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Submission to the Davis Tax Committee

SMALL BUSINESS

The impact of the tax system in the promotion of small and medium size businesses

Note: We attach the Free Market Foundation's submission on the taxation of small businesses. These proposals differ considerably from our proposals on the implementation of a Flat Tax in South Africa. In making such a submission we are not contradicting ourselves. Our first preference remains for income tax to be simple, flat and low, with generous allowances that exempt the poor from paying tax. This submission is made as a second best option. If the Flat Tax is not instituted, we propose alternatives for relieving the poor and small business from the most onerous aspects of income tax.

The Davis Tax Committee's top priority is to facilitate the growth of Small Businesses
Following the Minister of Finance's 2013 Budget announcement, the Davis Tax Committee is examining the role of South Africa's tax system to promote growth, job creation, sustainable development and fiscal self-reliance.

It is gratifying that the top priority of the Committee is to address ways in which the tax system can be improved to facilitate entrepreneurship and the growth of Small Businesses.[1]

We are pleased that the Committee intends to review the various tax packages that exist to encourage Small Businesses to find an optimal tax package that assists Small Businesses in contributing towards economic growth and reducing the high unemployment rate.[2]

The Committee's Terms of Reference say that aspects to receive specific attention include:

> Examination of the overall tax base and burden with evaluation of the economic and social impact of the tax system.[3]
>
> Analysis of the impact of the tax system in the promotion of Small and Medium Size Businesses, including compliance costs and the possibilities for further streamlining of administration and simplification of legislation.[4]
>
> Review of the corporate tax system with special reference, among other things, to tax incentives to promote developmental objectives.[5]

The Committee is also mandated to study tax issues which in its view should be addressed to promote inclusive economic growth, employment creation, development and fiscal sustainability.[6]

Our recommendations in 1999
In 1999 the Free Market Foundation compiled a published series of booklets concerning *Laws Affecting Small Business*, among which was a volume about Tax.[7] In the introduction to that booklet we said:[8]

> 'The single biggest problem for most small businesses is lack of capital. Most entrepreneurs use their own savings or retrenchment packages to start up in businesses, sometimes supplemented by personal loans from family members and friends. They run into financial difficulties as soon as their businesses start to grow – having exhausted their personal savings, they find they have no access to loan capital to exploit growth opportunities.
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> 'Very few young entrepreneurs and, because of past apartheid laws, very few black entrepreneurs of any age, have mortgageable title deeds to property. Nor, at the beginning of their business ventures, have they been able to build up significant investment portfolios. Thus they are unable to put up the security required by banks and other lending institutions, which are in any case reluctant to lend to small firms. And there is as yet no significant venture capital market where entrepreneurs could obtain equity capital from outside, independent investors.
>
> 'Small firm owners are therefore forced to rely on the cash flow generated from their own profits to finance their firms' growth. Even when profits are good, cash flow is frequently squeezed by the need to carry more stocks and to invest in additional equipment to support greater sales

volumes. The high inflation rates of recent years meant that more cash was required for new stock than was spent on the stock previously sold. The liquidity problems are compounded when, as is often the case, suppliers will sell only for cash and customers will buy only on credit. To complete this dismal scenario, the tax laws of the country require that a large proportion of any profits made, be paid to the state regardless of the devastation this may cause to the small firms' cash position.

'Tax is one of the greatest inhibitors of small business development. The high level of taxes, the enormous volume and complexity of the tax laws, and the administrative sophistication required to comply with these laws are daunting even for well-educated entrepreneurs. For those who through no fault of their own were educationally deprived, it would be easier to climb Mount Everest without oxygen than to understand and comply with all tax laws. There is an urgent need for simplification and preferably also for a reduction in tax rates.

'That great and well-proven engine for wealth and job creation, the small firms' sector, will continue to splutter and choke until there is serious tax reform. Economic growth will be curtailed, unemployment will continue to rise, and social instability will worsen.'

In that booklet we made the following Recommendations relating to the small firms sector:

- Adopt simplified income tax measures within the next two years to govern the taxation of the first part of any taxpayer's income (say, commencing with R100 000 and adjusted automatically for inflation every year).
- Allow small firms to deduct the cost of capital equipment from their taxable incomes in the year in which the cost is paid.
- Allow small firms to deduct a debtors allowance from their taxable incomes which is equivalent to the accrued profits on unpaid sales.
- Grant small firms a tax deduction in respect of profits retained in the business and not withdrawn.
- Increase to R500 000 the value of 'taxable supplies' at which registration for VAT becomes compulsory.
- Increase the threshold beyond which the payments basis for accounting for VAT is not permitted from the present R2 500 000 per year to R5 000 000, and extend this concession to close corporations and companies.
- Accept invoices from exempt small firms, listed with the SARS, as VAT invoices when received by VAT-registered larger firms.
- Provide for automatic inflation-adjustment of all figures embedded in tax legislation that fix exemptions and levels of income, turnovers, assets and other measures that determine liability for compliance with particular elements of that legislation.

There have been some reforms, but further improvements can be made

The Foundation is gratified that a number of our Recommendations in 1999 have been adopted, if only in part.

In this submission we reiterate our Recommendations which have not been adopted (with their supporting arguments updated for current circumstances).These Recommendations are:

- Adopt simplified income tax measures within the next two years to govern the taxation of the first part of any taxpayer's income (say, commencing with R215 000[9] and adjusted for inflation every year).
- Allow small firms to deduct a debtors allowance from their taxable incomes which is equivalent to the accrued profits on unpaid sales.
- Grant small firms a tax deduction in respect of profits retained in the business and not withdrawn.

