

# The Professional

Volume 13, Issue 1

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## Special points of interest:

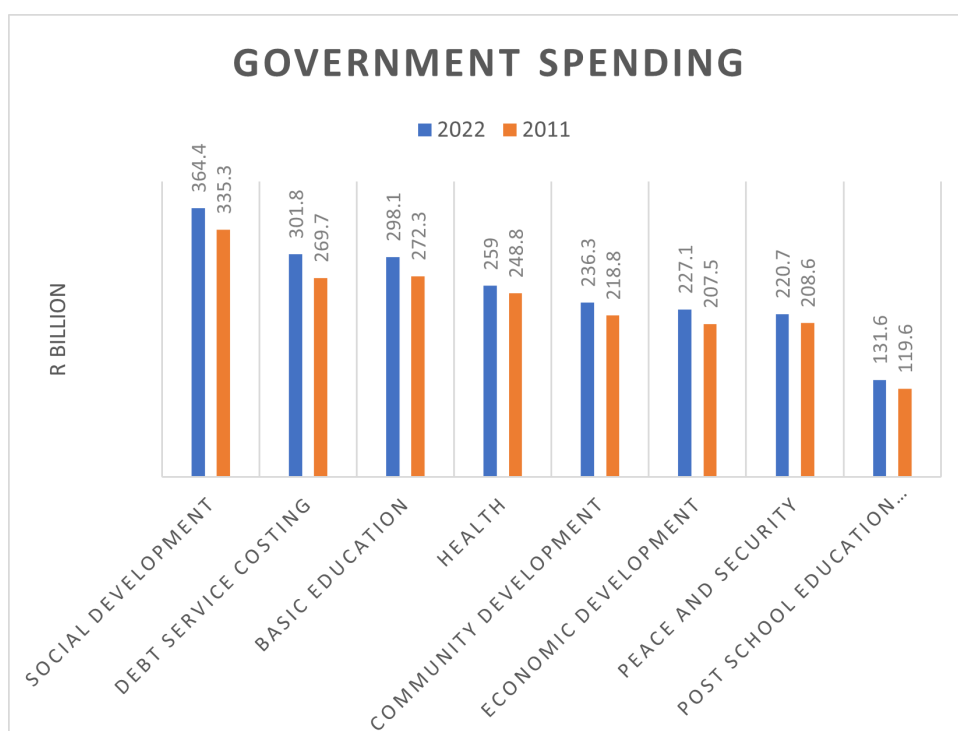
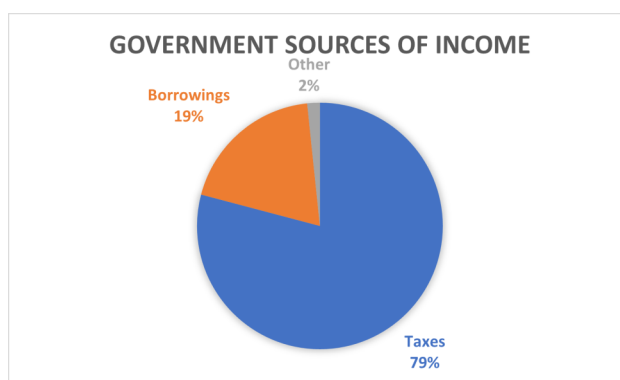
- No increase in fuel and road accident levy.
- Adjusted personal income tax brackets to compensate for inflation.
- Corporate income tax rate to be reduced to 27% in 2023.
- Excise tax increases between 4.5 and 6.5%.
- Monthly benefit limit increased by 50% for employees under the employment tax incentive.

## Inside this issue:

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## 2022 National Budget

The national budget is announced in February of each year and sets out the government's spending, tax and borrowing plans. The budget reflects how money is divided between national departments, provinces and municipalities. Spending on health, education, housing, social grants, transport, employment programmes and municipal services has risen from 58.2 per cent to 59.5 per cent of the budget between 2019/20 and 2021/22. Public debt has now risen to R4.35 trillion. Of every rand collected in tax revenue, 17 cents is used to pay off interest on this debt.



## Personal tax and special trusts

One of the main tax proposals was to provide personal income tax relief through adjustments in all brackets as

| 2022/3                |   | 2021/2                |   |
|-----------------------|---|-----------------------|---|
| Taxable income        | Rate of tax                                   | Taxable income        | Rate of tax                                   |
| R0 - R226 000         | 18% of each R1                                | R0 - R216 200         | 18% of each R1                                |
| R226 001 - R353 100   | R40 680 + 26% of the amount above R226 000    | R216 201 - R337 800   | R38 916 + 26% of the amount above R216 200    |
| R353 101 - R488 700   | R73 726 + 31% of the amount above R53 100     | R337 801 - R467 500   | R70 532 + 31% of the amount above R337 800    |
| R488 701 - R641 400   | R115 762 + 36% of the amount above R488 700   | R467 501 - R613 600   | R110 739 + 36% of the amount above R467 500   |
| R641 401 - R817 600   | R170 734 + 39% of the amount above R641 400   | R613 601 - R782 200   | R163 335 + 39% of the amount above R613 600   |
| R817 601 - R1 731 600 | R239 452 + 41% of the amount above R817 601   | R782 201 - R1 656 600 | R229 089 + 41% of the amount above R782 200   |
| R1 731 601 and above  | R614 192 + 45% of the amount above R1 731 601 | R1 656 601 and above  | R587 593 + 45% of the amount above R1 656 600 |

