

**15 December 2016**

**Final Response Document on the 2016 Rates and Monetary Amounts  
and Amendment of Revenue Laws Bill, and 2016 Rates and Monetary  
Amounts and Amendment of Revenue Laws (Administration) Bill**

**(Based on report-back hearings to the Standing Committee on Finance  
in Parliament)**



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## **1. BACKGROUND**

### **1.1. PROCESS**

The 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Amendment Bill and 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill were first released for public comment on 24 February 2016. These draft bills contain a Special Voluntary Disclosure Programme (SVDP) to give an opportunity to non-compliant taxpayers to voluntarily disclose offshore assets and income before the new global standard for automatic exchange of information between tax authorities commences in 2017.

Revised draft bills were again published for public comment on 12 April 2016 and 20 July 2016. A consultation meeting in respect of the SVDP was held with stakeholders to discuss and review their comments on 10 June 2016. The National Treasury and SARS briefed the Standing Committee on Finance (SCoF) on the SVDP changes on 17 August 2016. Public comments to the Committee were presented at a hearing that was held on 30 August 2016. The final report back to the Committee was on 7 September 2016.

The Final Response Document updates the Draft Response Document to take into account decisions made following further inputs from written submissions made by stakeholders and the SCoF during hearings on the 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Amendment Bill and 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill. The purpose of this Final Response Document is to explain the changes made to the draft Bills that have been included in the final Bills introduced by the Minister of Finance in the National Assembly on 26 October 2016. It also includes changes subsequently made to the 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill after introduction.

### **1.2. PUBLIC COMMENTS**

The National Treasury and SARS received responses from 22 organisations and individuals (see Annexure A attached). There were 10 organisations who presented their responses orally during the public hearings hosted by the SCoF. As mentioned above, a consultation meeting in respect of SVDP was held with stakeholders to discuss and review their comments on 10 June 2016.

### **1.3. POLICY ISSUES AND RESPONSES**

Provided below are the responses to the policy issues raised by the public comments received, both written and during the public hearings. These comments have been

taken into account in the revised Bills. Comments that fall wholly outside the scope of the Bills have not been taken into account for purposes of this response document.

#### **1.4. SUMMARY**

This response document includes a summary of the main written comments received on the 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Amendment Bill and 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill as well as the issues raised during the public hearings held by the SCoF.

The main comments that arose during the public hearings and the other main issues in the 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Amendment Bill and 2016 Draft Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Bill are:

- Special Voluntary Disclosure Programme;
- Environmental Levy on Tyres; and
- Tax rates and monetary thresholds:
  - Increasing all thresholds and limits annually;
  - Incentive for employers to provide bursaries to their employees and their relatives;
  - Increasing the inclusion rate for capital gains.

The response document does not take into account proposals raised that were not part of the Budget proposals and the subsequent draft Bills. Should taxpayers and/or their advisors wish to raise issues that are not included in the draft Bills, they are welcome to write to the Minister of Finance through a separate process.

## **2. DRAFT RATES AND MONETARY AMOUNTS AND AMENDMENT OF REVENUE LAWS AMENDMENT BILL AND RATES AND MONETARY AMOUNTS AND AMENDMENT OF REVENUE LAWS (ADMINISTRATION) BILL**

### **2.1. SVDP**

On 24 February 2016, the Minister of Finance in his Budget Speech announced the introduction of an SVDP to provide a further opportunity for non-compliant taxpayers who still have undisclosed assets abroad to voluntarily disclose their offshore assets and income. The new global standard for automatic exchange of financial account information in tax between tax authorities commonly known as the Common Reporting Standard (CRS) will allow governments to obtain detailed account information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis from September 2017. The proposed relief is intended to provide non-compliant taxpayers who still have undisclosed assets abroad the opportunity to come clean.