(We also highlight, later in this submission, the merits and demerits of legislative changes introduced concerning Small Business Corporations, Micro Businesses, VAT returns and venture-capital deductions, followed by an analysis of how these various changes have been adjusted over the years, and their scope and effect.)

RECOMMENDATIONS

Adopt simplified income tax measures to govern taxation of the first part of any taxpayer's income [10]
A new simplified income tax act should be prepared and introduced within the next two years to govern the taxation of, say, the first R215 000 of any taxpayer's taxable income. (The existing Act can be left in place to deal with those portions of incomes that exceed R215 000, though even here simplification will be highly desirable.)

It is unjust to have laws of such complexity that they are inaccessible to citizens whose lives and livelihoods are profoundly affected. It should be possible to have a brief, simple and straightforward set of laws applicable to taxpayers earning less than a specified income. The objective should be to have laws that can be easily understood by those to whom they apply.

Individuals with taxable income above R215 000 could remain subject to the existing laws in respect of income above that amount, or alternatively continue to be taxed under the existing laws.

The simplified income tax laws should be stripped down to the bare essentials. This would mean determining in the simplest possible manner how to calculate taxable income and tax payable. Any taxpayer wishing to claim an expense that falls outside the ambit of these laws could have the option of choosing to be taxed under the existing laws.

Simplified tax laws, if they were to be accompanied by simple procedures and requirements, would save taxpayers huge amounts in administrative costs, professional fees and other compliance costs. They would also relieve the South African Revenue Service of a considerable part of its administrative burden.

Recent measures allowing Micro Businesses to apply to pay turnover tax instead of income tax do not properly address this issue (see below).

The case for simplifying tax laws and regulations[11]
Tax laws are so complicated and voluminous that almost all members of the public, even those reasonably literate and numerate, are baffled by them. A result of the complexity and volume of tax laws and their high tax rates is the ever-increasing size of the thriving tax-advice industry –lawyers, accountants, life assurance brokers and financial advisers.

Small business owners who cannot handle their tax matters themselves nor afford to hire these expert services to handle them on their behalf, have no choice but to operate in the so-called informal sector. It is not a glamorous or pleasant place to be. Most people prefer to be on the right side of the law whenever possible and provided the laws accord with the communities' sense of justice. When it is not possible, as it is not for many small-firm operators, confinement to the informal sector prevents growth, visibility and security. Only the alternative of unemployment and destitution is worse.

It should not be thought that those who are forced to operate their businesses in this way pay no taxes. They pay plenty in terms of VAT (unrecoverable by them), in terms of the passed-on effects of corporate income taxes in the prices they pay for goods and services they purchase from large suppliers, and in terms of customs and excise duties, especially perhaps those included in petrol prices. Many of them too, although legally required to register and submit returns, would fall below the existing tax thresholds. It does not seem sensible to require registration and returns, let alone taxes, from those whose incomes do not provide them with any decent standard of living anyway. It is also very doubtful whether increasing exemption levels a little would seriously reduce tax collections.

It is generally agreed that a good tax system needs to be characterised by simplicity, certainty, neutrality, and a low cost of administration and collection. The present South African system falls short of all these ideals. It cannot be regarded as either simple or certain when it is not understood by more than 90% of the population; it is not neutral when compliance costs for small firms can be ten times the proportionate costs of big corporations; and although the administration and collection costs incurred by the SARS may be quite low, the huge size of the tax advice industry indicates that the overall costs are extremely high.

What to do? In this modern age of big governments and high taxes it seems unrealistic to imagine that wealthy countries can have simple tax systems. High taxes cause wealthy people to spend time and money on avoidance schemes, and that in turn causes governments to enact complicated anti-avoidance provisions. It is a vicious circle. But the vast majority of South Africa's residents are not at all wealthy by current world standards and many are desperately poor by any standards. Yet as things are, they are burdened with a tax system suitable at best only for the tiny, wealthy minority.

A possible solution would be to introduce a dramatically simplified income tax system applicable to, say, the first R215 000 of all taxpayers' incomes. The existing system would then apply only to those portions of more wealthy taxpayers' incomes that exceed that amount. Such relatively wealthy taxpayers can reasonably be expected to hire the expertise they need to comply. The rest, the vast majority with incomes below the R215 000 level, would not need to concern themselves with the more complicated, higher-level system.

The simplified system should also, among other things:

- Raise tax thresholds well above poverty threshold levels and not require registration or returns from people below these thresholds.

  (The National Income Dynamics Study undertaken for the National Planning Commission said in December 2013 that Poverty refers to (2012) monthly household income per capita of less than R636.[12])
- Significantly reduce the number of tax bands.
- Simplify or even scrap rebates and certain types of deductions.

- Encourage saving.
- Encourage small firms to plough back profits.
- Allow small firms to calculate taxable incomes on a cash, rather than an accrual, basis.

The aim should be to exempt as many as possible from the requirement to submit any returns at all and for the rest to so simplify things that the annual return does not exceed one page in length and the explanatory brochure does not exceed two pages (both to be available in all official languages).

Let us not pretend that it is easy to change tax laws. Unless very carefully considered, changes can often have unanticipated and undesired effects. Obviously, precautions will have to be taken to prevent abuse by income-splitting or other means, but these difficulties can be overcome.

