

South Africa: Budget Speech Highlights 2022

In brief

Members of the Johannesburg tax team, Virusha Subban, Jana Botha, Denny Da Silva and Prenisha Martin, analyze the South African National Budget Speech, delivered on Wednesday 23 February 2022 by Finance Minister Enoch Godongwana. The overview includes developments regarding corporate tax, international tax, VAT, carbon tax, as well as customs and excise, other indirect taxes, tax administration, and exchange control

In depth

A. Corporate Tax

- Reduction of Corporate Tax

Effective for tax years ending on or after 31 March 2023, the corporate income tax rate is reduced to 27%.

- Limitation of use of assessed losses

Coupled with the reduction of the corporate tax rate to 27% for years ending on or after 31 March 2023, the use of assessed losses brought forward will be limited to 80% of taxable income, leaving the balance of 20% subject to corporate tax at the new rate of 27%.

- Research and development tax incentive to be extended

The incentive will be extended in its current form until 31 December 2023 and the extension and potential amendments will be included in the 2022 Taxation Laws Amendment Bill.

- Delaying amendments in respect of collateral arrangements

In 2021, amendments were proposed in the Taxation Laws Amendment Bill 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 the avoidance of securities transfer tax or capital gains tax. The effective date for the proposed amendments was 1 January 2022.

After reviewing the public comments on the bill, government decided to postpone the effective date for these amendments to 1 January 2023 to give both the National Treasury and affected stakeholders more time to consider the impact of the proposed amendments. Government proposes to review the impact of the 2021 amendments during the 2022 legislative cycle.

- Delaying amendments in relation to the definition of contributed tax capital

In 2021, amendments were proposed in the Taxation Laws Amendment Bill to address tax avoidance concerns and clarify the definition of contributed tax capital. The effective date for the proposed amendments was 1 January 2022. After reviewing the public comments on the bill, government decided to postpone the effective date for these amendments to 1 January 2023 to give both the National Treasury and affected stakeholders more time to consider the impact of the proposed amendments. Government proposes to review the impact of the 2021 amendments during the 2022 legislative cycle.

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- Interaction of mining tax provisions, assessed loss rules and interest limitation rules

The Income Tax Act has specific provisions that cater for the taxation of mining companies and these have to interact in some way with the rest of the provisions of the Act, including the assessed loss provisions in section 20 and the interest limitation rules in section 23M. It would appear 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. Government proposes that the legislation 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 respect of the interest limitation provisions in section 23M, at issue is the application of the provisions of section 23M to the interest expense for non-producing mining operations that form part of the capital expenditure of such mining operations. Government proposes clarifying in the legislation that the interest limitation rules in section 23M will not be applied to the interest expense of non-producing mining operations.

- Refining nil base cost provisions in intra-group transactions

The intra-group transaction rules in the Income Tax 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, amendments were 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. It has come to government's attention that there are further instances that should result in the reversal of the nil base cost rules that have not been taken into account in the 2021 amendments. 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.

Government proposes that further refinements be made to the intra-group transactions rules in the corporate reorganisation provisions to account for these instances.

- 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. Government proposes clarifying 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.

B. International Tax

- Refinements to CFC provisions

Some updates and clarifications will be provided for the CFC provisions, including:

- updating the provisions to encompass new definitions introduced by the newly enacted Insurance Act
 - clarifying the deeming provisions in respect of royalties derived by CFC and particularly noting that royalties must be included in determining the taxable income of the CFC
 - clarifying the tax treatment of dividends on hybrid equity instruments where payor and payee form part of the same group of companies
 - expanding the exclusion of participatory interests in foreign collective investment schemes to cater for so-called "other disposals".
- Pillar 1 and Pillar 2 response

As a signatory to the OECD/G20 Inclusive Framework, South Africa will propose legislative amendments to implement these rules once the framework has been finalised and translated into a local context.