The National Treasury and SARS published the draft Bills three times for public comment in an attempt to simplify the proposed SVDP. The initial draft Bills were published for public comment on 24 February and 12 April 2016. Following public comments received and a consultation meeting in respect of the SVDP held with taxpayers and tax advisors on 10 June 2016, changes were made in the third draft Bill that was published for public comment on 20 July 2016.

Key SVDP proposals, as set out in the 20 July 2016 draft Bill, are the following:

*A. Window period of SVDP*

- Applications for relief under the SVDP can be made a limited window period of six months starting on 1 October 2016 and closing on 31 March 2016.

*B. Application process under the SVDP*

- The application process for the existing Voluntary Disclosure Programme in the Tax Administration Act, 2011 will be extended to the SVDP.

*C. Persons that may apply for the SVDP*

- Individuals and companies may apply for the SVDP on the same basis as for the existing Voluntary Disclosure Programme contemplated in Part B of Chapter 16 of the Tax Administration Act, 2011. That is to say, an initial “no-name approach” may be made; applications may be made in a representative capacity, etc.
- Trusts will not qualify to apply for the SVDP.
- Settlers, donors, deceased estates and beneficiaries of foreign discretionary trusts may, however, participate in the SVDP if they elect to have the trust’s offshore assets and income deemed to be held by them.
- Persons may not apply for the SVDP if they are aware of a pending audit or investigation in respect of foreign assets or foreign taxes or an audit or investigation in respect of foreign assets or foreign taxes has commenced. However, if the scope of an audit or investigation is in respect of other assets (other than foreign assets or foreign taxes, for example in respect of PAYE), persons may still qualify to apply for relief under the SVDP.
- Amounts in respect of which SARS obtained information under the terms of any international exchange of information procedure will not be eligible for the SVDP.

*D. Relief granted under the SVDP*

- 50 per cent of the highest value of the aggregate of all assets situated outside South Africa between 1 March 2010 and 28 February 2015 that were derived from undeclared income will be included in taxable income and subject to tax in South Africa.
- The undeclared income that originally gave rise to the assets above, will be exempted from income tax, donations tax and estate duty in the past. However, future income will be fully taxed and assets declared will remain liable for donations tax and estate duty in the future, should the applicant donate these assets or pass away while holding them.

- The value referred above is the market value determined in the relevant foreign currency and translated to the South African Rand at the spot rate at the end of each year of assessment.
- Taxes and levies such as Value Added Tax, Skills Development Levy and Unemployment Insurance Fund are excluded from SVDP.
- Where taxpayers do not have any assets post 1 March 2010 (e.g. because they have taken funds abroad and spent them) but might still want to apply for the SVDP because they are concerned that they might be identified through one of the global leaks, such taxpayers may also apply for the SVDP. Where the value in this regard cannot be determined, the Commissioner may agree to accept a reasonable estimate of that value.

*E. Waiver of penalties under the SVDP*

- No understatement penalties will be levied where an application under the SVDP is successful.

*F. Relief from criminal prosecution under the SVDP*

- As is currently the case in the existing Voluntary Disclosure Programme, SARS will not pursue criminal prosecution for a tax offence where an application under the SVDP is successful.

*G. Effective date*

- The proposed SVDP will be deemed to have come into effect on 1 October 2016.

*Comment:* The proposed 6 month window period for making applications to SARS for SVDP is too short and is likely to be inadequate time. This is likely to place a considerable burden on both taxpayers and tax practitioners to meet the deadline, particularly given the need to unravel complex structures, obtain information and prior years (5 years) market value of overseas assets. Compared with the time period given in relation to the 2010 SVDP, which was 12 months starting from 1 November 2010 to October 2011 and 2006 Small Business Amnesty which was 10 months starting from 1 August 2006 to 31 May 2007, the time period of 6 months for making SVDP applications is too short.

