

A NEW DAWN

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BUDGET

2019

2019 BUDGET

SAICA TAX SUMMARY AND COMMENT

IntegrITAX

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1. INTRODUCTION

The following is a summary of and some comment on the tax related budget proposals announced by the Minister of Finance on 20 February 2019.

2. BUDGET OVERVIEW

For various reasons, revenue collection in relation to estimates continues to decline. As per the 2018/19 Medium Term Budget Policy Statement (MTBPS), the initial revenue shortfall for 2018/19 was estimated at R27.4 billion as compared to the 2018 Budget estimate.

The revenue collections **shortfall** has now increased to **R42.8 billion** compared to the 2018 Budget estimate – which represents an **increase in the expected shortfall between October and now, by R15.4 billion**. Total tax collections is estimated at around R1.3 trillion for the year.

Whilst SAICA did predict an increase in the shortfall compared to that estimated in October 2018, this increase has even exceeded our earlier estimates and is of concern.

National Treasury has attributed the shortfall to the following factors:

- **Economic weakness** thereby resulting in lower than estimated corporate and personal income tax collections; and
- **Poor tax administration** that has been in the spotlight of late.

Interesting to note is that approximately **half of the additional R15.4 billion shortfall** has been attributed to the **higher than expected VAT refunds**, a symptom of the poor tax administration! Taxpayers and tax practitioners will no doubt feel vindicated for the complaints that they have consistently raised in this regard over the last few years and will hopefully be encouraged by the fact that this matter, at least, is being addressed with the South African Revenue Service (SARS) focusing on getting these refunds paid with refund payments accelerating since October last year. The Minister of Finance notes the positive side of this being the fact that the refunds paid out puts more money back into the economy.

The ongoing revenue shortfalls as well as additional expenditure, like the free higher education plan, resulted in significant tax increases over the last few years. We have seen increases in personal income tax rates, increases in the VAT rate as well as increases in dividends tax, capital gains tax (CGT), donations tax and estate duty (over certain limits). Despite these measures raising an additional R99 billion in collective revenue over the last four years, tax revenue as a proportion of GDP has continued to decline. In order to limit the negative impact on economic growth, a decision was taken not to increase tax rates in any category. Instead, **collections will be increased by not adjusting for inflation**. It is felt that improved efficiency of tax administration will go a long way to improving collections overall.

The 2019/20 tax proposals are designed to address at least part of the revenue collections shortfall and are expected to result in an overall increase in collections which will raise an

additional R15 billion in revenue. Refer to Chapter 4 (page 35) of the 2019 Budget Review documents for further details.

Although, as expected, no major changes are planned, the more significant tax proposals are noted below:

- Whilst **personal income tax** rates remain unadjusted since the prior year, the relevant tax brackets have not been adjusted to take into account inflation. It is estimated that this will contribute the biggest chunk of the additional revenue as it is estimated to result in an increase in collections by **R12.8 billion**.
- No adjustments will be made to **medical tax credits**. This is expected to bring in additional revenue of **R1 billion**
- An overall **29c/litre increase in fuel levies** (for petrol, 30c/litre for diesel), made up of a 15c/litre increase in the general fuel levy and 5c/litre on the road accident fund levy and 9c/litre from the new carbon tax which becomes effective this year. This is expected to contribute an **additional R1.3 billion in revenue**. This is made up of the additional revenue from **carbon tax on fuel of R1.8 billion**, with a **deficit in the general fuel levy and RAF levy of R500 million due to below-inflation increases** in this regard.
- The increase in 'sin taxes' are expected to bring in an additional **R1 billion** in revenue
- When the VAT rate increased by 1%, with effect from 1 April 2018, plans were noted in the prior year to reduce the effect of this increase on the poor. White bread flour, cake flour and sanitary pads will be zero rated for VAT purposes from 1 April 2019

Concerningly, the Minister noted that the increase in the RAF levy is not nearly enough to match the Funds R215 billion liability and the Department of Transport has been tasked with resubmitting the Road Accident Benefit Scheme Bill for Parliament's urgent consideration in efforts to help stabilize the fuel prices. It has always been SAICA's view that instead of increasing levies to meet the needs of the RAF, measures need to be taken to curb the amount of claims due to poor driver education and poor enforcement of traffic laws which ultimately lead to increased accidents and increased claims.

3. FOCUS ON IMPROVING TAX ADMINISTRATION

As noted in Chapter 4 of the Budget Review, problems with tax administration, as highlighted in the findings of the Nugent Commission, partly explain poor revenue-collection performance. We agree with the premise that improving collections hinges on restoring the efficiency of SARS. SAICA has always maintained that such improvements may be more effective in raising revenue than further substantial tax increases and will go some way to improving taxpayer behaviour. Concerns were raised in the prior year regarding poor taxpayer morality and some of this was attributed to poor administration and the subsequent taxpayer frustration.

The SARS Inquiry was initiated by the President not so long ago and certain recommendations have already been implemented.

The Commission's main finding is that the failings of SARS stem from a "massive failure of governance and integrity" after the appointment of the entity's previous Commissioner in 2014. To this end, in addition to the plans noted below, the Minister of Finance intends to introduce legislative amendments giving effect to a number of the Commission's governance recommendations. We are looking forward to these being included in this year's draft tax legislation. Recommendations relating to the creation of an inspector-general for tax administration will also be considered in a discussion document.