If the effects of the present tax system and the more general structures of the economy were neutral in their impact on businesses regardless of their size, the case for giving any special consideration to small firms would be weakened. In many ways, however, over many years economic structures have been distorted, leaving small firms at a significant competitive disadvantage:

- Laws were made (and still are) on the assumption that all citizens are equally well educated.
- Many laws create barriers to entry into business, so that those on the inside are protected from new competition from those still on the outside.
- Many laws are enacted on the basis that 'one size fits all', i.e. with an implicit assumption that the costs of complying with them will be proportionately similar regardless of the size of the entity concerned. In practice, the compliance costs for small firms can be ten times greater, per unit of sales or per unit of profit, than the comparable costs for their larger competitors.
- Once legal action goes beyond the very limited jurisdiction of the Small Claims courts, justice through court action is largely confined to the wealthier. It is not uncommon for small firms to abandon valid claims against affluent suppliers and customers because of their inability to pay for the necessary legal assistance.
- The small firms sector is poorly organised and has neither the money nor the time to match the sophisticated and continuous lobbying efforts of the corporate world and of organised labour. In many cases the rent-seekers triumph over the interests of small firm owners.

There is therefore a case for offsetting the structural disadvantages imposed on small firms with some countervailing benefits, if equality of opportunity to compete is to be achieved. A restructuring of the tax system is a good place to begin this process.

The case is strengthened by the undoubted economic and social benefits that the nation would derive from having a much stronger small firms sector. This sector, in all the economically successful countries of the world, is the main generator of new, wealth-creating and sustainable jobs. It is also the source of most of the useful inventions and innovations. It is essential if South Africa is to become globally competitive, and it is essential if competitive business opportunities are to be redistributed to those entrepreneurs previously suppressed and disadvantaged.

Allow small firms to deduct a debtors' allowance from their taxable incomes which is equivalent to the accrued profits on unpaid sales[13]

The obligation to pay income tax on amounts not yet received causes hardship for small firms. Debts owing to them usually increase in amount year by year with the result that the total amount of taxes paid on accrued income also steadily increases, draining the capital available to the firm.

In its simplest form, the calculation of the debtors' allowance would consist of applying the average gross profit percentage achieved by the firm on all sales during the year to the amount by which total sales invoiced but not yet paid at year-end have increased relative to the previous year.

The figure resulting from this calculation would be equivalent to the profit on unpaid sales for the tax year. Deducting the figure from the taxable income of the small firm would have the effect of subjecting to income tax only those profits which have actually been received.

(As a rule income tax is payable in respect of taxable income received 'or accrued'.[14])

This is similar to the dispensation granted to natural persons to pay over only VAT received rather than VAT invoiced but not yet received.

(Vendors must generally account for VAT payable on an invoice basis.[15] But the Commissioner can on application direct that a vendor account for VAT payable on a payments basis, if the vendor is a natural person (or unincorporated body of natural persons) the total value of whose taxable supplies in any period of 12 months doesn't or likely won't exceed R2,5 million.[16] (He must still account on an invoice basis for supplies other than fixed property for which the consideration is R100 000 or more.[17])

(Vendors become liable to be registered for VAT when their annual taxable supplies exceed R1 million,[18] but have the option to register if their annual taxable supplies exceed R50 000 or can be expected to exceed it in 12 months.[19] A vendor who has exercised this option and whose taxable supplies are expected to exceed R50 000 in 12 months must account on a payment basis with effect from registration but must do so on an invoice basis as from the tax period after the one in which his taxable supplies exceed R50 000.[20])

The principle involved in this recommendation is also recognised in the provision of the Income Tax Act which permits an allowance for certain unpaid receipts on instalment sales.

(As a rule, if a taxpayer has entered into an agreement with another person the effect of which is that ownership of property will pass on or after receipt by the taxpayer of all or a certain portion of the amount payable to the taxpayer under the agreement, then the whole amount is deemed to accrue to the taxpayer on the day the agreement is entered into.[21]

(But if 25% or more of the amount becomes payable only after expiry of a period of at least 12 months after the date of the agreement, the Commissioner can make such allowance as under the special circumstances of the trade seems reasonable in respect of all amounts deemed to accrue under the agreements but not received at the close of the taxpayer's accounting period. The allowance must be included as income in the taxpayer's return for the following year as income.[22])

An alternative to this recommendation would be to tax small firms on taxable income determined entirely on the cash basis. This would mean taking into account only amounts actually received and paid during the tax year.

Grant small firms a tax deduction in respect of profits retained in the business and not withdrawn[23]
Shortage of capital tends to be a greater constraint on the growth of small firms, especially in their first years of operation, than on larger firms. Exempting the retained profits of small firms from income tax, or reducing the rate of tax charged on such retained profits, could consequently bring about more rapid growth and create more jobs than the granting of similar relief to large firms.

Small firms would derive great benefit from relatively more substantial tax relief in the early years of their operations. Government should therefore consider granting tax relief on a substantial proportion of the profits earned by small firms in the first (say) seven years of doing business subject to those profits being retained and utilised in the business. Consideration could, for instance, be given to a complete exemption from income tax for profits that have been retained by small firms for a minimum of five years.

Legislation similar to the provision of the Act that deems certain amounts distributed to be dividends[24] for purposes of secondary tax on companies[25] (abolished as from April 2012[26]) could be devised to eliminate tax avoidance schemes.

One of the advantages of this recommendation is that the beneficiaries would be self-selecting. No unprofitable businesses would benefit. The fastest-growing small firms making the highest profits would receive the greatest tax relief, giving them more capital to grow even faster.

Implementation of the recommendation would assist in countering the perverse effects on economic growth of the graduated income tax system. As incomes increase, this system takes an increasing percentage in taxes, so it is precisely those small firms that are making the biggest contribution to economic growth that attract the highest taxes.

Critics of this recommendation will maintain that it is unfair to grant small firms a competitive advantage by postponing and possibly even exempting from income tax the profits retained and re-invested by them. This criticism would be valid if all firms were presently competing on level terms, which they are not. Some of the factors currently militating against small firms are:

- In high-tax regimes, small firms have greater difficulty than large firms in increasing their investable funds. Investors expect much lower rates of return from large firms than from small firms and most would never consider investing in small firms because of the greater risk. Small firms consequently have to rely almost exclusively on generating their own capital out of after-tax profits. If there was no income tax, small firms would, on average, grow comparatively much more rapidly than large firms.
- Several factors weigh against the ability of small firms to borrow money to expand their businesses. First, because of the large amounts of money the government borrows, lending to private borrowers is less attractive and considered to be a higher risk than if government was borrowing less or not at all.