*Response: Accepted.* In order to allow more time, an extension of the window period for applications for relief under the SVDP was proposed from 6 months to 9 months starting on 1 October 2016 and closing on 30 June 2017, which is the month after banks and financial institutions will be required to provide SARS with information for subsequent automatic exchange of information with other tax authorities. During the SCoF hearings, a compelling case was made to further extend the closing date for applications for relief under the SVDP from 30 June 2017 to 30 September 2017. The SCoF decided that the closing date for applications for relief under the SVDP should be extended to 31 August 2017, which is the month before automatic exchange of information under the CRS begins.

*Comment:* The proposed SVDP relief provides that 50 per cent of the highest value of the aggregate of all assets situated outside South Africa between 1 March 2010 and 28 February 2015 that were derived from undeclared income will be included in taxable income and subject to tax in South Africa. The inclusion rate of 50 per cent of market value may be too high. This creates cost concerns as taxpayers are weighing up costs against benefits. This may dissuade taxpayers and may result in poor uptake of the SDVP. For example, an individual who retains the assets offshore could have a cost of around 30% of market value. Total cost (excon and tax) of around 20-25% would be more palatable resulting in a better uptake. This could be achieved by reducing the inclusion rate to 40%.

*Response:* Accepted. The purpose of the SVDP is to give opportunity to non-compliant taxpayers to come forward and disclose their offshore assets and income before automatic exchange of information between tax authorities commences in September 2017. At issue is achieving the right balance between incentivising non-compliant taxpayers to correct their tax affairs and those who have been compliant all along. There is however the possibility that, if the penalty to come clean is too high, taxpayers may attempt to hide their assets deeper, which means it may take a bit longer for SARS to trace some of these non-compliant taxpayers.

In order to address the cost concerns and to encourage the uptake of the SVDP, the inclusion rate of 50 per cent will be reduced to 40 per cent of the highest value of the aggregate of all assets situated outside South Africa between 1 March 2010 and 28 February 2015 that were derived from undeclared income. This amount will be included in taxable income and subject to tax in South Africa.

*Comment:* The proposed SVDP relief requires the determination of the market value of the tainted assets for each of the 5 years, i.e. for every end of each tax year between 1 March 2010 and 28 February 2015. The proposed amendment is still very complex and creates an administrative burden to taxpayers. Tracing all undeclared amounts to offshore assets derived from these amounts could be very difficult. Financial institutions take time and charge substantial fees for gathering this information. In turn, it is very difficult to find out market values in previous years for certain assets, such as immovable property and unlisted shares. In order to simplify the process, it is proposed a single valuation date should be utilised for purposes of SVDP, for example it is proposed to use the market value as at 1 October 2016, when the SVDP commences or the market value of assets held on 29 February 2016, which is in line with the EXCON SVDP should be used for tax purposes.

*Response:* Not accepted. A linkage at some level between undisclosed receipts and accruals and the assets derived from them is unavoidable, since these receipts and accruals must be exempted for the taxpayer to derive the full benefit of the SVDP. The level of detail required in respect of these receipts and accruals has, however, been substantially reduced by the switch from the partial taxation of these amounts as “seed capital” in previous drafts of the legislation to the partial taxation of “tainted assets” as currently proposed.

It is common practice in most of the offshore jurisdictions where assets are held by financial institutions for account / performance statements to be made available to the true owner of the asset on at least a quarterly basis. Furthermore, foreign financial institutions, in particular banks, are eager to regularise the accounts of their clients, and have put special measures in place to facilitate access to statements and the like. In the case of property values, a reasonable estimate based on the property value growth / decline over time in a particular area is generally readily available to the public, property and/or valuation professionals, especially on a historical basis. In the case of unlisted shares in the context of offshore tax havens, these are typically shares that were acquired at a price equal to the initial capital transfer, and should be readily accessible. Increases / decreases in the value of the shares over time are typically linked to the performance of the underlying investments by the company. This too should be readily available for valuation purposes.

The ability to obtain the required information for the past five years should not be too difficult; this period is in any event more or less in line with the SARS requirement to keep financial records.