As noted, there are specific, short-term, plans that have been laid out to address the poor tax administration and work at fixing SARS for the benefit of all South Africans. The following recommendations by Judge Nugent and his Panel were specifically highlighted by the Minister:

- A new Commissioner will be appointed in the coming weeks.
- A new Illicit Economy Unit launched in August 2018 will fight the trade in illicit cigarettes and tobacco.
- The large business unit was a major source of tax collection, and its skill was renowned. This unit will be reintroduced and will be formally launched in early April 2019. SARS have already taken steps in this direction.
- SARS is strengthening its IT team and its IT systems and this is crucial for tax collection efforts.
- Information sharing agreements with allies will help fight cross-border tax evasion schemes.

In addition to these measures, Judge Davis will assess the tax gap, which is the difference between revenue collected and what ought to be collected. Plans will also be in place to review the proliferation of duty free shops inside South Africa.

However, as the Minister has noted, we need to work collectively to address the issues that we are faced with. Whilst the tax administration issues must be addressed, the ordinary taxpayer must be compliant – i.e. the taxpayer must pay his/her 'fair share'. To quote the Minister, 'Paying your taxes is the right thing to do'. We hope that taxpayers will take this to heart and do the right thing.

4. INDIVIDUALS

Personal income tax (PIT)

PIT contributes R497 billion of the total tax collections of R1.302 trillion - i.e. 38% of total tax revenue.

As was the case in the prior year despite increases in tax rates in prior years, overall PIT collection is less than budgeted, in this case by an estimated R8.3 billion. Some of the factors that are thought to contribute to this are lower bonus payments, lower increases and job losses thereby resulting in reduced employees' taxes withheld.

As noted earlier, a decision was taken to retain existing PIT rates. There was a minimal increase in the primary tax-free threshold from R78 150 to R79 000 for taxpayers under 65 years.

Whilst there was some relief for bracket creep in the prior year, in respect of lower income earners, this year, there were no adjustments to tax brackets for inflation, in order to increase collections by an estimated R12.8 billion.

Exemption for interest and dividend income

The annual exemption on interest earned by individuals younger than 65 years (R23 800) for individuals 65 years and older (R34 500) remains the same.

This is in line with the National Treasury policy to encourage the use of Tax Free Investment and to phase out the interest exemption.

Interest earned by non-residents who are physically absent from South Africa for at least 181 days during the 12-month period before the interest accrues and the debt from which the interest arises is not effectively connected to a fixed place of business in South Africa, is exempt.

Medical tax credits

The 2018 Budget Review announced that medical tax credits would be increased below the rate of inflation over a three-year period to help fund the rollout of national health insurance. To generate additional revenue of R1 billion in 2019/20, there will be no change in the monthly medical tax **credit for medical scheme contributions**.

Retirement reforms

Exemption relating to annuities from a provident or provident preservation fund

Once a member of a retirement fund retires and receives an annuity as a retirement benefit, any contributions to the retirement fund that did not qualify for a deduction when determining the member's taxable income are tax-exempt. This exemption currently does not apply to annuities received from a provident or provident preservation fund. To encourage annuitisation of these funds, it is proposed that this exemption be extended to provident and provident preservation fund members who receive annuities. It is proposed that the exemption apply in respect of contributions made after 1 March 2016.

Tax treatment of bulk payments to former members of closed funds

Retirement funds are permitted to make certain extraordinary payments to their members' tax free, provided that these payments are approved by the Minister of Finance in a Government Gazette notice. In 2009, the Minister issued a notice in Government Gazette No. 32005 approving retirement funds to make tax-free payments of "secret profits", "surplus calculations" and "unclaimed benefits". When the notice was issued, some deregistered retirement funds had already paid fund administrators, but the amounts were not yet paid to the affected members and/or beneficiaries. It is proposed that these payments currently held by fund administrators on behalf of deregistered retirement funds qualify as tax-free payments, as long as they meet the relevant criteria.

Reviewing the tax treatment of surviving spouse pensions

Members of a pension fund can deduct contributions to their retirement funds from their taxable income when determining their monthly employees' tax and annual income tax payable. Upon the death of a member, the surviving spouse may be entitled to receive a monthly spousal pension from the retirement fund. These spousal pension payments are subject to PAYE by the retirement fund. If the surviving spouse also receives a salary or other income, it is added to the spousal pension to determine his or her correct tax liability on assessment. The result of the assessment is often that the surviving spouse has a tax liability that exceeds the employees' tax withheld by the employer and retirement funds during the year of assessment, since the aggregation of income pushes them into a higher tax bracket. In most cases, the surviving spouse does not foresee the additional tax liability and does not save money to settle the liability. This creates a cash flow burden and a tax debt for the surviving spouse.

It is proposed that:

- Surviving spouses are provided with effective communication relating to tax and financial issues
- The monthly spousal pension be subject to PAYE withholding at a specified flat rate
- Tax rebates should not be taken into account in the calculation of spousal pensions
- Any PAYE excessively withheld as a result of this proposal will be refunded upon assessment

Reviewing the non-resident employer registration requirement

Every employer who pays remuneration - as defined in the Fourth Schedule to the Income Tax Act, 1962 (the ITA), is required to register with SARS and submit monthly and bi-annual employees' tax returns (EMP201). If the employer is non-SA resident, this requirement applies regardless of whether the employer is obliged to withhold PAYE or not. It is proposed that this requirement be reviewed to determine whether an exclusion from registration is warranted for this type of employer. This will no doubt be welcomed.

Foreign employment tax exemption

Refining the foreign employment income tax exemption for South African residents

From 1 March 2020, South African residents who spend more than 183 days in employment outside the country will be subject to South African taxation on any foreign employment income that exceeds R1 million. SAICA have made a number of submissions to National Treasury regarding the practical implications and challenges in this regard and it is heartening to see that some of the concerns are being addressed.