- Second, because of the limits the National Credit Act[27] places on the rate of interest that can be charged on loans, small firms cannot compensate lenders for risk by paying higher interest rates prescribed under that Act.

  (The National Credit Act authorises the Minister responsible for consumer credit matters, after consulting the National Credit Regulator, to prescribe a method for a maximum rate of interest applicable to each subsector of the consumer credit market as determined by the Minister.[28] A consumer includes[29] a party to whom money is advanced or credit granted under a credit agreement, including[30] any agreement whereby payment of an amount owed by one person to another is deferred and any charge, fee or interest is payable to the credit provider in respect of the amount deferred.[31])

  (The Minister has prescribed, as the maximum rate of interest per year for unsecured credit transactions and for 'developmental credit agreements for the development of a small business',[32] the ruling Reserve Bank Repurchase Rate multiplied by 2.2 plus 20%.[33]

  (The National Credit Act applies to every arm's-length credit agreement, except—

    An agreement with a consumer who is a juristic person whose asset value or annual turnover exceeds the 'threshold value' determined by the Minister[34] (currently R1 million[35]); and

    A 'large agreement' (a credit transaction whose principal debt falls at or above a threshold for large agreements established by the Minister,[36] currently R250 000[37]) with a consumer who is a juristic person with an asset value or annual turnover below the determined threshold value[38] (R1 million as aforesaid[39]).

- Finally, small loans are unattractive to lenders as the administrative costs of making such loans are proportionately much higher than the costs of making large loans.

Government should evaluate the potential economic growth and demand for labour that could emanate from the small business sector if it were allowed to accumulate capital from the re-investment of retained profits.

SMALL BUSINESS CORPORATIONS, MICRO BUSINESSES, VAT RETURNS AND VENTURE-CAPITAL DEDUCTIONS

Merits and demerits of legislation

Small Business Corporations

Small Business Corporations, whose gross income initially could not exceed R1 million, (a ceiling since increased and now R20 million) now pay lower than normal income taxes, according to a graduated rate structure. (A drafting error in the 2013 amendment, that the increase in their gross-income ceiling from R14 million to R20 million would apply for only one year, needs rectifying.)

SARS reported in 2013 that of the 600 000 companies assessed in 2011 only 100 000 were assessed as Small Business Corporations. This seems unduly low, and more effort should be made to promote the dispensation. The restrictions that disqualify certain types of businesses and owners from benefiting from the tax should be relaxed as far as possible.

Our recommendation that small firms should be allowed to deduct the cost of capital equipment from their taxable incomes in the year in which the cost is paid has been partly adopted. Since 2001 Small Business Corporations can immediately deduct investment expenditure in manufacturing assets in the year in which the investment is made. This should be extended to non-manufacturing assets. (Since 2005 Small Business Corporations are eligible over three years for a 50:30:20 deduction for non-manufacturing assets.)

The Minister of Finance in his 2014 Budget Speech said that consideration is being given to replacing the graduated tax structure for Small Business Corporations with a refundable tax compliance credit.[40] More particulars are required to enable interested parties to comment constructively.

Micro Businesses

Since 2008 Micro Businesses (businesses with a turnover less than R1 million a year) can apply for registration to pay turnover tax as an alternative to income tax.

It is pleasing that registered Micro Businesses can elect to pay employees' tax ('PAYE'), skills development levies, and unemployment insurance contributions only twice a year instead of monthly.

It seems very few Micro Businesses have registered for turnover tax. Registered Micro Businesses have to pay turnover tax whether or not they made a profit, whereas they would not pay normal income tax if they made a loss. Once registered for turnover tax, a Micro Business cannot be deregistered for three years. These weaknesses should be addressed.

The Minister in his 2014 Budget Speech said the turnover tax regime will be amended to further reduce the tax burden on micro-enterprises.[41] It is trusted that the new measures will be sufficiently far-reaching.

We approve the increase in 2009 in the value of 'taxable supplies' at which registration for VAT becomes compulsory to R1 million.

VAT returns

We approve the arrangement that VAT vendors with annual taxable supplies of up to R1,5 million can file VAT returns every four months instead of monthly, and the arrangement introduced in 2012 as from March 2014 that registered Micro Businesses can apply to file VAT returns every six months.

Venture capital deductions

The interesting innovation introduced in 2008 allowing the deduction of expenditure to acquire shares in venture-capital companies is promising but needs streamlining.

The Minister in his 2014 Budget Speech announced that amendments will be made to the venture capital company tax regime.[42] It is hoped that the amendments will address the following shortcomings:

The criteria needed to qualify for the incentive are too onerous to attract many venture capitalists.

> Investors are not given the choice to invest directly in startups, but have to do so via a venture-capital company. The fact that a deduction is recouped if on disposal of shares in a venture capital company might put investors off, because the full amount of an investor's deduction would be recouped in one year and capital gains tax applied to any profits made from selling the shares. The recoupment rule has been as a key reason why funds are unable to raise sufficient money from investors.
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> Investors might also be put off by the high penalties. SARS can levy 125% of the amount contributed by an investor if it withdraws the status of a venture capital company.
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> Venture capital companies also have to be vetted by SARS and licensed by the FSB, which can take time.