*Comment:* The proposed SVDP relief does not make provision for the resetting of the base cost of foreign assets for income tax/capital gains tax purposes. Given that the inclusion in taxable income is based on market value, the failure to adjust the base cost of the asset to market value would result in potential double taxation when, for example, the asset is disposed of at later date and a capital gain must be determined on the disposal of the asset. Without resetting the base cost, the taxpayer would have to base the gain on actual expenditure incurred.

*Response:* Partially accepted. A rule for rebasing the values of foreign assets will be inserted for capital gains tax purposes.

*Comment:* In terms of the proposed SVDP, trusts will not qualify. Settlers, donors, deceased estates and beneficiaries of foreign discretionary trusts may, however, participate in the SVDP if they elect to have the trust's offshore assets and income deemed to be held by them. We suggest that there should be a room for proportional deeming where a non-resident trust has more than one beneficiary. Getting group consensus amongst beneficiaries is often very difficult.

*Response:* Noted. The intention is that if a person makes an election to deem certain assets of a trust to be held by him/her, proportional deeming will depend on the election made by the person.

*Comment:* The proposed SVDP deems the person (donor or beneficiary) and the trust to be one and the same person in respect of the assets. In other words, all transactions and applicable tax rates of the trusts will apply to the person. Furthermore, the deeming provision infringes the natural manner in which trusts are constructed, for example, where trustees of the trust would have effected distributions in respect of the assets, it seems that the distributions are deemed to have been effected by the person (for example a beneficiary to himself in cases



where trust distributed to the beneficiary). It is proposed that clarity be provided in respect of the applicable tax rate for the person. Will the person's applicable tax rate be deemed to have applied or the trust's applicable rate be deemed to have applied in respect of the asset. The person could be at a lower marginal rate than the trust.

*Response:* Comment misplaced. The person and the trust are not deemed to be one and the same person. The person's applicable tax rate, not the trust's tax rate, will apply in this regard.

*Comment:* With the 2010 SVDP, the assets of a trust which required regularization were deemed to be that of the founder/ beneficiary of the trust. However from an estate duty purposes, such asset/s did not form part of the estate of that person. The 2010 SVDP included a specific exemption in this regard, which is not the case in the current VDP. As a result, such person will be liable for Estate Duty on the assets of the trusts. It is therefore proposed that exclusion from Estate Duty should be included in the proposed SVDP. It is also proposed that a rollover relief be maintained in respect of inter spousal disposals regarding the asset.

*Response:* Not accepted. The intention of the proposed SVDP is to specifically subject assets to estate duty when the person who has made an election and qualifies for SVDP passes away. The use of trusts, in particular where substance differs from form and specifically where sham instruments are involved, to escape estate duty on a permanent basis should be discouraged.

*Comment:* The reference to "receipts and accrual not declared to the Commissioner" in clause 15(2) renders the relief provided by clause 15(1) and the corresponding inclusion in taxable income in terms of clause 16 inappropriate in instances where a "resident" as defined in section 1 failed to impute the net income of a controlled foreign company ("CFC") as defined in section 9D(2). Section 9D(2A) requires a hypothetical calculation of the net income of the CFC based on the assumption that such a CFC is a resident. The hypothetical net income must then be included in the resident's "income" by virtue of the application of section 9D(2) as opposed to being "received by" or "accruing to" the resident. It is proposed that the SVDP be extended to apply to the section 9D(2) CFC income.

*Response:* Accepted. The SVDP will be extended to apply to individuals and companies who did not impute the net income of CFC's in their South African income.

*Comment:* The proposed SVDP only covers income tax, donations tax and estate duty. However no explanation has been given as to why VAT has been excluded. We submit that the SVDP should apply to all taxes that would have applied had the monies been legally remitted from South Africa.

*Response:* Not accepted. The intention of the proposed SVDP is to specifically exclude VAT from SVDP. Any taxpayer who has either charged VAT and not paid it over to SARS or has deliberately not charged VAT is indirectly guilty of theft and should not qualify for special relief measures.