## Rebates and tax thresholds

| 2022/3          |          | 2021/2          |          |
|-----------------|----------|-----------------|----------|
| Rebates         |          | Rebates         |          |
| Primary         | R15 714  | Primary         | R16 425  |
| Secondary       | R8 613   | Secondary       | R9 000   |
| Tertiary        | R2 871   | Tertiary        | R2 997   |
| Tax threshold   |          | Tax threshold   |          |
| Below age 65    | R87 300  | Below age 65    | R91 250  |
| Age 65 and over | R135 150 | Age 65 and over | R141 250 |
| Age 75 and over | R151 100 | Age 75 and over | R157 900 |

## SARS interest rates

| Rate of interest (from 1 February 2022)                                     | Rate       |
|---|------------|
| Fringe benefits - interest-free or low-interest loans (official rate)       | 5% p.a.    |
| Rate of interest (from 1 March 2022)  | Rate       |
| Late or underpayment of tax   | 7.25% p.a. |
| Refund or overpayment of provisional tax                                    | 3.25% p.a. |
| Refund of tax on successful appeal or where the appeal was conceded by SARS | 7.25% p.a. |
| Refund of VAT after prescribed period                                       | 7.25% p.a. |
| Late payment of VAT   | 7.25% p.a. |
| Customs and Excise  | 7.25% p.a. |

## Retirement fund lump sum benefits

It is important to distinguish between instances where amounts are withdrawn from a fund before and after a person reach the age of 55. Severance withdrawals are treated the same as withdrawals after 55.

### Withdrawals before 55

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 is equal to:

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



| Taxable income     | Rate of tax                                     |
|--------------------|---|
| R1—R25 000         | No tax  |
| R25 001—R660 000   | 18% of taxable income above R25 000             |
| R660 001—R990 000  | R114 300 + 27% of taxable income above R660 000 |
| R990 001 and above | R203 400 + 36% of taxable income above R990 000 |

### Withdrawals after 55 & severance

In this instance, retirement fund lump sum benefits refers to 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 ar-

rangement 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 is equal to:

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

*The man who  
asks a question  
is a fool for a  
minute, the  
man who does  
not ask is a  
fool for life.  
Confucius*

| Taxable income       | Rate of tax                                       |
|----------------------|---|
| R1—R500 000          | No tax  |
| R500 001—R700 000    | 18% of taxable income above R500 000              |
| R700 001—R1 050 000  | R36 000 + 27% of taxable income above R1 050 000  |
| R1 050 001 and above | R130 500 + 36% of taxable income above R1 050 000 |





## Dividends and interest

### Domestic 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.

### Interest

The following exemptions apply in respect of interest:

- South African source interest earned by a natural person

- \* Younger than 65 years—R23 800 p.a.
- \* 65 and older—R34 500 p.a.
- Interest earned by a non-resident who is physically absent from South Africa for at least 182 days during the 12 month period, before the interest accrues and the interest bearing debt is not effectively connected to a fixed place of business in South Africa,

**Do not impose  
on others what  
you yourself do  
not desire.  
Confucius**

## Provisional tax

A provisional taxpayer is any person who earns income by way of remuneration from an unregistered employer, or income that is not remuneration, or an allowance or advance payable by the person's principal.

An individual is not required to pay provisional tax if he or she does not carry on any business, and the individual's taxable income:

- Will not exceed the tax threshold for the tax year; or
- from interest, dividends, foreign dividends, rental from the letting of fixed property, and remuneration from an unregistered employer will be R30 000 or less for the tax year.

Provisional tax returns showing an estimation of total taxable income for the year of assessment are required from provisional taxpayers.

Deceased estates are not provisional taxpayers.

## Deductions—Retirement fund contributions

Natural persons may deduct amounts contributed to pension, provident and retirement annuity funds during a year of assessment.

Amounts contributed by employers and taxed as fringe benefits are treated as contributions by the individual employees.

The deduction is limited to 27.5% of the greater of

- the amount of remuneration for PAYE purposes

or

- taxable income (both excluding retirement fund lump sums and severance benefits).

The deduction is further limited to the lower of

- R350 000 or
- 27.5% of taxable income before the inclusion of a taxable capital gain.

Any contributions exceeding the limitations are carried forward to the immediately following 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 retirement annuities.



## Deductions—medical and disability expenses

Natural persons are allowed to deduct monthly contributions to medical schemes up to R347 for each of the first two persons covered by those medical schemes, and R234 for each additional dependant as medical credits.

In addition to the above persons over 65 and persons whose spouse/child has a disability may deduct

- 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 three times the medical scheme fees tax credits for the tax year .

Other persons may deduct the following amounts in addition to the medical credits:

- the sum of the qualifying medical expenses paid and borne by the individual, and
- an amount by which medical scheme contributions

paid by the individual exceed four 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

### Domestic

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 or incidental costs only, an amount determined by SARS, is deemed to have been expended per day.

From 1 March 2022, the determined amount is as follows where the accommodation, to which that allowance or advance relates, is in the Republic and that allowance or advance is paid or granted to pay for

- incidental costs only, an amount equal to R152 per day; or
- the cost of meals and incidental costs, an amount equal to R493 per day.