There is no good reason for all these prior requirements. If objective rules are set that venture-capital companies can comply with, they should not be subject to special vetting or required to be licensed before the tax benefits apply. Venture- capital investment should not be made more onerous than compliance with any other tax rules. The purpose should be to attract venture-capital investment in small firms, not to deter it.

Analysis of Legislative Changes

Small business corporations

The Income Tax Act says that companies, including close corporations[43] and associations registered as co-operatives,[44] must pay income tax annually in respect of their taxable income each financial year.[45] The rates of tax chargeable are fixed annually by Parliament.[46]

Small Business Corporations pay lower rates of tax than regular companies, increasing in brackets to the rate payable by regular companies.

A Small Business Corporation is (very succinctly[47]):

> A private company, close corporation or co-operative, the gross income of which for the year does not exceed R20 million, the shareholders of which are natural persons who do not have stakes in other businesses, that does not derive more than 20% of its revenue from investments and the rendering of personal services, and that is not a personal service provider unless employing three or more people.

Provision for Small Business Corporations was first made in the Income Tax Act in 2000. It stated that a Small Business Corporation was a private company etc. whose gross income for the year did not exceed 'R1 million'.[48]

The initial R1 million ceiling in 2000 was increased from time to time by Amendment Acts: to R3 million in 2002,[49] to R5 million in 2003,[50] to R6 million in 2005,[51] to R14 million in 2006,[52] and then to R20 million in 2013.[53]

Some (but not all) of these Amendment Acts say that the amendments to increase the ceiling applies to any year of assessment which ends on 'or after' a specified date.[54] This means that the amendments apply to all future years of assessment until future amendment. (Strictly speaking it is unnecessary for the statute to say so. Statutes by their very nature legislate for the future.[55])

Unusually, however, the 2013 Amendment Act says only that the amendment increasing the ceiling from R14 million to R20 million applies in respect of years of assessment ending during the period of 12 months ending 'on 31 March 2014'.[56]

This means that the increased ceiling of R20 million will apply only until 31 March 2014. It follows that the increase of the ceiling to R20 million will lapse on 31 March 2014 and the ceiling will revert to R14 million.

This is obviously a drafting error that should be remedied, unless any 2014 Amendment Act is passed that further increases the ceiling above R20 million.

Reduced graduated tax-rate structure for Small Business Corporations
A graduated tax-rate structure for Small Business Corporations was first introduced in 2000.

The Minister of Finance said in his Budget Speech that year:[57]

> 'The development of small and medium size enterprises is fundamentally important to the growth and employment potential of our economy. To complement a number of existing government initiatives directed at SMEs we propose to introduce a graduated company tax rate structure for incorporated small and medium size enterprises. Qualifying small corporations will pay 15% on the first R100 000 of taxable income and [the normal company rate] thereafter.'

This graduated tax-rate structure for Small Business Corporations was duly enacted in 2000.[58]

The tax rates or tax brackets, or both, for Small Business Corporations have been adjusted over the years:

> The introductory rates in 2000 for Small Business Corporations were set in two brackets: 15% of the amount of taxable income up to R100 000 and 30% of the amount of taxable income over R100 000.[59] This 30% rate was the same as the 30% tax rate set for regular companies[60] (a company[61] other than a Small Business Corporation, and certain others[62]).
>
> In 2002 the thresholds of these two brackets were adjusted: the rates were 15% of taxable income up to R150 000 and 30% of the amount of taxable income over R150 000. [63] Regular companies continued to pay 30%.[64]
>
> In 2005 rates for Small Business Corporations were set in three brackets: at 0% of taxable income up to R35 000, 10% of the amount of taxable income over R35 000 up to R250 000 and 29% per cent of the amount of taxable income over R250 000.[65] Regular companies paid 29%.[66]
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> In 2006 the thresholds of these three brackets were adjusted: the rates were 0% on the first R40 000, 10% of the amount over R40 000 up to R300 000 and 29% of the amount over R300 000.[67] Regular companies continued to pay 29%.[68]

In 2013 the rates of tax leviable on a Small Business Corporation were set in four brackets:[69] at 0% of taxable income up to R67 111, 7% of the amount of taxable income over R67 111 up to R365 000,[70] 21% of the amount of taxable income over R365 000 up to R550 000[71] and 28% of the amount of taxable income over R550 000. The rate for regular companies is 28%.[72] These rates apply in respect of any year of assessment ending during the period of 12 months ending on 31 March 2014.[73]

A regular company, on taxable income of R550 000, pays fully 28% thereof in tax, being R154 000. A Small Business Corporation, on the same taxable income, pays only R80 554 in tax.[74] This means that on taxable income of R550 000 a Small Business Corporation enjoys a tax benefit of R73 446 relative to a regular company.[75]

The National Treasury and South African Revenue Service reported in 2013 that, of the 600 526 companies assessed in the 2011 tax year, 103 928 were assessed as Small Business Corporations and paid tax at graduated income-tax rates instead of a fixed rate.[76]

As has been reported,[77] onerous rules that disqualify certain types of businesses and owners from benefiting from the tax are partly responsible for the low uptake of the Small Business Corporation tax regime: Business owners can't have shares in more than one business, can't derive more than 20% of their revenue from investments and rendering personal service and can't be a personal service provider unless they employ three or more people.

Many personal service providers start off with one person before expanding, and the rule disqualifies many start-ups in the services sector.