*Comment:* The proposed SVDP does not provide protection to advisors and registered auditors who consult with potential clients with the intention of making use of the SVDP from their reporting obligations in terms of the Financial Intelligence Centre Act (FICA) and Auditing Profession Act (APA). Section 29 (2) of the FICA imposes obligations of compulsory disclosure on advisors who are accountable institutions to disclose financial transgressions for tax purposes. FICA requires that a person who carries on a business who knows or ought reasonably have known or suspected that a transaction or series of transactions to which the business is a party may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the SARS Commissioner must report to the Financial Intelligence Centre (FIC) the grounds for the knowledge or suspicion and the prescribed particulars concerning the transactions or series of transactions. In the previous 2010 VDP and 2006 amnesty, advisors assisting clients to regularise their tax affairs through the VDP process would not have a reporting obligation under FICA provided that the money was obtained from legitimate sources, i.e. not illegal activities. It is therefore proposed that the above-mentioned principle should equally apply to the proposed SVDP.

*Response:* Partially accepted. The FIC and Independent Regulatory Board for Auditors will release guidance with respect to reporting obligations that may arise with respect to the SVDP.

*Comment:* In terms of the proposed SVDP, a person may not apply in respect of an amount that has funded an asset that has been disclosed to SARS under an international tax agreement. This is problematic as a taxpayer would not necessarily know that such a disclosure has been made to SARS. It is proposed that the requirements set out in section 226 of the TAA relating to a pending audit or investigation by SARS related to the default is sufficient in this regard and that this exclusion from SVDP should be removed.

*Response:* Not accepted. The exclusion only applies in respect of the asset that has already been disclosed to SARS under an international agreement and not to any other assets that may be disclosed by the applicant. On the other hand, the exclusion as a result of an audit covers all matters “related to the default the person seeks to disclose”.

*Comment:* In terms of the proposed SVDP, it may happen that a taxpayer applies for the relief after notification of an audit, in which case the higher understatement penalties under column 5 would be applicable. For example, it may happen that a general audit into the income tax affairs of a taxpayer is being undertaken and such taxpayer wishes to apply for SVDP relief in respect of offshore assets which would not have been detected under the audit. Such a taxpayer would potentially qualify for VDP relief in terms of section 226(2) of the TAA; however, any relief from understatement penalties would fall under column 5 and not under column 6 that provides for 0% penalties.

*Response:* Not accepted. Amendments in 2015 limited the audit exclusion for VDP applications (and thus for SVDP applications) to matters “related to the default the person seeks to disclose”. Unrelated matters are no longer excluded. A senior SARS official may still accept an application in respect of related matters if satisfied that that the default would not have been detected during the audit and that the acceptance would be in the interest of the good management of the tax system and use of SARS’ resources. It is only in these cases that the slightly higher understatement penalties in column 5 apply.

*Comment:* In terms of the proposed SVDP, amounts that were not taken into account for provisional tax estimates will be included in the 2015 and 2016 tax returns. As a result penalties for underestimating or late payment of provisional tax may be levied. A waiver of these penalties should be provided for.

*Response:* Comment misplaced. A waiver for underestimating and, following amendments in 2015, late payment of provisional tax is already provided for in section 229(c) of the TAA.

## **2.2. Environmental Levy on Tyres**

In Budget 2015, the Minister of Finance proposed the implementation of the tyre levy to be implemented through the Customs and Excise Act and collected by SARS. The implementation of this levy was delayed until 2016. Following further consultations by the National Treasury with Department of Environmental Affairs (DEA) and SARS, the Minister of Finance announced in Budget 2016 that the tyre levy will be implemented at a rate of R2.30/kg of tyre, effective from 1 October 2016. The proposed tyre levy will replace existing fee arrangements for tyres as per the DEA regulations. The proposed tyre levy will apply to new and used pneumatic tyres, as well as tyres included on vehicles and certain equipment.

