

BIODIVERSITY TAX INCENTIVES

Section 37D

FACT SHEET 1: Fiscal Benefits Project

INTRODUCTION

The following note seeks to provide a short outline of the amendments to the biodiversity tax incentives, relating only to Nature Reserves or National Parks. This note may not be used as tax advice and is purely informative in nature.

HISTORY

In 2008, section 37C was inserted into the Income Tax Act. This section was created with the aim of providing a financial reward for landowners engaging in Biodiversity Stewardship agreements to conserve the biodiversity and environmental value of their land. S 37C did not, however, provide the practical benefit originally envisioned due to the nature of the wording of the section itself as well as other practical implementation issues.

As a result, a lobbying process with National Treasury began in an attempt to provide a tax incentive that effectively fulfilled the original motivation of s 37C; to provide landowners with a tangible fiscal benefit. This process reached a successful conclusion at the end of 2014 with the inclusion of a re-worded tax incentive, **section 37D**, in the Income Tax Act, effective as of 1 March 2015.

The suggested amendments were drafted as an amended s 37C and a newly inserted s 37D. The amendments dealt only with Nature Reserves and National Parks. The rest of s 37C, governing tax incentives for other Protected Areas and Biodiversity Management Agreements, remains unchanged (see the Fiscal Benefits Project Fact Sheet Two). S 37D applies on or after 1 March 2015.

FUTURE PROGRESS

The accepted changes are being tested through BirdLife South Africa's Fiscal Benefits Project. The Project was launched 1 February 2015 and involves a feasibility study whereby s 37C and s 37D are being fully investigated at selected Biodiversity Stewardship pilot sites with a range of landowners. S 37D has now been placed in the tax return of a landowner and has shown to be effective and practically applicable.

The Fiscal Benefits Project is funded by the Global Environment Facility through the Biodiversity and Land Use Project implemented by SANBI and the WWF Nedbank Green Trust and is being run in collaboration with various Biodiversity Stewardship and Protected Area Expansion stakeholders and National Government.

MAIN TAX CHANGES TO BIODIVERSITY TAX INCENTIVES

- Section 37C subsections (1) to (4), relating to other forms of PAs, remains unchanged.
- Section 37C subsections (5), (6) and (7), relating to Nature Reserves or National Parks, have been deleted and replaced with the newly formulated Section 37D.

- Section 37D governs an allowance for land conservation in respect of Nature Reserves or National Parks declared on or after 1 March 2015.

THE NEW SECTION 37D

- Section 37D allows for a 4% straight line deduction on the value of the land declared. This means that a landowner who declares their land as a Nature Reserve or National Park may deduct 4% of the value of that declared land from their taxable income each year for 25 years.
- The tax incentive governed by section 37D can only accrue to the title deed holder of the land.
- The land must be declared as a Nature Reserve or National Park in terms of section 20 or 23 of NEMPA with the endorsement reflected on the title deed of the land for a minimum period of 99 years.
- If the landowner maintains a right of use of the land then the deduction is apportioned accordingly.
- The deduction becomes effective in the year the land is declared and in each subsequent year of assessment. It is important to remember that these straight line deductions only apply, at this current point in time, to land declared on or after 1 March 2015.
- Should the Biodiversity Stewardship agreement or Protected Area status be terminated, the landowner will be liable for certain tax penalties. The landowners' responsibilities in terms of the declaration agreement are defined by NEMPA.
- The section applies to taxpayers in profit making or loss positions and has benefits for both scenarios.

VALUE OF THE LAND

The value of the land is based on one of two possible calculations: the cost of acquiring the land and its improvements or its municipal or market value as based on a prescribed formula. This calculation is detailed and requires knowledge of the application.

WHY IS THIS OF BENEFIT TO THE LANDOWNER?

In most cases, taxpayers are not entitled to large deductions based on the value of land. To be able to deduct part of the value of the land they declare from their taxable income, in any one year of assessment, is often hugely beneficial to individual taxpayers as the reduction in tax owing allows for increased cash flow.

For further information please contact:

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