The amount will also be exempt if the recipient is away for a part of day if allowed by

the employer, provided these amounts do not exceed the amounts listed above.

### Foreign

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. This list has not been updated since 2019 and includes the following daily amounts:

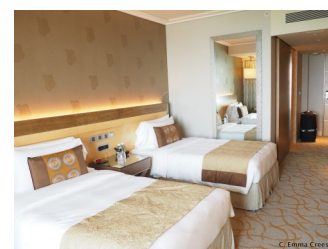
- Angola—US\$ 303
- Australia—A\$ 230
- Botswana – Pula 826
- Canada—C\$ 167
- France—€ 128
- Germany—€ 120
- Hong Kong—HK\$ 1 000
- Japan—Yen 16 275
- Kenya—US\$ 138
- Lesotho—R750
- Namibia—R950
- Nigeria—US\$ 242
- Swaziland—R 818

- UAE—Dirhams 699
- Uganda—US\$ 111
- UK—BP 102
- USA - US\$ 146
- Zambia—US\$ 119
- Zimbabwe—US\$ 123

Note that the above list is not comprehensive and it is recommended to consult Income Tax Notice 268 of 2019 to determine the daily amount for the relevant country visited.

In instances where the specific country is not listed in the Notice, the applicable daily amount is US\$ 215.

*If you are the  
smartest  
person in the  
room, then you  
are in the  
wrong room.  
Confucius*





## Travel allowance

Persons receiving a travel allowance may deduct the cost relating to business use based on actual use or rates per kilometre determined by SARS,

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.

The employee may not deduct maintenance cost if he/she has not borne the full cost of maintaining the vehicle (e.g. if the vehicle is covered by 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 recoverable costs.

If the 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, i.e. R3.82 per kilometre 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.

The cost scale is set out below

| Where the value of the vehicle is—              | Fixed cost (R) | Fuel cost (c/km) | Maintenance cost (c/km) |
|---|----------------|------------------|-------------------------|
| R95 000 or less                                 | 29 504         | 104.1            | 38.6                    |
| More than R95 000 but does not exceed R190 000  | 52 226         | 116.2            | 48.3                    |
| More than R190 000 but does not exceed R285 000 | 75 039         | 126.3            | 53.2                    |
| More than R285 000 but does not exceed R380 000 | 94 871         | 135.8            | 58.1                    |
| More than R380 000 but does not exceed R475 000 | 114 781        | 145.3            | 68.3                    |
| More than R475 000 but does not exceed R570 000 | 135 746        | 166.7            | 80.2                    |
| More than R570 000                              | 156 711        | 172.4            | 99.6                    |

## Taxable fringe benefits

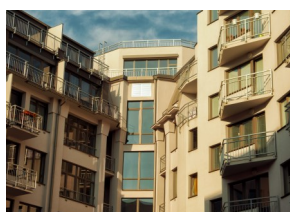
### Interest-free/low-interest loans

The difference between interest charged at the official rate (i.e. 5% p.a.), and the actual amount of interest charged, has 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 will apply if the accommodation is owned by the employee, but it does not apply to holiday accommodation hired by the employer from non-associated institutions.





## Taxable fringe benefits—Employer owned vehicles

The taxable value is 3.5% of the determined value (the cash cost including VAT) of each vehicle per month.

If the vehicle is:

- Covered under 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 em-

ployer 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 licence, 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



## Estate duty

Estate duty is levied on the property of residents and the 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.

*Our greatest  
glory is not in  
never falling  
but in raising  
every time we  
fall.  
Confucius*

## Individuals, employment and savings

### Variable remuneration

Section 7B of the Income Tax Act allows taxation in respect of variable remuneration to be deferred to the date the amount is paid to the employee rather than when the amount accrues. Variable remuneration includes the following:

- Overtime pay
- Bonus
- Commission
- Allowance or advance paid for transport expenses
- An amount an employee becomes entitled to as a result of unused leave
- Night-shift or standby al-

lowance

- Amounts paid or granted as reimbursement.

Government recognises that this list does not cater for all types of variable remuneration, especially with regards to the informal sector. It was proposed that changes be made to section 7B to cater for performance-based variable payments.

### Apportionment when ceasing to be a resident

An individual's tax year is deemed to end on the date immediately before the person's tax residency ceases. Consequently, the person may have two tax years during a 12-month period which may result in the double-up of

certain exemptions and exclusions. To address this anomaly, it is proposed to apportion the interest exemption and capital gains annual exclusion in such instances.

### Transferring interest in retirement annuity fund

Members on retirement funds are allowed to transfer their interest from one fund to another, subject to certain limitations. Members of preservation funds are, however, not restricted on the portion of the retirement interest that can be transferred to another fund.

To address this anomaly, it is proposed that fund members be allowed to move interest between funds.





## Small Business Corporations—tax rates

For years of assessment ending on or after 1 April 2021, the following table apply in respect of small business corporations.