*Comment:* REDISA is of the view that the fee imposed on tyres in terms of its plan is not a tax. The reasons for this are:

- The fee is not compulsory. However, it is compulsory for every tyre producer (manufacturer or importer) to either establish an approved plan of their own or belong to an approved plan.
- The fee is authorised by the Waste Tyre Regulations. REDISA notes that regulation 9(1)(j) requires a waste tyre plan to provide estimates on the costs of implementing a waste management plan for the first 5 years and the ‘manner in which the activities of the waste tyre management plan will be financed’. It is argued that Regulation 9(1)(i) requires details on the ‘manner in which the contribution of each member of the plan will be determined and how the contribution will be collected’.

*Response:* Noted. Following an assessment of the fees raised to support the recycling efforts under the REDISA plan, the National Treasury is of the view that

the payment of these payments by industry is a mandatory requirement, and not voluntary in nature. The compulsory nature of the waste tyre processing fee implemented by REDISA is therefore more akin to a tax. It is also possible to deem a fee to be a tax but not the other way around. A fee is by its nature a voluntary payment in exchange for a good or service and not an unrequited payment like a tax.

More importantly, the current arrangements are problematic as REDISA is responsible for the collection and disbursement of revenues, yet the company remains outside the Public Finance Management Act with limited accountability to government.

*Comment:* REDISA argues section 13 of the Bill in so far as it imposes a tyre levy is unconstitutional because it is irrational and liable to be set aside under the principle of legality (an aspect of the rule of law) for the following reasons:

- The failure to consult and to conduct a socio-economic impact assessment study.
- The underlying reason for the section is the erroneous legal proposition that the moneys paid to REDISA for its services are a tax.

*Response:* Not accepted. The DEA and National Treasury have consulted all stakeholders, including REDISA. Numerous written correspondence minutes of meetings can testify to this. As this is merely a replacement of a “fee” that is already in place with a more transparent tax and revenue collection and allocation process an additional socio-economic impact assessment is superfluous.

In terms of section 73 of the Constitution, only the Minister of Finance may introduce a Money Bill in the National Assembly to allow for the imposition of the waste tyre processing levy. The Customs & Excise Act is a Money Bill {Act} therefore a separate Money Bill for this levy is not necessary. Currently, environmental levies are imposed in terms of the Custom and Excise Act and apply to plastic bags, electricity generation from non-renewables, energy inefficient incandescent light bulbs and motor vehicles’ carbon dioxide emissions.

During 2016, the DEA and National Treasury engaged REDISA on this matter on several occasions; i.e., on 3 February, 29 June and 19 July 2016. This was followed by a broader consultation with the tyre industry on 23 August 2016.

*Comment:* REDISA argues that changing the funding model from a fee to a tax will prevent REDISA from discharging its obligations under the plan because the plan is premised on a 5 year horizon. In addition, REDISA is concerned about the uncertainty and unpredictability of funding from the fiscus to the DEA for industry waste management plans and then the Waste Bureau for allocation to REDISA. It is argued that the cutting off of funds from 1 October will mean that will lose between 6 and 18 months of funds of the 5 years of funds secured under the plan.

*Response: Not accepted.* As with most taxes, the revenues from the tyre levy will be deposited into the National Revenue Fund. To support the waste tyre management process, National Treasury will propose an appropriation on the vote of the DEA on a three year rolling basis in the annual appropriation Bill based on the submission of a sound business plan which will be adjusted annually.

The National Treasury has engaged REDISA extensively and requested information on how long REDISA can operate for once the collection of fees is replaced by the tyre levy. Based on a submission to the National Treasury in February 2016 by REDISA and an independent audit report, REDISA has sufficient funding to operate for a period of 8,53 months.

