022 Budget tax proposals and we can expect that SARS will renegotiate double tax agreements with the countries where they forfeit the right to tax the retirement benefits in the hands of the non-resident member of a South African retirement fund. The affected countries may include the UK, Germany, Italy, Denmark, Austria and Belgium.

If successful, South Africa will have taxing rights on these benefits and the individuals' would be able to claim foreign tax credits in the country of residence.

03 Value-Added Tax

Highlights

No changes in VAT rate, but revenue collections from VAT expected to increase significantly.

Regulations applicable to foreign electronic service providers may be updated.

While no changes in the VAT rate were proposed, the Treasury has budgeted a 14,6% increase in VAT collections for 2022/2023, which is well above current inflation levels and expected GDP growth. The 2022 Budget Review confirmed SARS' investment in additional resources and modernising its IT infrastructure. The budgeted increase in VAT collections over for 2022/2023 is expected to result largely from increased revenue collection and compliance enforcement by SARS. Following the broadening of the scope of VAT to foreign electronic service providers in April 2019, National Treasury proposes to review the electronic services regulation to ensure that it still aligns to OECD guidelines. In addition, National Treasury is contemplating excluding foreign electronic service providers making once off supplies exceeding R1m from registering for VAT in order to reduce the administrative burden on these entities.

During 2021 the VAT Act was amended to provide for certain section 72 rulings that were repealed at the end of December 2021. National Treasury is considering additional changes to the VAT Act to provide for scenarios previously dealt with in terms of these rulings.

04 Financial Services

Highlights

Proposed changes to taxation of insurers

No changes to collective investment schemes

Impact of IFRS 17 insurance contracts on the taxation of insurers

The International Financial Reporting Standard ('IFRS') 17 governing the accounting of Insurance Contracts will be effective for periods beginning on or after 01 January 2023. Due to the potential impact on the cash-flows and profit profiles for insurers, government proposes that changes be made to the current income tax provisions dealing with the taxation of insurers.

Tax treatment of amounts received by or accrued to portfolios of collective investment schemes

Government proposes that a discussion document be released for public commentary around the tax treatment of amounts received by or accrued to portfolios of collective schemes before any amendments are proposed to the current tax regime.

05 International Tax and Exchange Control

Highlights

Implementing Pillar 2 of BEPS 2.0 and the tension with South Africa's controlled foreign company (CFC) rules.

Exchange control amendments – are they aimed in boosting long-term investment?

BEPS 2.0 and South Africa

South Africa is a member of the Steering Group of the OECD/G20 Inclusive Framework which is tasked with finding consensusbased solutions to tax challenges associated with digitalisation of the economy. In October 2021, the Inclusive Framework agreed on a twopillar solution, with a proposed implementation framework to take effect by 2023.

BEPS 2.0 in the main comprises Pillar One, dealing with revised profit allocation and nexus rules, whilst Pillar Two deals with global minimum tax rules.

The Pillar Two mechanism is structured to give countries the right to impose "top-up taxes" on low-taxed foreign income earned by multinational corporations up to the agreed 15% minimum income tax in all countries of operation.

South Africa will propose legislative amendments to implement these rules once the framework has been finalised and translated into a local context.

Although Pillar One will likely be implemented through a Multi-lateral Instrument, under Pillar Two countries require a mechanism whereby it can levy "top-up taxes" under domestic law.

National Treasury will need to determine how any Pillar Two related legislation will interact with or require amendment of South Africa's current controlled foreign company (CFC) rules, especially in relation to CFCs with foreign business establishments in low tax jurisdictions.

Other international tax matters

Noteworthy international tax related matters include:

- Amendments to section 9D(2A) to ensure that it similarly included deeming provisions in respect of royalties derived by CFCs as what is currently the case with interest.
- Widening the current intra-CFC transactions to include hybrid equity instrument transactions. Since the payor company does not get a tax deduction, the proposed amendment ensures tax neutral treatment since the payee company's deemed income is excluded.
- Widening the exclusion of participatory interests in foreign collective investment schemes from the foreign dividend definition to include all types of disposals such the sale of units, shares, or interest to the foreign management company of that foreign collective investment scheme.