C. Value Added Tax

- Section 72 Rulings to be Reviewed

In the 2019 Budget Speech the then Minister of Finance, Tito Mboweni, proposed a constitutional review of section 72 of the Value Added Tax Act, 1991 (VAT Act). Section 72 was introduced into the VAT Act in 1991 and gave SARS discretionary powers to make arrangements or decisions (rulings) in relation to the application of the provisions of the VAT Act to overcome any difficulties, anomalies or incongruities which arose as a result of the way in which a taxpayer or class of taxpayer conducted its business. The subsequent amendment to section 72 in the same year resulted in the limitation of the extent of SARS' discretion under the section. Accordingly, a section 72 ruling issued by SARS may not have the effect of increasing or reducing a taxpayer's liability for VAT, or be contrary to the construct and policy intent of the VAT legislation as a whole.

The changes only apply to applications made to SARS on or after 21 July 2019, and any arrangement or decision made by SARS before that date only remains valid until the earlier of the stated expiry date of that decision, 31 December 2021 or the date of any legislative change that would affect the decision or arrangement.

In today's Budget Speech, Minister Enoch Godongwana (Minister) proposed that further changes be made to section 72 to allow for further reviews of some of the section 72 rulings previously issued.

- Electronic Services Regulations to be Reviewed

The Steering Group of the OECD/G20 Inclusive Framework, of which South Africa is a member, agreed a two-pillar solution to tax challenges associated with digitalisation of the economy in October 2021 with the intention to work on an implementation framework to take effect in 2023. In light of this, the Minister proposed that South Africa's regulations prescribing electronic services that are subject to South African VAT be reviewed to account for further developments in this area.

- Once-off Electronic Services Supplies by Non-Residents to South African Recipients

In terms of the VAT Act, South African resident entities that exceed the VAT registration threshold as a result of abnormal circumstances of a temporary nature is not required to register for VAT. No such exception is currently available to non-resident entities that supply electronic services to recipients in South Africa. The Minister therefore proposed that a similar exception rule be considered for non-resident electronic services suppliers.

D. Carbon Tax

- Amendments to carbon tax rates:
 - From 1 January 2022, the carbon tax rate will increase from ZAR 134 to ZAR 144 per tonne of carbon dioxide equivalent; and
 - From 6 April 2022, the carbon fuel levy will increase by 1c to 9c per litre for petrol and 10c per litre for diesel.
- Extension of the first phase of the carbon tax

The first phase of the carbon tax will be extended by three years for the period 1 January 2023 to 31 December 2025. There are further proposals in the budget speech such as:

- extending the energy-efficiency-saving tax incentive
- extending the electricity price neutrality commitment;
- adjusting the threshold for the maximum trade exposure allowance from 30% to 50%
- penalising emissions exceeding the mandatory carbon budgets.

In line with South Africa's commitments at COP26, the carbon tax rate will progressively increase every year in order to reach USD 20 per tonne.

In the second phase from 2026 onwards, the carbon tax rate will have larger annual increases to reach at least USD 30 by 2020 and the allowances will rapidly fall away.

E. Customs and Excise

- Excise duties

Excise duties on alcohol and tobacco will increase by between 4.5% and 6.5% from 23 February 2022.



- Vaping

Government has proposed to introduce a new tax on vaping products by way of a flat excise duty rate of at least R 2.90/ml to both nicotine and non-nicotine solutions.

The above proposal will be included in the 2022 Taxation Laws Amendment Bill for further consultation before being introduced from 1 January 2023.

- Beer Powders

Currently, the excise duty regime applies a flat excise rate for traditional African beer powder of 34.7c/kg. The budget speech mentions that there are similar products in the market and in the interest of equity, these products will be included in the tax net with an excise equivalent to the powder rate from 1 October 2022.

- Proposed Amendments to the Customs and Excise Act:
 - amendment of the Act to include an enabling framework to allow the SARS Commissioner to issue advanced rulings
 - amendment of the 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
 - amendments to clarify the legislative requirements for invoices in respect of the import and export of goods.
- Review of the diesel refund administration

The diesel refund system has been under review since 2020. Government proposes that the legislation effecting the amendments to the diesel refund notes and rules to the Customs and Excise Act will be put forward.