Immediate deduction of investment expenditure by SBCs in manufacturing assets
In determining a person's taxable income from carrying on business, expenditure incurred in the production of the income is allowed as a deduction from the income, if the expenditure is not of a capital nature.[78]

Expenditure incurred in acquiring machinery used in a business is normally expenditure of a capital nature not allowed as a deduction from income.[79]

But the Act allows businesses to make specific deductions for machinery. For example:

> General Wear-and-Tear and Depreciation[80] Deduction: A deduction of the sum the Commissioner thinks just and reasonable as the amount by which the value of machinery, plant, etc. acquired and used by the taxpayer for the purpose of his trade was diminished by wear and tear or depreciation during the year is allowable (unless a'40/20/20/20 Depreciation Deduction' (below) or the 'Small Business Corporation deduction' (later below) or another specific deduction[81] is allowable).[82]
>
> '40/20/20/20' Depreciation Deduction:[83] For machinery which a taxpayer brings into use both for the purpose of his trade and in a process of manufacture that he carries on in the course of his business, a deduction of 40% of his cost of acquiring the machinery is allowable in the year it is brought into use and three succeeding years.[84]

The Act allows more generous deductions for Small Business Corporations:

Immediate deduction of expenditure by Small Business Corporations in manufacturing assets, introduced in 2001

In his 2001 Budget Speech the Minister said:[85]

> 'Government continues to support small businesses, which are key engines of job creation. In the 2000 Budget, a reduced tax rate of 15 per cent of the first R100 000 of taxable income was introduced for certain small businesses. The tax privileges for small businesses are extended in this Budget to allow for the immediate deduction of investment expenditure in manufacturing assets in the year in which the investment is made.'

Provision for an immediate deduction of expenditure in manufacturing assets for Small Business Corporations[86] was duly inserted into the Act in 2001.[87] It provides:

> Where plant or machinery owned by a Small Business Corporation or acquired by it as purchaser under an instalment credit agreement is brought into use for the first time by it for the purpose of its trade,[88] and is used by it directly in a process of manufacture[89] carried on by it, a deduction is allowed in the year the asset is brought into use equal to the cost of the asset.[90]

'50:30:20' depreciation deduction for other assets acquired by SBCs, introduced in 2005

In his 2005 Budget Speech the Minister said:[91]

> 'Small businesses will also be eligible for a simplified 50:30:20 depreciation write-off rate for non-manufacturing assets, while manufacturing assets will continue to qualify for 100 per cent write-off.'

Provision for '50:30:20' depreciation of non-manufacturing assets[92] for Small Business Corporations[93] was duly inserted into the Act in 2005.[94] It provides:

> Where a Small Business Corporation acquires machinery, plant, etc. for use by it for the purpose of its trade, and for which a General Wear-and-Tear and Depreciation Deduction[95] is allowable, the deduction allowable must, at the election of the Small Business Corporation, be either
>
>> the General Wear-and-Tear and Depreciation Deduction, or
>>
>> 50% of the asset's cost in the year it was first brought into use, 30% the following year and 20% in the third year.[96]

Turnover tax payable by Micro Businesses, introduced in 2008

In his 2008 Budget Speech the Minister said:[97]

> '[T]he 2008 Budget reduces the administrative burden on small businesses by introducing a presumptive turnover tax as an alternative to income tax and VAT for businesses with a turnover less than R1 million a year.'

Provision for this turnover tax was made that year:[98]

> A turnover tax is payable by a person that was a registered micro business in a year of assessment, on its taxable turnover that year.[99] The rates of tax chargeable must be fixed annually by Parliament.[100]

A person qualifies as a Micro Business if the person is a natural person or company (including a cooperative or close corporation[101]), if its qualifying turnover (receipts from carrying on business activities excluding amounts of a capital nature[102] for the year doesn't exceed R1 million,[103] and if it does not fall in any of the disqualifications (similar in some respects to those applicable to a Small Business Corporation).[104]

A person that meets these requirements can elect to be registered as a Micro Business.[105]

The taxable turnover of a registered Micro Business in a year of assessment consists of amounts not of a capital nature received by the business in the year from carrying on business activities, with some inclusions (50% of receipts of a capital nature from disposal of fixed property[106] or other assets used mainly for business other than a financial instrument; and, in the case of a company, other than dividends) and exclusions (investment income in the case of a natural person, specified government grants).[107]

The business must, in the first six months of the year of assessment, estimate its taxable turnover for the whole year, calculate the tax payable on the estimate and pay half the tax. The estimate can't be less than its taxable turnover the previous year unless the Commissioner agrees. The business must, by the last day of the year, estimate its taxable turnover for the whole year again, calculate the tax payable on this estimate and pay it, less the amount paid in the half-year.[108]

If its year-end estimate is less than 80% of taxable turnover for the year, a penalty of 20% of the difference between the tax payable on 80% of the taxable turnover for the year and the tax payable on the estimate must be charged. If the Commissioner is satisfied, in full or part, that the estimate was not deliberately or negligently understated and was seriously made based on information available, the Commissioner must waive the penalty in full or part.[109]

The total amount received from carrying on business activities by a connected person in relation to a person qualifying as a micro business must be included in the qualifying turnover of the latter for purposes of determining if his qualifying turnover for a years exceed the R1 million ceiling, if the Commissioner is satisfied that the connected person carries on business activities that should properly be regarded as forming part of the business activities carried on by the latter and a main reason for the connected person carrying on business activities in the way he does is so that the qualifying turnover of the latter does not exceed the ceiling.[110]

A registered micro business need only retain records of its amounts received and dividends declared in a year of assessment , and its assets as at the end of the year with a cost price of more than R10 000 and liabilities as at the end of the year that exceeded R10 000.[111]

Amounts received by registered Micro Businesses are exempt from normal income tax, other than investment income or remuneration received by natural persons registered as Micro Businesses.[112]

A dividend[113] is exempt from dividend tax (15% of the dividend paid by any company[114]) if the beneficial owner is a holder of shares in a registered Micro Business paying the dividend, to the extent that aggregate dividends paid by the business to holders of shares in it in the year of assessment in which it is paid don't exceed R200 000.[115]

A registered micro business may elect to be deregistered, but must not be deregistered unless it has been a registered micro business for at least three years.[116]

A graduated turnover tax rate structure in five brackets was introduced, in 2009,[117] for any year of assessment ending in the 12-month period ending 31 March 2010:[118]

0% on the amount of taxable turnover up to R100 000,
1% on the amount of taxable turnover over R100 000 up to R300 000,
3% on the amount over R300 000 up to R500 000,
5% on the amount over R500 000 up to R750 000, and
7% on the amount over R750 000 (up to the R1 million ceiling).