Exchange control

Several exchange control related proposals were made which aims to boost long-term investment. These include:

- Harmonising the offshore limit for all insurance, retirement, and savings funds at 45% inclusive of the 10% African allowance.
- Institutional investors may open foreigncurrency accounts with authorised dealer banks for funding purposes and to accept foreigncurrency deposits from the disinvestment proceeds of foreign assets, pending the reinvestment of the funds offshore
- An increase in the annual threshold for domestic treasury management companies of up to R5bn for listed companies (currently R3bn) and up to R3bn for unlisted companies (currently R2bn).
- The foreign direct investment limit for companies investing abroad will increase R5bn (currently R1bn), provided the stipulated investment conditions, tax obligations and reporting requirements are met. Excess income or profits of offshore branches and offices of South African firms may be retained offshore, subject to annual reporting.

06 Corporate Income Tax

Highlights

The corporate income tax rate is reduced from 28% to 27%, effective for years of assessment ending on or after 31 March 2023.

Deferred legislation limiting the utilisation of assessed losses and expanding the interest limitation rules should also be effective for years of assessment ending on or after 31 March 2023.

Broadening the tax base and reducing the corporate tax rate

The 2020 Budget Review outlined the basis for a tax-neutral restructure of the corporate income tax system over the medium term. This involved broadening the corporate tax base while reducing the corporate tax rate. Two tax-broadening measures were promulgated in 2021, namely, a limitation on the utilisation of assessed losses and an expansion of the interest limitation rules to better align these rules with international principles. The effective date for both amendments was, however, deferred to align with a reduction in the corporate tax rate. It is now proposed that these measures should take effect for years of assessment ending on or after 31 March 2023, thereby coinciding with the effective date for a reduction in the corporate income tax rate from 28% to 27%.

Given these amendments will be effective earlier than previously anticipated, taxpayers will need to act quickly to review and assess their impact on financing structures as well as pricing and investments decisions.

Other tax proposals

The effective date for certain 2021 amendments, including the definition "contributed tax capital" and clarifying the tax treatment of collateral arrangements, was postponed to 1 January 2023, based on public comments. The impact of these amendments will be reviewed during the 2022 legislative cycle.

The rules that trigger a recoupment as a result of debt forgiveness in a year subsequent to the disposal of the asset acquired utilising that debt, will be clarified to confirm the intention for these rules to apply where the disposal resulted in a scrapping allowance or capital loss.

While certain amendments were made in 2021 impacting the reversal of the nil base cost rules applicable to intra-group transactions, it is proposed that further refinements be made to these rules to account for other instances that should result in this reversal.

Finally, the Government proposes a review of the existing debtors' allowance to limit the adverse effect of this provision on lay-by arrangements.

07 Tax Administration

Highlights

Strengthening SARS' audit power by allowing SARS to conduct joint audits with other Revenue Authorities through an exchange of information.

Review of domestic legal framework to effect joint audits

The Tax Administration Act will be amended to incorporate provisions which will enable SARS to conduct audits jointly with revenue authorities from other countries. The purpose is to improve the effective exchange of information under international tax agreements. This will lead to more in-depth audits which may last longer and have a greater impact on multinational companies.

Imposition of understatement penalty for employment tax incentives improperly claimed

The imposition of understatement penalties will be incorporated into the Employment Tax Incentive Act on reimbursements that are improperly claimed. The purpose of these understatement penalties is to prevent the abuse by employers of this incentive.

Tax Compliance Status (TCS) System

There has been an increase in the abuse of the TCS system by taxpayers. One such example is a taxpayer who files nil returns for purposes of ensuring they remain compliant even though this nil return may be incorrect. A change to the TCS system will be introduced to prevent such abuse.

Tax compliance status for taxpayers under business rescue

During the business rescue proceeding, a taxpayer is non-compliant if there is an outstanding tax debt or return required by any Tax Act. It is proposed that SARS reviews when a taxpayer in business rescue may be provided with an exception in order to obtain a TCS for purposes of ensuring that the business rescue process is not negatively affected.