F. Other Indirect Taxes

- Plastic bags levy

In an attempt to discourage the purchase and use of plastic bags, it has been proposed that from 1 April 2022 the plastic bag levy be increased from **25c/bag to 28c/bag**.

In addition, an upstream plastic tax and a tax on single-use plastics will be investigated.

- Fuel levies

No increases have been made to the general fuel levy on petrol and diesel and the RAF levy also remains unchanged.

- Health promotion levy or Sugar Tax

From 1 April 2022, the health promotion levy for beverages that contain more than 4g of sugar content per 100ml will be increased from 2.21c/g to 2.31c/g.

In addition, government will consider lowering the 4g sugar content threshold and extending the levy to fruit juices.

- Motor vehicle emissions and incandescent globe taxes

From 1 April 2022, the following increases are proposed:

- the vehicle emissions tax rate on passenger cars to be increased from ZAR 120 to ZAR 132/gCO₂/km
- the tax on double cabs to be increased from ZAR 160 to ZAR 176/gCO₂/km
- the incandescent light bulb levy will be increased from ZAR 10 to ZAR 15 per light bulb.
- Upstream petroleum tax regime

Government has proposed replacing the variable royalty rate with a flat-rate royalty of 5%. 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.

G. Tax Administration

- Refunds of Dividends Tax to Regulated Intermediaries



There is currently no mechanism in the Income Tax Act (ITA) for regulated intermediaries to recover dividends tax overpaid from SARS in instances where the refundable amount exceeds the dividends tax withheld by that regulated intermediary if the refundable amount exceeds the dividends tax withheld. It is therefore proposed that the ITA be amended to allow regulated intermediaries to, in these instances, recover the dividends tax from SARS at least one year after the amount become refundable.

- Domestic Legal Framework to allow Joint Audits

Part E, Chapter 11 of the Tax Administration Act, 2011 (TAA), currently makes provision for SARS to provide assistance to foreign governments in relation to the recovery of taxes in accordance with relevant international tax agreements. It is proposed that the judicial framework, mainly the TAA, be amended to provide for the full use of joint audits with other tax administration in order to improve the effective exchange of information under the international tax agreements.

- Understatement Penalties Imposed iro Improper Employment Tax Incentive (ETI) Claims

As a result of the alleged abuse of the ETI, government proposes that the Employment Tax Incentive Act, 2013 (ETI Act) be amended to impose understatement penalties on improperly claimed ETI reimbursements. Neither the ETI Act nor the TAA currently allow for the imposition of understatement penalties in this regard.

- Tax Compliance Status

A taxpayer who has outstanding tax debts can obtain tax clearance, to reflect a compliant status, if the taxpayer has entered into a deferred payment arrangement or compromise agreement with SARS, or if a suspension of payment has been granted in the event the tax debt is being disputed. This is generally not possible in the early stages of business rescue proceedings, thus negatively affecting the prospects of a successful rescue. Government is proposing to investigate empowering SARS to assist in these cases under certain conditions.

H. Exchange Control

The National Treasury continues to modernise South Africa's capital flows management framework. In this context, the following reforms are proposed:

Individuals:

- The export of dual listed domestic securities to a recognized foreign share exchange is allowed subject to certain limitations.
- Resident individuals may use their single discretionary allowance to participate in online foreign exchange trading activities but may not use credit or debit cards to do so.
- Resident individuals may receive and retain gifts from non-residents offshore.
- Residents may lend or dispose of authorised foreign assets held offshore to other South African residents subject to local tax disclosure and compliance. This dispensation will not apply retrospectively.
- South African residents may transfer, for foreign investment purposes, authorised capital in excess of ZAR10 million per year through offshore trusts, subject to the current tax application and reporting requirements.
- Authorized dealers may, on a once-off basis remit abroad the remaining cash balances (of up to ZAR 100,000) of people who have ceased to be tax residents without reference to SARS.