To prevent monthly withholding of income tax both in South Africa and the host country, it is now proposed that South African employers be allowed to reduce their monthly local PAYE withholding by the amount of foreign taxes withheld on the employment income. Before implementation, a workshop will be held to consult taxpayers on their administrative concerns. Any resulting amendments will be processed during the 2019 legislative cycle. Members must look out for the tax amendment bills and provide comments when called upon, in order to ensure that your concerns are voiced.

Other proposals affecting individuals

Extending the scope of amounts constituting variable remuneration

In 2013, section 7B was introduced in the ITA to match the timing between the accrual and payment dates of some forms of variable cash remuneration. Section 7B deems certain amounts to accrue when they are actually paid. However, because the scope of this section is limited, it is proposed that it be extended to include certain qualifying payments.

Updating the Employment Tax Incentive Act to align with National Minimum Wage Act

The wage-regulating measures in the Employment Tax Incentive Act (2013) will be revised in line with the recently promulgated National Minimum Wage Act (2018).

Health promotion levy

Also known as ‘sugar tax’, this levy was implemented from 1 April 2018. It applies to beverages with more than 4 grams of sugar content per 100ml. A tax of 2.1 cents per gram is applied for every gram of sugar beyond the first 4 grams, which are levy-free. To avoid an erosion in the value of the tax due to inflation, the levy rate will increase to 2.21 cents per gram in excess of 4 grams of sugar per 100ml from 1 April 2019.

5. COMPANIES

Corporate tax rates

No change is proposed to corporate tax rates.

General corporate tax policy proposals are noted below.

Anti-dividend stripping provisions

Addressing abusive arrangements aimed at avoiding the anti-dividend stripping provisions

In 2017, the rules governing share buy-backs and dividend stripping were changed to prevent taxpayers from avoiding tax on share disposals by companies. These rules were adjusted again in 2018, to prevent harm to legitimate corporate reorganisations. However, some taxpayers are apparently undermining the adjusted rules.

These arrangements involve the target company distributing a substantial dividend to its current company shareholder and subsequently issuing shares to a third party. As a result, the value of the current company shareholder’s holding in the shares of the target company is diluted and these shares are not immediately disposed of. This differs from the previous avoidance arrangements that involved disposing of the same shares in return for a tax-exempt dividend. To curb this new form of abuse, it is proposed that the rules governing share buy-backs and dividend stripping be amended. **These amendments will take effect on 20 February 2019.**

Correcting anomalies arising from applying value-shifting rules

Clarifying the effect of deferred tax liability on the market value of issued shares

Current anti-avoidance provisions target value-shifting through asset-for-share transactions that apply when the market value of the assets acquired differs from the market value of the shares issued in exchange. However, the current provisions do not include the effect of a deferred tax liability (related to the acquired asset) on the market value of the shares. It is proposed that the ITA be amended to clarify that any difference in value due to the deferred tax liability should not be subject to the relevant provisions.

Clarifying the effect of a capital gain from the operation of the anti-avoidance rules on the base cost of shares acquired in exchange for assets

In 2012, rules were introduced to prevent the transfer of high-value assets to a company in return for shares issued by the company with a different value. These rules trigger a capital gain or a deemed *in specie* dividend event for one of the parties. Other rules state that a company issuing shares in exchange for assets is deemed to have acquired the assets for expenditure equal to the market value of the shares.

However, this deemed acquisition value does not include any capital gains previously triggered by the anti-value shifting rules, thereby resulting in possible double taxation when the company disposes of the assets later. It is proposed that the rules be amended to prevent this.

Special interest deduction for debt-funded share acquisitions

Special interest deduction following company reorganisations after an acquisition

Current provisions allow a special interest deduction relating to debt-financed acquisitions of controlling shares in an operating company, but require that the acquirer of those shares assess whether they still qualify for the deduction under certain circumstances. It is proposed that this requirement be reconsidered if the acquirer remains a (direct or indirect) controlling shareholder of the specific entity after certain reorganisation transactions.

Anti-avoidance rules targeting shareholders claiming the special interest deduction for start-up companies

Some taxpayers are claiming the special interest deduction for debt-funded capitalisation of newly established companies. This deduction is intended for debt-funded acquisitions of a controlling interest in companies that already generate income. It is proposed that changes be made to ensure that taxpayers do not claim the deduction for unintended purposes.

Corporate reorganisation rules

Clarifying corporate reorganisation rules relating to exchange items and interest-bearing instruments

The current corporate reorganisation rules allow the tax-neutral transfer of assets between companies that are part of the same group. However, the provisions do not specify how exchange

items and interest bearing assets should be treated during corporate restructuring. It is proposed that the legislation clarify that the transfer of these items and assets is excluded from the rules. This is on the basis that unrealised values on the date of transfer should be triggered in the transferor companies.

Refining the interaction between the anti-avoidance provisions for intra-group transactions

The corporate rollover provisions regarding intra-group transactions contain multiple anti-avoidance measures. However, it is not always clear how these measures interact with each other. In particular, separate measures often cause punitive tax consequences that are not taken into account should another measure subsequently apply, which results in potential double taxation. It is proposed that these provisions be refined by clarifying how the measures interact.

Harmonising the degrouping charge provisions for intra-group transactions and controlled foreign companies

If a company leaves a group but retains an asset acquired within the last six years through the relief provided in the corporate reorganisation rules, a degrouping charge applies. This charge is intended to revoke the tax-neutral status of the original transaction and is designed to deem a capital gain to arise in the year of assessment in which the degrouping takes place. However, provisions relating to controlled foreign companies in sections 9D and 9H of the ITA determine that the year of assessment in which the degrouping takes place starts and ends on the same day. It is proposed that changes be made to harmonise these provisions across the corporate reorganisation and controlled foreign company rules.