Review of provisional tax system

There is a proposal to change the provisional tax system to align it with changing circumstance and international development. A discussion paper will be published on these proposed changes.

08 Customs & Excise

Highlights

Notably, there was no mention of the AfCFTA as well as the Customs accreditation programme (AEO).

There does seem to be a focus on customs control.

Traders should be aware of the specific note of ITAC-initiated anti-dumping investigations.

No increase in the fuel and Road Accident Fund levies for the first time since 1990.

SARS clamps down on illicit tobacco trade.

Customs performance:

- Unlike other taxes customs duties have not increased above 2019/2020 levels. This is to be expected given the Covid19 lockdown restrictions on cross-border trade as well as South Africa's capacity to manufacture then export.

Customs administration:

- An enabling framework for advance rulings in the Customs and Excise Act has been proposed which will enable SARS to issue these in the same way as other taxes
- With regards to particulars on invoices, traders can expect more clarity. It is our view that recent disputes regarding costs and charges reflected on the invoices, resulting in under or overpayment of customs duty, have led to this development

Customs initiatives:

- Starting with Beit Bridge Government has again committed to continued modernisation of SARS and borders
- SARS Customs efforts to combat illegal trading and theft of copper and steel continue and this year licensing of traders by the dtic will be introduced. This will be enforced by SARS Customs at the time of import/export. In addition, anti-money-laundering measures and stronger Customs reporting measures will be introduced (including tracking origin on the import and export of these items). Non-compliance to these controls will be sanctioned.
- We are surprised that there was no specific mention of the Authorised Economic Operator (AEO) programme for importers/exporters
- ITAC has committed to increased activity for the next year including the initiation of new anti-dumping cases, where the market believes that lower-priced imports are threatening local manufacturers.
- Given the country's commitment to trade within Africa, we would have expected an update on progress of the African Continental Free Trade Area (AfCFTA).

Excise duties on tobacco and alcohol will be increased by between 4.5 and 6.5%. Government further intends to introduce an excise duty on Vaping solutions.

The proposed rate is R2.90/ml for both nicotine and nonnicotine solutions with an implementation date of 01 January 2023.

SARS has increased its focus on illicit trade in tobacco. It has seized illicit tobacco to the value of R 350 million during the pandemic. It has further issued assessments for R 18 billion in additional duties, cancelled the licences of three manufacturers and referred 8 cases for criminal prosecution.

For the first time since 1990 no increase in the fuel levy and Road Accident Fund Levy has been proposed. The carbon fuel levy will however increase by 1c to 9c for petrol and 10c for diesel.

Amendments to the diesel refund scheme has also been finalised after wide consultations. Legislation should soon follow to give effect to the reforms.

The increase in excise duty is set out below:

- 17c 750ml wine
- R4.83 750ml bottle of spirits
- R6.77 23g Cigar
- 11c 340ml Beers or ciders
- 76c 750ml bottle of sparkling wine
- R1.03 box of 20 cigarettes
- 10c per gram of sugar (health promotion levy)
- R5 incandescent lightbulb
- 3c Plastic bag levy
- R12 /gCO2/km vehicle emissions tax rate on passenger cars (double Cabs from R16 /gCO2/km).