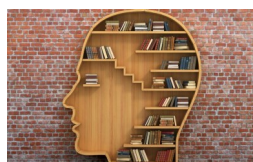
| Taxable income     | Tax  |
|--------------------|--|
| R1—R91 250         | No tax   |
| R91 251—R365 000   | 7% of taxable income above R91 250             |
| R365 001—R550 000  | R19 163 + 21% of taxable income above R365 000 |
| R550 001 and above | R58 013 + 28% of the amount above R550 000     |

## Turnover tax for micro businesses

The following table applies in respect of years of assessment ending on any date between 1 March 2022 and 28 February 2023.

| Taxable turnover   | Tax  |
|--------------------|--|
| R1—R335 000        | No tax   |
| R335 001—R500 000  | 1% of taxable turnover above R335 000          |
| R500 001—R750 000  | R1 650 + 2% of taxable turnover above R500 000 |
| R750 001 and above | R6 650 + 3% of taxable turnover above R750 000 |

**Real knowledge  
is to know the  
extent of one's  
ignorance.  
Confucius**



## Withholding taxes

### Dividend tax

Dividends tax is a final tax on dividends at a rate of 20%, paid by resident companies and non-resident companies in respect of shares listed on the JSE or other South African licensed exchange. Dividends are tax exempt if the beneficial owner of the dividend is a South African company, retirement fund or other exempt person.

Non-resident beneficial owners of dividends may benefit from reduced tax rates in limited circumstances.

The tax is to be withheld by companies paying the taxable dividends, or by regulated intermediaries in the case of dividends on listed shares. The tax on dividends in kind (other than in cash) is payable, and is borne by the company that declares and pays the dividend.

### Royalties

15% of the gross amount of royalties from a South African source payable to non-residents has to be withheld.

### Interest

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

### Foreign entertainers & 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.

### Disposal of immovable property

A provisional tax is withheld on behalf of non-resident sellers of immovable property in South Africa. This amount may be set off against the normal tax liability of the non-residents.

The tax to be withheld from payments to the non-residents is

- 7.5% for a nonresident individual,
- 10% for a non-resident company,
- 15% for a non-resident trust that is selling the immovable property.



## Transfer duty

Transfer duty is payable at the following rates on transactions which are not subject to VAT:

| Value of property      | Transfer duty                                   |
|------------------------|---|
| R1—R1 000 000          | No transfer duty                                |
| R1 000 001—R1 375 000  | 3% of the value above R1 000 000                |
| R1 375 001—R1 925 000  | R11 250 + 6% of the value above R1 375 000      |
| R1 925 001—R2 475 000  | R44 250 + 8% of the value above R1 925 000      |
| R2 475 001—R11 000 000 | R88 250 + 11% of the value above R2 475 000     |
| R11 000 001 and above  | R1 026 000 + 13% of the value above R11 000 000 |



## Donations tax

Donations tax is levied at a flat rate of

- 20% on the cumulative value of property donated since 1 March 2018 not exceeding R30 million, and
- 25% on the cumulative value of property donated since 1 March 2018 exceeding R30 million.

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, South African group companies and donations to certain public benefit organisations, are exempt from donations tax.

*To see what is  
right and not  
do it is the  
worst  
cowardice.  
Confucius*

## Other taxes

### Securities transfer tax

This 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.

### International air travel

This tax is levied at R190 per passenger departing on international flights. However, in the case of flights to Botswana, Lesotho, Namibia and eSwatini, the tax on international air travel is reduced to R100.

### Skills Development levy

A skills development levy is payable by employers at a rate of 1% of the total remunera-

tion paid to employees.

Employers paying annual remuneration of less than R500 000 are exempt from the payment of Skills Development Levies

### Unemployment insurance

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

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

### Value-Added Tax

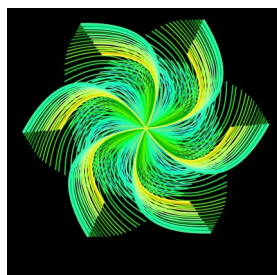
VAT is levied at the standard rate of 15% on the supply of goods and services by registered vendors.

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





## Debtor allowance

Section 24 of the Income Tax allows a debtor allowance to be claimed as a deduction if the taxpayer entered into an agreement with another person whereby the taxpayer transferred property ownership to the other person after receiving the agreed amount, or part thereof.

This allowance is only applicable if 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 such instance, the whole amount is deemed to accrue to the taxpayer on the date the agreement was entered into, and therefore needs to be included in the taxpayer's gross income.

It was noted that lay-by arrangements do not benefit from the debtor allowance as such agreements are generally shorter than 12 months.

It was, therefore, proposed that the current debtor allowance rules be reviewed to limit the negative impact on lay-by arrangements.

*The man who  
moves a  
mountain  
begins by  
carrying away  
small stones.  
Confucius*

## Employment tax incentive

Treasury is concerned about youth unemployment and propose to increase the value of the employment tax incentive by 50% effective from 1 March 2022.

This means that the incentive will increase from a maximum of R1 000 to R1 500 per month in the first 12 months, and from R500 to a maximum of R750 in the second 12 months of eligibility.

Improved targeting will be considered to support jobs for long-term unemployed work seekers. The expansion of the eligibility criteria will also be considered to improve the incentive for small businesses.

## Corporate income tax reforms

### Tax losses

Government proposed restricting the use of assessed losses. The offsetting of the balance of assessed losses brought forward will be limited to 80 % of taxable income.

This means that companies with an assessed loss balance that matches or exceeds their current-year taxable income will need to pay tax on 20 % of their taxable income.

The proposal does not increase companies' tax liability but ensures tax payments from companies are smoothed over time.