The National Treasury has requested a business plan from REDISA to motivate for funding allocations to the DEA and subsequently to REDISA. Based on the business plan, the National Treasury will make an allocation to the DEA effective from 1 April 2017. However, despite extensive consultations with REDISA since February this year, REDISA has not been forthcoming with the business plan.

To ensure a seamless transition to the new funding arrangements, the DEA is also in the process of finalising the National Pricing Strategy and the transitional arrangements for REDISA.

*Comment:* The REDISA plan exempts retreaders from the fee in respect of retreads of South African manufactured tyres. It is argued that this is due to the fact that the waste management fee for each tyre retreaded will have already been paid when the original tyre was produced. The plan provides for credits and refunds to tyre manufacturers and motor manufacturers who export tyres. REDISA is of the opinion that the proposed legislation does not provide for credits or refunds when tyres are exported, and that the current REDISA plan is better suited as it makes provision for this.

*Response: Accepted.* Both these issues have also been raised by the tyre industry, which are in support of the proposed move to a tyre levy and new funding arrangement for the recycling of waste tyres.

With regard to the treatment of retreaded tyres, after extensive consultations between the National Treasury, DEA and SARS, together with the retread tyre industry, ITAC and NRCS, those categories of retreads that are manufactured domestically will be exempted, while those retread categories that are imported will be taxed. This ensures essentially the same outcome for retreaded tyres as the REDISA treatment, where local retreads are exempt and imported retreads are subject to the levy.

Credits or refunds for exported tyres are catered for in the current environmental levy rebate/refund provisions of the Customs and Excise Act and will be extended where necessary.

*Comment:* REDISA indicates that the imposition of the levy will lead to an overall loss in revenue for the fiscus. If the fee is converted into a levy, the VAT falls away.

*Response:* Comment misplaced. The VAT applies to the price of goods and services inclusive of all product taxes, including environmental levies.

### **General comment**

The implementation of the tyre levy will be delayed to 1 February 2017 to allow for additional consultations with tyre manufacturers, tyre importers and vehicle manufacturers.

## **2.3. Tax rates and monetary thresholds**

### **Increasing all thresholds and limits annually**

*Comment:* It is a concern that there are numerous monetary amounts in the tax legislation which are not regularly updated, resulting in their continual erosion due to inflation. These values should be adjusted on an annual basis, unless there is a clear policy intent to keep the values fixed. For example, unlike the personal income tax tables which are adjusted each year, the tax brackets for the retirement fund lump sums tax table was last adjusted in 2014. Not adjusting these values is increasing taxation through stealth.

*Response:* Not accepted. The key monetary thresholds are reviewed each year and are generally increased on a regular basis, albeit not annually in some cases, to take into account the impact of inflation. The personal income tax tables are usually adjusted on an annual basis and many thresholds in the tax legislation, such as the abatement for fringe benefits for residential accommodation and the tax table for small business corporations, are aligned to these tables and are thus also adjusted annually. Some of the monetary thresholds are set a specific level for administrative reasons and do not require regular adjustments. For others it might be the intention that these should be gradually phased out (eroded by inflation over time, e.g. the currently interest tax free thresholds that will over time be replaced by the tax free savings accounts).

### **Incentive for employers to provide bursaries to their employees and their relatives**

*Comment:* The Budget 2016 announcement that the thresholds for the incentive for employers to provide bursaries to employees or their relatives would be increased was not included in the Bill.

*Response:* Noted. This amendment has been included in the 2016 Taxation Laws Amendment Bill with an effective date of 1 March 2016.

### **Increasing the inclusion rate for capital gains**

*Comment:* The new inclusion rates will apply to disposals during any year of assessment after 1 March 2016. Transactions entered into before 1 March 2016 may be caught by the higher inclusion rate if some conditions of the sale are only fulfilled after 1 March 2016, even if these conditions are outside of the control of the seller. It is proposed that the higher inclusion rate only applies to transactions entered into after 1 March 2016.