09 Energy & Sustainability

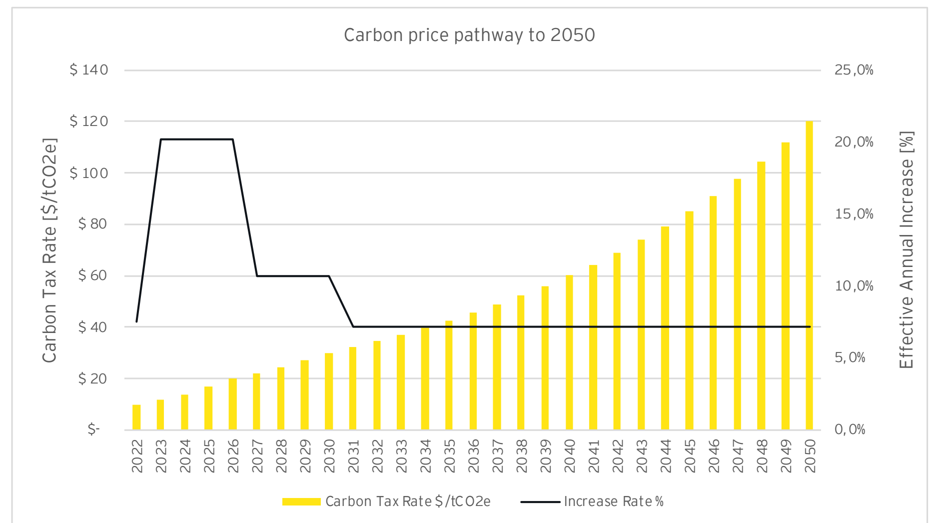
Carbon and Energy

Carbon Tax Phase 1 extended to December 2025 with a Rate increase to R144 per ton CO2e for 2022.

The Energy Efficiency Tax Incentive (S12L) was extended to December 2025.

1. Carbon tax

- Phase 1 of the Carbon Tax is extended by three years to 31 December 2025. The Carbon Tax Rate increases from R134/ton CO2e to R144/ton CO2e 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.
- Treasury have budgeted R1.5 billion in revenue collection from carbon tax for 2022 and roughly R8 billion from the electricity levy.
- For the second phase, government intends to increase the carbon price more rapidly every year, to at least US$30 by 2030, accelerating to higher levels by 2035, 2040 and up to US$120 beyond 2050.



2. Section 12L – Energy efficiency incentive

To encourage additional and continuous investment in energy efficiency, government extended the energy efficiency incentive (S12L) to 31 December 2025. No changes to the tax incentive rate were announced during the budget speech.

3. Environmental levies

- The plastic bag levy will be increased from 25c/bag to 28c/bag from 1 April 2022.
- DFFE will implement the national waste management strategy (NWMS), which aims to divert 40 per cent of waste from landfills over the next 5 years.
- Government proposes to increase the vehicle emissions tax rate on passenger cars from R120 to R132/ gCO2/km and from R160 to R176/ gCO2/km for double cab vehicles from 1 April 2022.
- The incandescent light bulb levy will be increased from R10 to R15 per light bulb from 1 April 2022.

10 Incentives

Highlights

Government allocates R17.8 billion over the next three years to support business investment in new equipment and infrastructure.

Section 11D R&D Tax Incentive extended in its current form until 31 December 2023.

Incentive programmes continue to play a crucial role in supporting economic growth with the government allocating a total of R17.8 billion over the next three years to support business investment in new equipment and infrastructure.

This funding is administered by the Department of Trade, Industry and Competition (dtic) and will be used to provide financial support to the private sector through incentives such as, but not limited to, the automotive incentive scheme, the black industrialist programme, the agro-processing support scheme and the strategic partnership programme (which encourages supplier development). The dtic also seeks to support over 400 clothing and textile firms though its clothing and textiles incentive.

Government continues to assess existing incentives to enhance efficiency with those found to be effective being retained and, where necessary, redesigned to improve performance. To that end, the Section 11D R&D tax incentive, which had a sunset date of 31 October 2022, and provides a 150 per cent deduction for eligible R&D will be extended in its current form until 31 December 2023.

This is welcome news providing time for the Government to thoughtfully consider comments from the private sector in amending the incentive. And in doing, increasing its uptake in order to meet its stated ambition of an R&D investment of 1.5% of GDP by 2030.

Continuing in the spirit of increasing the effectiveness of incentives and following engagement with relevant stakeholders several corporate tax incentives will not be renewed when they reach their sunset date i.e. the rolling stock Section 12DA (rolling stock), Section 12F (airport and port assets), Section 12O (films) and Section 13sept (sale of lowcost residential units through an interest free loan) incentives.

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