Amending rules to allow company deregistration by operation of law

In some corporate reorganisation rules, to qualify for the tax-neutral transfer of assets, one or more of the companies involved should cease to exist after the transaction. The legislation lists steps that show a taxpayer meeting this requirement. However, the steps do not take into account deregistration by operation of law. It is proposed that the rules be amended to include this option.

Financial Sector

Tax treatment of amounts received by portfolios of collective investment schemes

In 2018, amendments were proposed in the Taxation Laws Amendment Bill to tax the profits of certain collective investment schemes as revenue instead of capital. After reviewing the public comments on this draft, government decided that more time is needed for it to work with industry to find solutions that will not negatively affect the relevant groups. This study is proposed for the 2019 legislative cycle.

Reviewing the Real Estate Investment Trust (REIT) tax regime

Tax treatment of unlisted REITs

The implementation of the Financial Sector Regulation Act, 2017 and the establishment of the Financial Sector Conduct Authority allows regulation of unlisted REITs. It is proposed that

government consider the regulation and tax treatment of unlisted REITs that are widely held or held by institutional investors, in line with the announcement in the 2013 *Budget Review*.

Clarifying inconsistencies in the current REIT tax regime

The current REIT tax regime contains various inconsistencies, including the definition of rental income as applied to foreign exchange differences and the interaction between the REIT tax regime and corporate reorganisation rules. It is proposed that the legislation be amended to clarify these inconsistencies. The efficacy of the current REIT regime will be reviewed.

Refining taxation of risk policy funds

From 2016, risk policy funds were introduced to tax long-term insurers. However, if a policy allocated to a risk policy fund is paying benefits in the form of an annuity, the transfer of assets between that fund and the untaxed policyholder fund of the insurer creates an administrative burden. It is proposed that the legislation be amended to address this.

Aligning income tax provisions with the Insurance Act

The Insurance Act, 2017, which came into effect during 2018, replaced provisions of the Long-Term Insurance Act (1998) and the Short-Term Insurance Act (1998). It is proposed that definitions in the ITA be revised in line with the new Insurance Act.

Incentives

Special economic zone (SEZ) regime

Reviewing anomalous provisions

As taxation provisions relating to special economic zones (SEZs) preceded implementation of the programme, there is now some misalignment between the provisions and the stated objectives of the programme. Government proposes to review these provisions to clarify the policy intent and address unintended misalignment with the Special Economic Zone Act, 2016.

Reviewing the anti-avoidance measures relating to transactions between a company and connected persons

Qualifying companies deriving taxable income from within the SEZ regime benefit from a reduced corporate tax rate of 15%. To counter potential profit-shifting, a qualifying company may not claim this benefit if more than 20% of its deductible expenditure or its income arises from transactions with connected persons. This anti-avoidance measure may harm legitimate business transactions as some business models in SEZs were accepted before the anti-avoidance measure was introduced. It is proposed that the measure be reviewed and clarified to meet its original intent.

Venture capital company tax

In 2018, changes were made to the venture capital company tax regime to prevent abuse of various aspects of the system. It has come to government's attention that some taxpayers are

trying to benefit from unintended, excessive tax deductions. It is proposed that these rules be reviewed to prevent this abuse.

Energy-efficiency savings tax initiative

The energy-efficiency savings tax incentive was introduced in November 2013 to offset the tax burden on industry from the introduction of the carbon tax. The incentive is due to expire on 31 December 2019. It provides companies with a tax deduction for energy-efficient investments, contributing to environmental goals while reducing energy costs. To encourage additional investment in energy efficiency, government proposes to extend the incentive to 31 December 2022. During 2019, the design and administration of the incentive will be reviewed, with a view to improving its ease of use, effectiveness and economic impact.

Employment tax incentive

In 2018, the employment tax incentive was extended by 10 years. In addition to this, the eligible income bands will be adjusted upwards to partially cater for inflation. From 1 March 2019, employers will be able to claim the maximum value of R1 000 per month for employees earning up to R4 500 monthly, up from R4 000 previously. The incentive value will taper to zero at the maximum monthly income of R6 500.

6. INTERNATIONAL TAX

Controlled foreign company (CFC) rules

Comparable tax exemption

As noted in the 2018 Budget, the global trend towards reducing corporate tax rates affects the current CFC comparable tax exemption. It is proposed that the exemption threshold be reduced from the current percentage, taking into account the sustainability of the tax base.

Circumvention of anti-diversionary rules

The rules for controlled foreign companies aim to prevent South African taxpayers from shifting income that should be taxed in South Africa to an offshore jurisdiction with a beneficial taxation regime. These rules are inadequate for multi-layered transactions. Government has identified schemes where CFCs (that are part of a group) are interposed in the supply chain between South African connected parties and independent non-resident customers or suppliers. It is proposed that additional measures be introduced to prevent this circumvention.

Definition of permanent establishment

The current definition of permanent establishment in the ITA is based on the definition developed by the Organisation for Economic Co-operation and Development (OECD). In November 2017, the OECD expanded this definition. When South Africa signed the OECD multilateral convention, it did not expand the permanent establishment definition. As a result, South African tax treaties use the narrow definition of permanent establishment. However, the definition in the ITA uses the expanded OECD definition. It is proposed that the permanent establishment definition in the ITA be reviewed to determine whether a limitation is warranted.

Revising tax relief for blocked foreign funds

The ITA provides tax relief for a South African tax resident when funds are blocked in a foreign country due to currency restrictions or foreign legal limitations. The resident can claim foreign tax credits for foreign taxes paid on foreign income. These credits are lost if the blocked funds are released more than seven years from the tax year in which the foreign income accrued. It is proposed that this seven year limitation be reconsidered.