Companies:

- All debt securities referencing foreign assets listed on South African stock exchanges remain classified as foreign.
- The foreign direct investment limit for companies investing funds offshore will increase from ZAR 1 billion to ZAR 5 billion 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.
- Authorised dealers may process transfers from the parent company to the domestic treasury management companies up to a maximum of ZAR 5 billion per calendar year for listed entities and ZAR 3 billion for unlisted entities. Funds transferred under this dispensation may be used for new investments, expansion, and other transactions of a capital nature.

**Crypto assets:**

- Enhancing monitoring and reporting of crypto asset transactions to comply with the Exchange Control Regulations of 1961. The process to include crypto assets in the regulations is underway.

I. Other notable mentions**Additional reviews to be conducted by National Treasury**

- A discussion document will be published in 2022 on a personal income tax regime for remote work.
- A review of the exemption of foreign retirement benefits in domestic tax legislation will be conducted.

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

Summary of Tax Rates

Companies: Financial years ending on any date between 1 April 2022 and 31 March 2023

Type	Rates of Tax
Corporate Tax	28%

Companies: Financial years commencing on or after 31 March 2023

Type	Rate of Tax
Corporate Tax	27%

Small Business Corporations: Financial years ending on any date between 1 April 2022 and 31 March 2023

Taxable Income (ZAR)	Rates of Tax (ZAR)
1 - 91 250	0% of taxable income
91 251 - 365 000	7% of taxable income above 91 251
365 001 - 550 000	19 163 + 21% of taxable income above 365 000
550 001 and above	58 013 + 28% of taxable income above 550 000

Turnover Tax for Micro Businesses: Financial years ending on any date between 1 March 2022 and 28 February 2023

Taxable Income (ZAR)	Rate of Tax (ZAR)
1 - 335 000	0% of taxable income
335 001 - 500 000	1% of taxable income above 335 000
500 001 - 750 000	1 650 + 2% of taxable income above 500 000
750 001 and above	6 650 + 3% of taxable income above 750 000

Value Added Tax (VAT)**Rates**

Rate Category	Rate of Tax
Standard rate (most local supplies of goods or services)	15%
Zero rate (direct export and certain specific supplies of goods or services)	0%
Standard rate (non-resident suppliers of electronic services)	15%



Registration Threshold

Registration Requirement	Threshold (ZAR)
Compulsory: taxable supplies exceed in any consecutive 12 months	1 000 000
Voluntary: taxable supplies exceed in any consecutive 12 months	50 000

Individuals and Trusts: Period 1 March 2022 to 28 February 2023

Individuals and special trusts

Taxable Income (ZAR)	Rates of Tax (ZAR)
1 – 226 000	18% of taxable income
226 001 – 353 100	40 680 + 26% of taxable income above 226 000
353 101 – 488 700	73 726 + 31% of taxable income above 353 100
488 701 – 641 400	115 762 + 36% of taxable income above 488 700
641 401 – 817 600	170 734 + 39% of taxable income above 641 400
817 601 – 1 731 600	239 452 + 41% of taxable income above 817 600
1 731 601 and above	614 192 + 45% of taxable income above 1 731 600

Trusts other than special trusts

Type	Rate of Tax
Trusts	45%

Rebates

Type	Amount (ZAR)
Primary	16 425
Secondary (persons 65 and older)	9 000
Tertiary (persons 75 and older)	2 997

Tax Threshold

Age	Threshold (ZAR)
Below age 65	91 250
Age 65 to 75	141 250
Age 75 and older	157 900

Medical scheme fees tax credit

Persons covered by a medical aid scheme	Tax Rebate (ZAR) per month
For the first two individuals	347
For each additional dependent	234

**Transfer Duty: Applicable where sale of property is not subject to VAT**

Taxable Income (ZAR)	Rates of Tax (ZAR)
1 – 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

Estate Duty: Levied on the dutiable value of an estate

Value of Estate (ZAR)	Rate of Tax
1- 30 000 000	20%
30 000 000 and above	25%



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