Smaller companies more likely to struggle with cash flow will be exempt from the proposed changes.

Restructuring the corporate income tax system is estimated to have no effect on corpo-

rate tax revenue over the medium term. While the reduction in the rate will result in a revenue loss, it will be offset by the additional revenue from the base protection and broadening measures.

Due to the timing of companies' provisional tax payments, only about 25 % of the full effect of each measure will be felt in 2022/23. It was proposed that these measures take effect for years of assessment ending on or after 31 March 2023.

### R&D incentive

A workshop is planned for 2022. To allow for certainty and planning the R&D incentive will be extended until 31 December 2023.

### Expiring incentives

The following incentives will not be renewed or extended:

- Expired on 31 December 2021—Films (section 12O)
- Expiring on 28 February 2022
  - \* Rolling stock \*section 12DA)
  - \* Airport and port assets (section 12F)
  - \* Sale of low cost residential units through interest-free loans (section 13sept)

### Depreciation and investment allowances

Depreciation and investment allowances will be reviewed during 2022/23.



## VAT proposals

### Section 72 arrangements

Section 72 deals with SARS discretion to make arrangements regarding the application of the VAT legislation in specific situations where the manner in which a vendor (or class of vendors) conducts business leads to difficulties, anomalies or incongruities.

Further reviews will be performed during the year to determine whether these arrangements should be discontinued or extended.

### Electronic services

The regulations prescribing electronic services were amended in 2019 to broaden the scope of electronic services that are subject VAT.

Government proposes to review the current regulations to account for further developments.



## Customs and excise duty proposals

### Advance rulings

It is proposed to create a framework for enabling advance rulings to be requested and issued in respect of customs and excise tax matters.

### Time of entry

Currently, there is no provision in the Customs and Excise Act to enable SARS to prescribe the period within

which loose and break-bulk cargo must be entered in the case of an import. It is proposed that amendments be made to the act to allow the Commissioner of SARS to make rules for the entry time of any category of goods, including break-bulk cargo imported by sea, air or rail.

### Invoicing

It is proposed to amend the

Customs and Excise Act to clarify the legislative requirements for invoices in respect of imports and exports.

### Diesel refunds

Draft amendments were published for comment in 2020 and 2021. Industry specific workshops were also held and government proposed that legislation effecting these amendments be put forward.

*The secret of  
your success is  
determined by  
your daily  
agenda.  
John C.  
Maxwell*

## Tax administration proposals

### Dividend tax refunds

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

### Provisional tax

The provisional tax system will be reviewed in light of changing circumstances and international developments. The intention is to publish a discussion paper on the matter.

### Electronic services

It is proposed that a specific be created for non-residents making a once-off supply of electronic services to prevent unnecessary registrations, costs and administrative burden for non-resident suppliers and SARS.

### Joint audits

Government proposed to amend the Tax Administration Act to make provision for the full use of joint tax audits with other tax administrations to improve the effective exchange of information under international tax agreements.

### Understatement penalty

It is proposed to amend the Employment Tax Incentive Act to impose understatement penalties on reimbursements that are improperly claimed.

### Business rescue

SARS cannot reflect a taxpayer as tax compliant if the person has outstanding tax debts, unless the person entered into an agreement with SARS. This may not be possible in the early stages of business rescue. This matter will be investigated further.





## Customs—import invoices

SARS published the updated invoice requirements for Customs on 24 February 2022. This external policy documents the minimum requirements for invoices in order to make due entry when importing goods.

Importers are required to produce a valid invoice when importing goods. If the invoice does not meet the minimum requirements, the Customs clearance declaration will not be valid and the goods will be deemed to be “illicit goods” liable for forfeiture.

The minimum requirements are as follows:

- The invoice must be in one of South Africa’s official languages. The Controller may, however, accept an invoice in another language if it is accompanied by translation certificates completed by parties registered with the South African Translation Institute.
- The invoice must be issued by the supplier who exports the goods to South Africa
- The invoice must be a true reflection of the transac-

tion which is the cause for the goods to be exported to South Africa, including

- \* The nature of the transaction, for example, an outright sale transaction, lease or barter transaction
- \* The goods to which the transaction relates
- \* The amount paid, or payable in terms of the transaction.
- The invoice must reflect the country of origin. If different rates of duty or rebates apply to goods originating from different territories, completion of the certificates of origin (DA 59) is a pre-requisite.
- The invoice need to display
  - \* Date of issue
  - \* Name and physical address of the issuer
  - \* Name of the person to whom the invoice is issued
  - \* The price paid or payable
  - \* Commissions, discounts, costs, charges, expenses,

royalties, freight costs, taxes, drawbacks, refunds, rebates, remissions and any other information that affects the price.

- The invoice must contain all the particulars to make a valid entry, assess the duty and compile trade statistics, including
  - \* All particulars of the final amount of the transaction value
  - \* Any proprietary or trade name of the goods
- The invoice should also contain a clear description of the goods, including
  - \* Identification number
  - \* HS code
  - \* Physical characteristics, e.g., weight, composition, method of manufacturing
  - \* Quantity of the goods
  - \* Any other information needed to determine the relevant tariff.