Amendments to the definition of “domestic treasury management company”

The domestic treasury management company regime allows qualifying companies to expand into other African countries. Within this regime, a company is so defined if it is incorporated in South Africa, deemed to be incorporated in South Africa, or effectively managed from South Africa and is not subject to exchange control restrictions. In 2017, the ITA was amended to remove the incorporation requirement. However, the South African Reserve Bank (SARB) definition in Circular 5/2013 still includes this requirement. As a result, the 2017 changes are not aligned with the SARB requirements. It is proposed that the definition of “domestic treasury management company” is changed in the ITA to reintroduce the incorporation requirement.

Criteria for recognised exchanges

The ITA defines a recognised exchange as a stock exchange licensed under the Financial Markets Act, 2012 or a similar exchange in another country that has been recognised by the Minister of Finance in the Government Gazette. Since 2001, the criteria used to recognise foreign exchanges have not been revised. It is proposed that a review of these criteria be considered.

“Affected transaction” definition in the arm’s length transfer pricing rules

The “affected transaction” definition relating to arm’s length transfer pricing rules in the ITA applies to transactions between connected persons as defined in the Act. However, in the OECD Model Tax Convention, the transfer pricing rules apply to transactions between associated enterprises.

It is proposed that the scope of these rules be reviewed to determine whether the definition in the act should be changed in line with the OECD definition.

Clarifying the interaction of CGT and foreign exchange transaction rules

Assets disposed of or acquired in foreign currency are subject to tax under both the foreign exchange transaction rules and CGT rules. To prevent double taxation of assets, foreign debt is currently excluded from the specific CGT rules. However, it is unclear how the general rules apply if foreign bonds are disposed at a capital gain or loss. It is proposed that these rules be reviewed to prevent potential double taxation.

7. ENVIRONMENTAL TAXES

Carbon Tax

The Carbon Tax will be effective from 1 June 2019. Initially this was proposed to take effect from 1 January 2019.

The carbon tax gives effect to the polluter-pays principle, prices greenhouse gas emissions and aims to ensure that businesses and households take these costs into account in their production, consumption and investment decisions. It is government's view that the tax will assist in reducing emissions and ensure that South Africa meets its commitments under the 2015 Paris Climate Agreement. It will be reviewed after three years.

SARS and the Department of Environmental Affairs will jointly administer the tax. To ensure a smooth administration, SARS will publish draft rules for consultation by March 2019. These rules will complement three sets of regulations:

- A draft Regulation on the Carbon Offsets was published in June 2016. A revised regulation, taking public comments into account, was published for further consultation in November 2018. A consultation workshop will be held in March 2019 to finalise the regulation.
- Trade exposure regulations, which provide for higher allowances based on trade intensity, will be published before the end of February 2019, following extensive consultations on methodology.
- Benchmarking regulations will be published in March 2019 for further consultation. A review of the proposed benchmarks will be undertaken in consultation with stakeholders under the Partnership for Market Readiness.

Repeal of tax exemption for certified emissions reduction

South Africa is committed to tackling climate change and subscribes to international agreements to reduce greenhouse gas emissions. In 2009, government introduced a tax exemption for income generated from the sale of certified emission-reduction credits. After the introduction of the carbon tax, emission-reduction credits could be used to reduce carbon tax liabilities. To avoid a double-benefit scenario, where the same emission reduction leads to both an income tax exemption and reduced carbon tax liabilities, the tax exemption will be repealed from 1 June 2019.

Tyre levy

The tyre levy was introduced to reduce waste, while encouraging reuse, recycling and recovery, and discouraging disposal into landfills.

The tyre levy is effective since 1 February 2017 and remains the same at a rate of R2.30/kg per tyre.

Incandescent globe tax

An environmental levy on incandescent light bulbs was introduced in 2009 to encourage the use of more efficient compact fluorescent bulbs and reduce electricity demand.

This levy remains R8 per globe.

Plastic bag levy

The plastic bag levy to counter the dispersion of plastic bags that end up as wind-blown litter or in waste facilities. The levy was introduced in 2003 and has not generally been considered

effective in changing consumer behavior. The levy was increased to 12 cents a bag, effective from 1 April 2018. It is unclear as to whether this has affected taxpayer behavior.

Motor vehicle emissions tax

The motor vehicle emissions tax aims to encourage consumers to use more fuel-efficient, low-carbon-emitting vehicles, and manufacturers to improve fuel efficiency.

The rates remain at R110 for every gram of emissions/km above 120 gCO₂/km for passenger vehicles and R150 for every gram of emissions/km in excess of 175 gCO₂/km for double cab vehicles.

8. INDIRECT TAXES

Value-added tax (VAT)

Following the prior year increase in the VAT rate by 1%, with effect from 1 April 2018, additional food items will be zero-rated to counteract the effect of the rate increase (to an extent) on the lower income households. White bread flour, cake flour and sanitary pads will be zero rated for VAT purposes from 1 April 2019.

Other, specific proposals are dealt with below.

Reviewing the definition of “group of companies” for electronic services regulations

From 1 April 2019, regulations prescribing electronic services will expand the scope of electronic services required to pay VAT in South Africa. These regulations exclude electronic services supplied between companies in a “group of companies”, if a non-resident company supplies such services to a domestic company within the same group. The regulations define “group of companies” to include two or more companies that hold shares in at least one other company such that 100% of equity shares in each controlled company are directly held by the controlling company in the group. However, this 100% shareholding requirement may exclude companies because of employee incentives or other empowerment programmes. It is proposed that the definition be changed to reflect this understanding. The change will come into effect on 1 April 2019.