*Response:* Not accepted. The change in the effective rate of tax on capital gains is similar to a change in the marginal rates of income tax and is generally not afforded any vested rights relief. For example, if an employee has a contract with an employer to be remunerated a certain amount any changes in the personal income taxes will apply immediately, even if the contract was entered into before the tax change.

*Comment:* Capital gains tax collections are inherently volatile making it inappropriate to rely on this revenue stream for a structural increase in tax revenues.

*Response:* Not accepted. The volatility of an individual stream of tax revenues is less important when the total tax base is diversified across various tax instruments (such as personal income taxes, corporate income taxes and value added taxes). The important feature of the tax system is that total tax revenues are buoyant across the business cycle. It should be noted that the taxing of capital gains is there for equity reason and also to protect the personal income tax base. In any case, total capital gains tax revenues in the 2013/14 tax year and 2014/15 tax year were R11.60 billion and R11.67 billion respectively and have not been particularly volatile in recent years.

*Comment:* The relatively low level of the inclusion rate in previous years was to compensate for there being no inflation indexation and to avoid taxing nominal, rather than real, returns. The increases in the inclusion rate and the effective tax rate on nominal returns raises the question of whether inflation indexation should be introduced. Indexation is applied in some form in both Australia and the United Kingdom, where inflation rates are lower than in South Africa.

*Response:* Noted. The briefing document “Capital Gains Tax in South Africa” presented to the Portfolio and Select Committees on Finance on 24 January 2001 discusses this issue in detail in section 7. With inflation levels at around 6 per cent and reasonable rates of real returns, the effective tax rates for individuals on capital gains will continue to be at or below the level of statutory tax rates with the higher inclusion rates, and through deferral the effective tax rate will continue to decrease over time. The introduction of inflation indexation would not only be administratively complicated compared to the current regime, but may introduce other distortions as the treatment would favour equity assets

over income generating assets (such as money-market funds). These are but a few of the many complications that would need to be considered in detail when contemplating such a proposal.

*Comment:* The increase in the inclusion rates for capital gains will lead to a decrease in savings. The increase in the effective tax rate may also not lead to additional tax revenues as individuals hold off from selling their assets or increase the levels of tax evasion.

*Response:* Not accepted. Academic literature suggests that the effective rate of tax has little impact on the overall level of private savings, however tax does play a significant role in the allocation of savings between different investments. It is expected that the increase in the inclusion rate will lead to an increase in tax revenues, notwithstanding whether some individuals hold off from selling their assets due to the increase. After the increase in the inclusion rate in 2013/14 total capital gains tax collections increased from R7.17 billion in 2012/13 to R11.6 billion in 2013/14.



## Annexure A – Public comments

	<u>Name of Company</u>	<u>Contact Person</u>
1	Ayoob Attorney	A.K Ayoob
2	BASA	Leon Coetzee
3	BDO South Africa	Lucia Hickman
4	Deloitte	Tammy Arendse
5	Hogan Lovells	Ernie Lai King
6	Hugo Van Zyl	Hugo Van Zyl
7	James Dique	James Dique
8	KPMG	Lesley Isherwood
9	Law Society of South Africa	Kris Devan
10	Leon F Du Toit	Leon F Du Toit
11	Mervin Messias Attorneys	Mervin Messias
12	PKF Chartered Accountants and business Advisors	Paul Gering
13	PWC	Riaan Stipp and Kyle Mandy
14	SAICA	Pieter Faber

	<u>Name of Company</u>	<u>Contact Person</u>
15	SAIT	Keith Engel
16	SA Tax Advisory	T Smith
17	Shalk Kruger	Shalk Kruger
18	Society of Trust and Estate planning Practitioners	Rupert Worsdale, Dan Foster and Harry Joffe
19	Webber Wentzel	Dan Foster
20	Werkmans Attorneys	Ernest Mazansky Michael Honiball
21	Zeridium	Anthony Chait
22	Recycling and Economic Development of South Africa (REDISA)	Herman Erdmann