*If you are a leader, you should never forget that everyone needs encouragement*

*John C.  
Maxwell*



## SARS—Documents for public comment

The following draft publications were published for public comment:

- Draft interpretation notes
  - \* Mining rehabilitation company or trust—Section 37A (Comments due 24 June)
  - \* Recoupment of amounts deducted or set off when asset commences to be held as trading stock (Comments due 3 June)
  - \* Understatement penalty: Meaning of “maximum tax rate applicable to the taxpayer” (Comment due 27 May)
  - \* Public benefit organisations—provision of residential care for retired persons (Comments due 13 May)
  - \* Public benefit activity: Bid to host or hosting and international event (Comments due 13 May)

## Once off PIT administrative penalty

A once-off admin penalty will be imposed on the following taxpayers:

- Taxpayers that were selected for auto assessment and failed to accept, decline, or edit and then file their return after SARS issued an original based on estimated return (auto).
- All provisional and non-provisional taxpayers that were not auto assessed and submitted a return post filing season and pre-imposition of the recurring admin penalty.

Just like the PIT outstanding return recurring admin penal-

ty, the PIT once-off admin penalty can be adjusted or cancelled.

### Admin Penalty Amount Adjustment

As part of the admin penalty process, SARS will adjust the admin penalty amount if there's any change to the taxable income where an Once-Off Admin Penalty was already imposed.

The change in the taxable income may be because of a revised declaration, a dispute (NOO/NOA) against the rejected or edited return and is allowed or partially allowed leading to the taxable income being different to the initial

taxable income utilised to determine the once-off admin penalty amount.

A penalty adjustment letter will be issued to the taxpayer to inform the Taxpayer of the admin penalty adjustment.

### Cancellation:

If SARS erroneously imposed the once-off Admin Penalty on Taxpayers, SARS will cancel the Admin Penalty transactions and related debt and update Taxpayer's admin penalty account.



## Ceasing to be a South African tax resident

The determination of whether an individual ceases to be a tax resident in South Africa is based on the manner in which such individual has been a tax resident in South Africa. If the taxpayer has been an ordinarily tax resident, it is a factual enquiry on whether or not that person's subjective intention to cease to be ordinarily resident in South Africa and no longer make South Africa his or her real home, is supported by various objective factors.

If a person has ceased to be an ordinarily tax resident, it will be from the day such person ceased his or her residence. Factors that will be taken into account to determine whether a taxpayer has ceased to be a tax resident of South Africa includes:

- The type of visa on which the person has gone to the foreign country.
- Proof of permanent residence in the foreign country (if applicable).
- A certificate of tax residence from the foreign revenue authority or a letter from the authority that indicates that the person is regarded as a tax resident in that country (if available).
- Details of any property that the person may still have available in South Africa, including the purpose for which such property is being used.
- Details of any business interest (e.g. investment and employment) that the person may still have in South Africa.
- Details of the person's family that are still in South Africa and the reasons therefor.
- Details of the person's social interests (e.g. gym contract, recreational clubs and societies) and location of the person's personal belongings.
- Details of any return visits

to South Africa, their frequency and the reason for undertaking such visits.

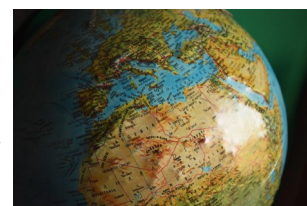
An individual, who is resident by virtue of the physical presence test, ceases to be a resident when that person is physically outside the Republic for a continuous period of at least 330 full days. The individual will be deemed to have ceased to be a resident from the day such person left South Africa.

An individual who has become a tax resident of another country through the application of a double tax agreement will also cease to be a resident for tax purposes in South Africa.

Consequences of ceasing to be a tax resident includes that a deemed disposal for capital gains tax purposes takes place at the time when an individual breaks his or her tax residence. The individual will be deemed to have disposed of his or her worldwide assets, excluding immovable property situated in South Africa.

*If we are  
growing, we  
will always be  
out of our  
comfort zone.*

*John C.  
Maxwell*





## Message from CEO

Dear IAC Family

I trust that all of you are recharged as we approach 2022, that you are taking every precaution to stay safe in these unprecedented times of being exposed to the infection by the invisible enemy, the COVID 19 Pandemic, and in particular the 4th wave of the Omicron Variant that has been prevalent internationally for the last few months.

With that I would like to, on behalf of myself, my staff and the IAC Board of Directors, wish you, your family, and staff the best of health, peace, happiness and prosperity for 2022.

It is with great heaviness in my heart that I was informed that few of our members has passed on during the holiday period having been infected with virus, and some who have fell fatefully ill. Their demise has saddened us immensely, and we pray strength for their families, and may their Soul Rest in Peace.

Some members of the IAC family have also come through a bout of being infected, have isolated, and have recovered well. We continue to pray fervently for all members of the IAC Family.

If you have not been vaccinated yet, I advise you to **PLEASE GET VACCINATED AS SOON AS POSSIBLE**, as this will prevent you from getting very sick if you did get exposed to the Virus.

Let me take this opportunity to thank the majority of our members who have heeded to my many reminders to pay your 2022 Subscriptions in time, and to those of you have completed your 2021 CPD Hours as required by the various Statutory Bodies. Thank You.

If you have not paid your Subscriptions or completed your 2021 CPDs yet, please do so as soon as possible as we would not like to administer Interest Penalties or CPD Penalties which will be applicable soon. We really seek compliancy by our members before instituting such penalties, as we do not want to add pressure to your business by penalizing you for non-compliance. We are professionals and let's be professional with our compliancy.