Clarifying financial services to include the transfer of long-term reinsurance policy

The VAT Act, 1991 makes provision for the activities of providing or transferring ownership of a long-term insurance policy, or providing reinsurance relating to any such policy, to be deemed to be financial services. However, that Act does not specify how to treat the transfer of a long-term reinsurance policy. It is proposed that the VAT Act be amended to clarify this treatment.

Aligning provisions of the VAT Act with the Insurance Act

It is proposed that certain definitions referenced in the VAT Act are revised to align with the Insurance Act.

Refining the VAT corporate reorganisation rules

In line with the ITA, the VAT Act provides relief for companies in the same group by treating the supplier and the recipient of goods or services as the same person during corporate reorganisation transactions. If these transactions take place in terms of sections 42 or 45 of the ITA, VAT relief is only permitted if the transfer relates to a going concern. However, transfers of fixed property under these sections may not always involve a going concern, especially in sale and lease-back situations. It is proposed that the VAT Act be amended to clarify treatment in these instances.

VAT treatment of rental stock paid in terms of the National Housing Programme

In the VAT Act, a vendor (such as a municipality) is deemed to supply services to any public authority (for example, the Department of Human Settlements) if the vendor is paid or makes a payment in line with the National Housing Programme outlined in the Housing Act (1997). However, it is difficult to interpret the VAT treatment of payments relating to rental stock. It is proposed that the VAT Act be amended to clarify the treatment of rental stock in these instances.

Reviewing section 72 of the VAT Act

Section 72 of the VAT Act gives SARS discretionary powers to apply provisions relating to the calculation or payment of tax or the application of any provision, exemption or zero rate, in cases where “difficulties, anomalies or incongruities have arisen” due to the business conduct of a particular vendor or vendors. It is proposed that a constitutional review of section 72 of the VAT Act be conducted given the challenges that arose as to its application in respect of mandatory wording of the VAT Act.

Refining the VAT treatment of foreign donor-funded projects

The VAT Act provides relief for foreign donor-funded projects if they meet specified criteria. However, the criteria and the type of projects that qualify are unclear, especially if the project is sub-contracted to different contractors. It is proposed that these provisions be amended to clarify the policy intention.

Customs and excise

SARS publication of the excise rewrite discussion document

SARS has compiled an excise rewrite discussion document that will be published for public comment as part of redrafting the excise duty legislative framework. The paper outlines the internationally recognised requirements of an excise duty administration. The current duty-at-source system is reviewed to identify possible reforms. A selected country comparison outlines reform options and the conclusion reflects the proposals that SARS supports. After comments are received, SARS will engage representative industry bodies and responsible government departments on reform proposals that require refinement.

Reviewing the tax treatment of duty-free shops

Concerns regarding duty-free shops operating within the country have been noted. The legislative framework governing duty-free shops will be reviewed to minimise any abuse and risks that may be occurring. SARS will investigate any alleged abuse and take action if required.

Excluding bulk wine movements from the compulsory tariff determination requirement

Manufacturers and importers of alcoholic beverages must obtain compulsory tariff determinations before these beverages can be removed from the excise manufacturing warehouse or cleared for home consumption upon the first importation. Bulk wine that is removed from one excise manufacturing warehouse to another is used as an input for further manufacturing and is not the final alcoholic beverage that should be subject to the tariff determination requirement. These bulk wine removals between warehouses will therefore be exempted from the obligation.

Extending the fiscal marking, tracking and tracing intervention to include excise and levy goods

The 2018 Budget strengthened the fiscal marking, tracking and tracing intervention for tobacco products to comply with South Africa's obligations under the Illicit Trade Protocol of the World Health Organisation Framework Convention on Tobacco Control. Other excise and levy goods pose similar illicit trade risks causing significant revenue losses. The intervention could also address these concerns in a cost-effective manner. Over time, the intervention will be expanded to include other excise and levy products where feasible.

Progress with the review of the diesel refund administration

During August 2018, the National Treasury and SARS jointly held extensive consultations on the published discussion paper, "Review of the Diesel Fuel Tax Refund System", through a series of industry-specific workshops. Discussions focused on defining primary production activities for different sectors, linked to the equipment and vehicles typically used in each sector; a separate diesel refund administration system; fishing and mining authorisations; outsourcing, contraction and partnerships; logbooks and recordkeeping; registration and user profiling; and special dispensations for small-scale users.

Stakeholders provided more written inputs based on the workshops for their respective sectors by November 2018. These intensive consultations demonstrated the need for developing industry-specific provisions for each sector for a focused and effective diesel refund administration system. The proposed system will shift the basis from eligible users to eligible activities. The design of the new standalone diesel refund administration will be outlined in draft rules and notes that will be developed and published for public comment during the course of the year. Certain industries and representative bodies may be further engaged during this drafting process if additional consultations are needed to inform the new design.

Sharing client-specific information with relevant departments for carbon tax purposes

Implementing the carbon tax requires SARS, the Department of Environmental Affairs and the Department of Energy to share client-specific information. Provisions in the Customs and Excise Act that permit information sharing with strict confidentiality will be enhanced for the purposes of

carbon taxation and the associated regulation of greenhouse gas emissions and energy efficiency.

Ad valorem proposals to consistently apply and extend current items

Expanding the computer category

Ad valorem taxes apply to televisions and monitors with screens larger than 45 cm, irrespective of their end use. “Smart” technology items are harder to distinguish and therefore difficult to categorise. To prevent these items from escaping *ad valorem* tax, it is proposed that the computer category be expanded to include any apparatus with a screen larger than 45 cm.