In 2010 the same graduated rate structure in five brackets was set[119] for a year of assessment ending in the 12-month period ending 31 March 2011.[120]

In 2011,[121] slightly-more generous rates and brackets were set for any year of assessment commencing 'on or after 1 March' 2011,[122] as follows:[123]

0% on the amount of taxable turnover up to R150 000,
1% on the amount of taxable turnover over R150 000 up to R300 000,
2% on the amount over R300 000 up to R500 000,
4% on the amount over R500 000 up to R750 000, and
6% on the amount over R750 000 (up to the R1 million ceiling).

In 2012 these rates and brackets were retained,[124] for a year of assessment ending in the 12-month period to 31 March 2013.[125]

Similarly in 2013 the same rates and brackets were also kept,[126] for a year ending in the 12 months to 31 March 2014.[127]

In his 2012 Budget Speech the Minister announced that Micro Businesses will be able to pay certain amounts in respect of their employees twice a year, which meant that 'the number of returns and payments a year will be reduced […] to just two.'[128]

Accordingly in 2012 provision was made for Micro Businesses to pay employees' tax ('PAYE') deductions to the Commissioner only twice a year:[129]

A registered micro business may elect to pay to the Commissioner at the end of each of the first and six-month periods of a year of assessment, the amounts which it has deducted or withheld during those periods in respect of—

Employees' tax deductible from remuneration payable to its employees (usually payable monthly to the Commissioner[130]);

In 2013 this twice-annual payment facility was expanded,[131] with effect from 1 March 2014 in tax periods commencing on or after that date,[132] to cover skills development levies and employer's and employee's unemployment insurance contributions:

> A registered micro business may elect to pay to the Commissioner at the end of each of the first and six-month periods of a year of assessment, the amounts which it has deducted or withheld during those periods in respect of:
>
>> Skills development levies (an amount, usually payable to the Commissioner by an employer monthly, [133] calculated as a percentage of the remuneration paid to an employee during a month;[134] and
>>
>> Unemployment insurance contributions (an amount payable by an employee but deductible by his employer from the employee's remuneration[135] and an amount payable by the employer, both calculated as percentages of the remuneration paid to the employee during a month,[136] and usually payable to the Commissioner by the employer monthly[137]).

If a registered Micro Business has made such an election to pay twice a year, the election must apply to all the amounts deducted or withheld[138] (i.e., employees' tax, skills development levies, and employer's and employee's unemployment insurance contributions).

It was reported in August 2013 that figures from the South African Revenue Service showed that in the 2012 tax year just 8 493 Micro Businesses had registered for turnover tax.[139]

As has been pointed out,[140] turnover tax has the serious drawback that Micro Businesses pay tax regardless of whether they make a profit or not, whereas under normal income tax they would not pay tax in the event of a loss. Once signed up for turnover tax, a Micro Businesses must stay in the system for at least three years.

VAT returns

Persons who make supplies in the course of an enterprise must register as vendors under the Value-Added Tax Act[141] if the value of taxable supplies they made in the previous twelve months exceeded a specified amount.[142] This amount was R300 000 until March 2009, when it was raised to R1 million.[143]

Vendors must file tax returns and pay to the Commissioner any value-added tax payable, at the end of every 'tax period' applicable to the category of vendors concerned.[144] The Act provides for vendor categories each of whose tax periods are periods of one, two, four, six and 12 months[145] depending on various criteria.[146]

The category of vendors whose tax period is six months[147] includes registered Micro Businesses that have made written application to the Commissioner to be placed in this category.[148] (This dispensation was introduced in 2012, with effect from 1 March 2014.[149])

There is also a category of vendors with tax periods of four months comprising vendors the value of whose taxable supplies over 12 months does not exceed R1,5 million.[150] (This was introduced in 2005[151] with a ceiling of R1 million, which was increased in 2006[152] to R1,2 million, which was increased to the present R1,5 million in 2008.[153]

Venture capital deductions
Provision was made in the Income Tax Act[154]in 2008 (and revised in 2009[155]) with effect from July 2009[156] (and further revised in 2011[157]) for the deduction of expenditure for the issue of shares in venture capital companies:

There must be allowed as a deduction from the income of a taxpayer expenditure actually incurred by him in acquiring venture capital shares issued to him by a venture capital company.[158]

A venture capital company must be approved by the Commissioner.[159]

To be approved, a venture capital company must apply for approval to the Commissioner, who must be satisfied that its sole object is the management of investments in 'qualifying companies' that the tax affairs of the company are in order, that it has complied with all the relevant provisions of the laws administered by the Commissioner, and that the company is licensed by the registrar of financial services providers[160] to act as a financial services provider.[161]

A 'qualifying company' is any company, if it is not a controlled group company, if its tax affairs are in order and it has complied with all relevant provisions of the laws administered by the Commissioner; if it is unlisted; if it is not carrying on an 'impermissible trade'; and if investment income derived by the company in any year of assessment does not exceed 20% of its gross income that year.[162]