On Finance: Please contact Ms. Valencia Williams on [finance2@iacsa.co.za](mailto:finance2@iacsa.co.za) On Compliance (CPDs and TCCs): Please contact Ms. Bronwyn Scholtz on [info@iacsa.co.za](mailto:info@iacsa.co.za) If you have other queries or want to introduce a new member to the IAC Family, please contact Ms. Soraya Busch on [members@iacsa.co.za](mailto:members@iacsa.co.za) And if all else fails or you have technical query, contact your CEO, Mr. Prakash Singh on [ceo@iacsa.co.za](mailto:ceo@iacsa.co.za)



### The top 10 complaints against SARS: What can you do to protect your rights

After almost 2 weeks into 2022, please allow me to speak to you on a specific topic that I am sure you would find useful as good information.

*"... the OTO commits to continue doing everything possible to ensure that taxpayers are not forced to pay a cent more than what is required." (Judge Bernard Makgabo Ngoepe, the Tax Ombud)*

The list of the top 10 complaints made against SARS over the last eight years to the Office of the Tax Ombud (OTO), published in its recent newsletter, makes for interesting reading, and highlights the areas where taxpayers are most likely to encounter pitfalls in their dealings with SARS.

1. SARS placing unwarranted stoppers on taxpayers' accounts for refunds not to be paid, significantly impacting the taxpayer's cash flow.
2. Delays in finalizing verifications result in delays in releasing refunds due; even when taxpayers have submitted all



the requested information.

3. Non-adherence by SARS in finalizing dispute resolution within the dispute resolution timelines - already an identified systemic issue.
4. Incorrect allocation of payments, often first covering administrative penalties before principal debt and ignoring taxpayers' letters to SARS about how to allocate the payments.
5. Taxpayers do not receive outcomes of their objections, and in some instances, SARS could not prove that they had sent the outcomes to the taxpayer.
6. Recalled refunds where SARS pays refunds into taxpayers' bank accounts and then recalls these refunds, in some instances taking more than six months to resolve the issues.
7. E-filing profile problems for tax practitioners, resulting in them not being able to add or remove clients from their profiles.
8. SARS deducting more money from taxpayers' bank accounts than it should, prejudicing the taxpayer financially.
9. Banking details of taxpayers have been updated, but the refunds are still not released.
10. SARS Complaints Management Office (CMO) incorrectly rejects taxpayers' complaints lodged with it.

Source: OTO Fair Play Issue 22

The Ombud has also launched a new taxpayer rights awareness campaign, #TaxpayersRightsMatter, to help improve taxpayers' understanding of their rights and the recourse available if their rights are not upheld by SARS.

## What are your rights as a Taxpayer?

Issues with refunds feature quite prominently on the list of complaints, as do delays and ignored requests or complaints. These certainly constitute infringements of taxpayers' rights, when considering the brief overview below of the rights related to these complaints.

The interaction between SARS and taxpayers is governed by the TAA (Tax Administration Act), and SARS' Service Charter also stipulates service levels and time frames. The TAA, like all laws in South Africa, is also subject to the Constitution and the Rule of Law. Conduct inconsistent with the Constitution is invalid and illegal.

Some key features and principles of the Constitution are included in other Acts such as the TAA, PAIA (Promotion of Access to Information Act) and PAJA (Promotion of Administrative Justice Act).

- *Taxpayers' Constitutional Rights*
  - \* The right to privacy includes the right not to have your person, home or property searched; your possessions seized; or the privacy of your communications infringed. SARS cannot search or seize in violation of this Constitutional right.
  - \* The right not to incriminate yourself – there are Constitutional restrictions on the information SARS can use to determine your taxes and potential penalties.
  - \* The right to a high standard of professional ethics as well as rational and accountable actions from SARS; services provided impartially, fairly, equitably and without bias; transparency; and accessible and accurate information.
- *Taxpayers' Legal Rights*
  - \* The TAA details many taxpayers' rights including, for example, SARS must keep taxpayers informed at all times, including providing a Letter of Findings before issuing a revised assessment.
  - \* PAIA provides the right of access to information, detailing rules regarding how SARS is allowed to obtain information and ensuring taxpayers can find out what information SARS has accessed.

## Message from CEO (continued)

- \* PAJA protects the right to just administrative action, requiring that any action by SARS must be lawful, reasonable and procedurally fair.
- *Taxpayers' Rights as per SARS' Service Charter*
  - \* Where a current year's refund is due to a taxpayer and no other debt is due; all obligations have been met; SARS administrative control processes are adhered to; and no inspection, verification or audit is required or has been initiated; SARS will endeavor to pay the current filing period refunds within 7 business days of completing the final assessment.
  - \* SARS endeavors to provide reasons for an assessment within 45 business days; to consider objections within 60 business days; and to respond to service complaints within 21 business days.