Expanding the gaming category

Ad valorem taxes on gaming consoles are currently limited to consoles that use a television screen. However, games are now displayed on many different items. It is proposed that the provisions be amended to include any external screen or surface on which gaming console images can be reproduced.

Duty rebates and refunds in circumstances of vis major

Government will review provisions relating to duty rebates and refunds in circumstances of *vis major* (an unpreventable incident caused by a superior external force) in the Customs and Excise Act and its schedules to align them with international best practice.

Curbing smuggling and illicit financial flows

Government will consider amendments enabling the confidential disclosure of names and associated reference numbers of customs clients, as well as other information necessary to verify legitimate financial flows. The proposed amendment will align the Customs and Excise Act with the similar approach adopted in the Tax Administration Act, 2011.

9. TAX ADMINISTRATION/OTHER

Model mandatory disclosure rules and non-compliance penalties

It has emerged internationally that offshore structures and arrangements are being designed in an attempt to circumvent financial account reporting under the OECD’s Common Reporting Standard. The standard is used for the exchange of information between countries. It is proposed that the OECD’s model mandatory disclosure rules be implemented in South Africa to identify and counter such structures and arrangements and that similar penalties to those currently in force for non-compliance with the reportable arrangement legislation be imposed for non-compliance with the rules.

Tax compliance certificates

The legislative provisions relating to tax compliance certificates will be updated to include recent system requirements.

10. TAX GUIDE (including tables)

Individuals and trusts

Income tax rates for natural persons and special trusts Year of assessment ending 28 February 2020	
Taxable income (R)	Taxable rates
0 – 195 850	18% of each R1
195 851 – 305 850	35 253 + 26% of the amount above 195 850
305 851 – 423 300	63 853 + 31% of the amount above 305 850
423 301 – 555 600	100 263 + 36% of the amount above 423 300
555 601 – 708 310	147 891 + 39% of the amount above 555 600
708 311 – 1 500 000	207 448 + 41% of the amount above 708 310
1 500 001 and above	532 041 + 45% of the amount above 1 500 000

Natural persons

Tax thresholds		
	2019/20	2018/19
	R	R
Below 65 years of age	79 000	78 150
Aged 65 and below 75	122 300	121 000
Aged 75 and over	136 750	135 300

Tax rebates		
	2018/19	2018/19
	R	R
Primary – all natural persons	14 220	14 067
Secondary – persons aged 65 and below 75	7 794	7 713
Secondary – persons aged 75 above	2 601	2 574

Trusts

The tax rate on trusts (other than special trusts which are taxed at rates applicable to individuals) is 45%.

Retirement fund lump sum withdrawal benefits

Taxable income	Rate of tax
R	R
0 – 25 000	0% of taxable income
25 001 - 660 000	18% of taxable income above 25 000
660 001 - 990 000	114 300 + 27% of taxable income above 660 000
990 001 and above	203 400 + 36% of taxable income above 990 000

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 (lump sum X) is equal to –

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

Retirement fund lump sum benefits or severance benefits

Taxable income	Rate of tax
R	R
0 – 500 000	0% of taxable income
500 001 – 700 000	18% of taxable income above 500 000
700 001 – 1 050 000	36 000 + 27% of taxable income above 700 000
1 050 001 and above	130 500 + 36% of taxable income above 1 050 000

Retirement fund lump sum benefits consist of 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 arrangement 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 (lump sum or severance benefit Y) is equal to –

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

Dividends

Effective from 22 February 2017, the dividend withholding tax rate increased to 20% (previously 15%), in respect of dividends paid (as defined) on or after 22 February 2017. Government

increased the dividend withholding tax rate to reduce the difference between the top marginal personal income tax rate and the combined statutory tax rate.

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.

Withholding tax on immovable property sales

The rate of withholding tax payable on disposal of immovable property by **non-residents** remains unchanged.

The rate for individuals is 7.5%. Whilst the rate for companies is 10% and a rate of 15% applies to trusts.

Exemptions

Interest

Interest from a South African source earned by any natural person under 65 years of age, up to R23 800 per annum, and persons 65 and older, up to R34 500 per annum, is exempt from taxation.

Interest is exempt where earned by non-residents who are physically absent from South Africa for at least 181 days during the 12 month period before the interest accrues or the debt from which the interest arises is not effectively connected to a fixed place of business in South Africa of that non-resident.

Deductions

Pension, provident and retirement annuity fund contributions

Amounts contributed to pension, provident and retirement annuity funds during a year of assessment are deductible by members of those funds. 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 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 next 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 against retirement annuities.

Donations

Deductions in respect of donations to certain public benefit organisations are limited to 10% of taxable income (excluding retirement fund lump sums and severance benefits). The amount of donations exceeding 10% of the taxable income is treated as a donation to qualifying public benefit organisations in the following tax year.

Medical and disability expenses

In determining tax payable, individuals are allowed to deduct:

- monthly contributions to medical schemes (a tax rebate referred to as a medical scheme fees tax credit) by the individual who paid the contributions up to R310 for each of the first two persons covered by those medical schemes, and R209 for each additional dependant; and
- in the case of
 - an individual who is 65 and older, or if an individual, his or her spouse, or his or her child is a person with a disability, 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 3 times the medical scheme fees tax credits for the tax year; or
 - any other individual, 25% of an amount equal to 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 4 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 allowances and advances

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, an amount of R435 (previously R416) per day is deemed to have been expended;
- incidental costs only, an amount of R134 (previously R128) for each day which falls within the period is deemed to have been expended.

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. Details of these amounts are published on the SARS website under Legal Counsel / Secondary Legislation / Income Tax Notices / 2019.