### How to protect your personal and business rights

- Careful compliance and excellent record-keeping are always the first line of defense when it comes to dealing with SARS. An annual tax audit by a professional will help ensure that you have the correct processes in place to ensure both.
- SARS' Service Charter stipulates service levels and time frames with regards to returns and declarations; inspections, audits and verifications; refunds; payments; debt and disputes; and provides official channels for complaints. Understanding these can help you protect your rights as a taxpayer.
- Private and business taxpayers have free and independent recourse against SARS through the OTO. However, the powers of the OTO are very limited. It can only deal with complaints against SARS that relate to a service, administrative or procedural issue and only after all avenues of recourse within SARS have been exhausted, except where there are compelling circumstances, or the matter is a systemic issue. For example, the Tax Ombud has no control over how long SARS will take to implement its recommendations, which are also not binding on either SARS or the taxpayer.
- Access to an expert who can defend you or your business in the event of a tax dispute is essential.
- If taxpayers are uncertain of their rights or if their rights are being infringed, they must seek expert advice to protect their Constitutional and legal rights.
- A long list of High Court cases against SARS reveals a growing trend of taxpayers seeking legal recourse against procedurally unfair conduct by SARS or administrative decisions by SARS that prejudice the taxpayer's rights. The cost of legal defense is often prohibitive, making tax risk insurance worth considering ensuring access to experts in constitutional and tax law when required

Yours sincerely,



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**Prakash Singh**  
**Chief Executive Officer - IAC**

## Congratulations to our new members

| CERTIFIED BUSINESS RESCUE PRACTITIONER                      |                |                       |
|---|----------------|-----------------------|
| <u>MEMBERSHIP NUMBER</u>                                    | <u>SURNAME</u> | <u>NAME</u>           |
| 652165(CBRP)*   | MHLOPHE        | NKOSINATHI            |
| FINANCIAL ACCOUNTANT IN PRACTICE/CERTIFIED TAX PRACTITIONER |                |                       |
| <u>MEMBERSHIP NUMBER</u>                                    | <u>SURNAME</u> | <u>NAME</u>           |
| 336462(FAP/CTP)   | BILLIE         | LUZUKO                |
| 6612(FAP/CTP)   | FARGHER        | BRENDA JANE           |
| 4770155(FAP/CTP)  | PAGE           | ROBERT FRANCOIS       |
| 655316(FAP/CTP)*  | VALENTINE      | ANGELA IRENE          |
| FINANCIAL ACCOUNTANT IN PRACTICE                            |                |                       |
| <u>MEMBERSHIP NUMBER</u>                                    | <u>SURNAME</u> | <u>NAME</u>           |
| 1379151(FAP)  | DE BEER        | HENDRIK JOHANNES      |
| FINANCIAL ACCOUNTANT IN COMMERCE/CERTIFIED TAX PRACTITIONER |                |                       |
| <u>MEMBERSHIP NUMBER</u>                                    | <u>SURNAME</u> | <u>NAME</u>           |
| 5474771(FAC/CTP)  | THERON         | WILANDA MARIA         |
| TECHNICAL ACCOUNTANT/CERTIFIED TAX PRACTITIONER             |                |                       |
| <u>MEMBERSHIP NUMBER</u>                                    | <u>SURNAME</u> | <u>NAME</u>           |
| 6240436(TA/CTP)   | BOONZAAIER     | URSULA                |
| 8833006(TA/CTP)   | DESAI          | NASREEN               |
| 3118090(TA/CTP)   | ESSOP          | MOHAMED               |
| 8120780(TA/CTP)   | LIDDLE         | ARISKA SHIRLEY        |
| 3889769(TA/CTP)   | MOODLEY        | ALUSHA                |
| 2392532(TA/CTP)   | NEL            | JACOBUS GERHARDUS     |
| 3937029(TA/CTP)   | TONGA          | LYDIA                 |
| TECHNICAL ACCOUNTANT  |                |                       |
| <u>MEMBERSHIP NUMBER</u>                                    | <u>SURNAME</u> | <u>NAME</u>           |
| 339684(TA)  | CHITSIGA       | TAWANDA               |
| 5413312(TA)   | KARA           | MUREEDA BEGUM         |
| 9359442(TA)   | LUBBE          | ELIZABETH HESTER      |
| 5604000(TA)   | MUNEMO         | HUMPHREY ZVIKOMBORERO |
| 5823906(TA)   | MWALE          | JANICE                |
| 5323942(TA)   | NONGWE         | NOMAJAMA MAVIS        |
| 9589028(TA)   | ROSCOW         | CHANTAL               |
| STUDENT ON LEARNERSHIP                                      |                |                       |
| <u>MEMBERSHIP NUMBER</u>                                    | <u>SURNAME</u> | <u>NAME</u>           |
| 4606994(SOL)  | MAZIBU         | AVUYILE               |

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08:00 - 15:30

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**Vision**

To be a dynamic world class Professional Accounting Institute (incorporating related fields) at the forefront of technology and an integrated approach to the profession.

**Mission**

It is the aim of the Institute to be recognised as the pre-eminent Professional Body for Accountants and other related professionals by actively promoting the effective utilization and development of qualified professionals, through the achievement of excellence in standards of professional competence and socially acceptable ethical conduct amongst its members, through a dynamic integrated approach to the legislative and environmental arena.



## Death announcements

We learned with regret of the deaths of the following valued members:

- Ms. Kauthar Ely (June 2021)
- Mr. Gysbert Jacobus Du Plessis (September 2021)
- Mr. Jorge Manual Teixeira (December 2021)
- Mr. Charl François Rossouw (December 2021)

We at the IAC would like to express our sincere condolences to the families.