Travelling allowance

Rates per kilometer which may be used in determining the allowable deduction for business travel, where no records of actual costs are kept are determined by using the following table.

Value of the vehicle (including VAT)	Fixed cost	Fuel cost	Maintenance cost
R	R per annum	c per km	c per km
0 – 85 000	28 352	95.7	34.4
85 001 – 170 000	50 631	106.8	43.1
170 001 – 255 000	72 983	116.0	47.5
255 001 – 340 000	92 683	124.8	51.9
340 001 – 425 000	112 443	133.5	60.9
425 001 – 510 000	133 147	153.2	71.6
510 001 – 595 000	153 850	158.4	88.9
Exceeding 595 000	153 850	158.4	88.9

Note:

- 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 and no maintenance cost may be claimed if the employee has not borne the full cost of maintaining the vehicle (e.g. if the vehicle is the subject of 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 costs which may be claimed against a travelling allowance.

Alternative simplified method:

- Where an 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 of 361 cents per kilometer (i.e. no change in the 2018/19 rate of 361 cents), 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.

Other deductions

Other than the deductions set out above an individual may only claim deductions against employment income or allowances in limited specified situations.

Fringe Benefits

Employer contributions to retirement funds for employees' benefit

- The taxable fringe benefit is equal to the actual contribution where the benefits payable to the employee consists solely of defined contribution components.
- Where the benefits payable to the employee do not consist of defined contribution components, the taxable fringe benefit is calculated in terms of a formula.

Employer-owned vehicles

- The taxable value is 3.5% of the determined value (retail market value) per month of each vehicle. Where the vehicle is–
 - the subject of 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 employer 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.

Interest-free or low-interest loans

The difference between interest charged at the official rate and the actual amount of interest charged, is 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 applies if the accommodation is owned by the employee, but it does not apply to holiday accommodation rented by the employer from non-associated Institutions.

Corporate tax rates

Companies, PSPs and foreign resident companies

YEARS OF ASSESSMENT ENDING BETWEEN 1 APRIL 2019 AND 31 MARCH 2020 (unchanged since prior year)		
Normal tax		
Companies and close corporations	Basic rate	28%
Personal service provider companies	Basic rate	28%
Foreign resident companies which earn income from a SA source	Basic rate	28%

Small business corporations

Financial years ending on any date between 1 April 2019 and 31 March 2020

Taxable income	Rate of tax
R	R
0 – 79 000	0% of taxable income
79 001 – 365 000	7% of taxable income above 79 000
365 001 – 550 000	20 020 + 21% of taxable income above 365 000
550 001 and above	58 870 + 28% of the amount above 550 000

Financial years ending on any date between 1 April 2018 and 31 March 2019

Taxable income	Rate of tax
R	R
0 – 78 150	0% of taxable income
78 151 – 365 000	7% of taxable income above 78 150
365 001 – 550 000	20 080 + 21% of taxable income above 365 000
550 001 and above	58 930 + 28% of the amount above 550 000

Micro businesses

Financial years ending on any date between 1 March 2019 and 28 February 2020 (unchanged since prior year)

Taxable turnover	Rate of tax
R	R
0 – 335 000	0% of taxable turnover
335 001 – 500 000	1% of taxable turnover above 335 000
500 001 – 750 000	1 650 + 2% of taxable turnover above 500 000
750 001 and above	6 650 + 3% of taxable turnover above 750 000

Effective capital gains tax rates

Capital gains on the disposal of assets are included in taxable income.

Maximum effective rate of tax		
	2019/20	2018/19
Individuals and special trusts	18%	18%
Companies	22.4%	22.4%
Other trusts	36%	36%

Other taxes, duties and levies

Value-added Tax (VAT)

From 1 April 2018, VAT is levied at the standard rate of 15% (previously 14%) 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.

Transfer duty

Government proposed to raise the duty-free threshold on the purchase of a residential property from R750 000 to R900 000, in order to provide relief for lower- and middle-income households.

Transfer duty is payable at the following rates on transactions in respect of acquisition of property on or after 1 March 2017 which are not subject to VAT.

Value of property (R)	Rate
0 – 900 000	0%
900 001 – 1 250 000	3% of the value above 900 000
1 250 001 – 1 750 000	10 500 + 6% of the value above 1 250 000
1 750 001 – 2 250 000	40 500 + 8% of the value above 1 750 000
2 250 001 – 10 000 000	80 500 + 11% of the value above 2 250 000
10 000 001 and above	933 000 + 13% of the value above 10 000 000

Estate duty

Estate duty is levied on property of residents and 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.

Donations tax

- Donations tax is levied at a flat rate of 20% on the value of property donated, up to R30 million.
- Donations exceeding R30 million is taxed at a rate of 25%.
- 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 and South African group companies and donations to certain public benefit organisations are exempt from donations tax.

Securities transfer tax

The 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.

Tax on International Air Travel

The tax amounts to R190 per passenger departing on international flights, excluding flights to Botswana, Lesotho, Namibia and Swaziland, in which case the tax is R100 per passenger, remains unchanged.

Skills Development Levy

A skills development levy (SDL) is payable by employers at a rate of 1% of the total remuneration paid to employees. Employers paying annual remuneration of less than R500 000 are exempt from the paying the levy.

Unemployment Insurance Contributions

Unemployment insurance contributions are payable monthly to SARS by employers on the basis of a contribution of 1% by employers and 1% by employees, based on employees' remuneration below a certain amount. Employers not registered for PAYE or SDL purposes must pay the contributions to the Unemployment Insurance Commissioner.

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Please note that while every effort is made to ensure accuracy, SAICA does not accept responsibility for any inaccuracies or errors contained herein.

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