An 'impermissible trade' is any trade involving immovable property other than as an hotel keeper; any trade carried on by a bank or long- or short-term insurer or involving money-lending or hire-purchase financing; any trade involving financial or advisory services including legal, tax advisory, stock-broking or management consulting services, auditing or accounting services; any trade involving gambling; any trade involving liquor, tobacco, arms or ammunition; or any trade mainly outside the country.[163]

If in any year of assessment a taxpayer incurs expenditure and as after the acquisition of a venture capital share in a venture capital company he is a connected person in relation to that venture capital company, no deduction must be allowed in that year for any expenditure incurred by him in acquiring any venture capital share issued to him by that venture capital company.[164]

If, after 36 months from the approval of a venture capital company, the Commissioner is not satisfied that at least 80% of the expenditure incurred by the company to acquire assets held by it was incurred to acquire 'qualifying shares' issued by qualifying companies each of which after the issue held assets with book value not exceeding R20 million[165] or that no more than 20% of expenditure incurred by the company to acquire qualifying shares was for shares issued by one qualifying company, the Commissioner must withdraw the approval, with effect from the date of approval of the company as a venture capital company[166] if corrective steps acceptable to the Commissioner are not taken by the company in a stated period.[167]

'Qualifying shares' means equity shares held by a venture capital company which is issued to it by a qualifying company, and does not include any share which would have constituted a hybrid equity instrument but for the three-year period required for hybrid equity instruments or which constitutes a third-party backed share.[168]

If the Commissioner withdraws approval, an amount of 125% of the expenditure incurred by any person for the issue of shares held in the company must be included in the income of the company in the year of assessment in which the approval is withdrawn.[169]

If in any year of assessment any loan or credit has been used by a taxpayer for payment or financing of any portion of any expenditure in acquiring venture capital shares and any portion of that loan or credit is owed by the taxpayer on the last day of the year, the amount which may be taken into account as expenditure that qualifies for a deduction must be limited to the amount for which the taxpayer is deemed to be at risk on that day. The taxpayer must be deemed to be at risk to the extent that the incurring of the expenditure or the repayment of any loan or credit used by the taxpayer for the payment or financing of the expenditure would (having regard to any arrangement entered into) result in an economic loss to the taxpayer were no income to accrue to the taxpayer in future years from the disposal of any venture capital share issued to the taxpayer as a result of the incurring of that expenditure. The taxpayer must not be deemed to be at risk, to the extent that: the loan or credit is not repayable within five years; and any loan or credit used by the taxpayer for the payment or financing of the whole or any portion of any expenditure is (having regard to any arrangement) granted directly or indirectly to the taxpayer by the venture capital company as a result of the incurring of the expenditure.[170]

No deduction will be allowed for shares acquired after June 2021.[171]

The Act says that various amounts allowed to be deducted in the current or any previous year of assessment (including expenditure incurred in acquiring venture capital shares issued to the taxpayer by a venture capital company), which have been recovered or recouped during the current year of assessment (i.e., to the extent of the initial venture capital company investment[172]), shall be included in the taxpayer's income.[173] Any amount allowed as a deduction is recouped[174] upon the disposal of venture capital shares. Any amount recouped is automatically included in the gross income of the person disposing of the shares, irrespective of the capital or revenue nature thereof. An amount received or accrued on or after 1 July 2009 for the sale of venture capital shares that is recouped, will not[175] be deemed to be of a capital nature.[176] An amount received or accrued in excess of the amount recouped will, however, be deemed to be of a capital nature provided that the shares have been held for at least three continuous years.[177]

Various weaknesses have been identified and criticisms levelled against the venture capital tax incentive:[178]

> 'Four years after the venture capital tax incentive was introduced, only one small business, an IT firm, had benefited from a venture capital investment.
>
> 'Despite the incentive having been overhauled in 2011, after a campaign by industry members against the onerous criteria needed to qualify for the incentive, not all the onerous criteria were removed.
>
> 'The incentive aims to boost venture capital investments in small businesses by allowing individuals to make upfront tax deductions if they invest in venture capital companies, which in turn invest in certain kinds of small enterprises.

‘South Africa Venture Capital Association (Savca) chairperson Erika van der Merwe said that the small uptake was due to the incentive not having been widely marketed by SARS and it not being perceived as ‘sufficiently attractive’ by the venture capital market and high-net-worth individuals.

‘Jeff Miller, director of Grovest, said the provision in the 12J regulations (in which a deduction is recouped if an individual disposes of their shares in a venture capital company) might have put some investors off. It means that when investors chose to sell shares, SARS would — in one year — recoup the full amount of an investor’s deduction and apply capital gains tax to any profits made from selling of the shares.

‘Miller pointed out that such a provision does not exist for the UK’s venture capital incentive. Three years ago the recoupment rule was cited by one venture capitalist as the key reason why his fund was unable to raise sufficient money from investors using the incentive.

‘Investors might also be put off by the high penalties. SARS can issue a fine equal to 125% of the amount contributed by an investor if SARS opts to later withdraw the status of any investment firm as a venture capital company.

‘Venture capital companies also have to be vetted by SARS first and licensed with the Financial Services Board (FSB) before they can begin operating. Miller said that Grovest’s application to the FSB took nearly a year.

‘The incentive should be spurring more angel investors to investing in small companies, but Brett Commaille, who runs angel investment network Angel Hub, said unlike in the UK, investors are not given the choice to place investment directly in firms to benefit from tax rebates, but have to do so via a venture capital company.

Commaille points to McKinsey & Company data on venture capital incentives, where 74% of UK angel investors reported that the tax incentives played a highly significant role in their decision to invest in a small business.’

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About the Free Market Foundation

The Free Market Foundation is an independent public benefit organisation founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations and sponsorships.

See more at: *http://www.freemarketfoundation.com/about/who-we-are#sthash.8H58hvPM.dpuf*

Endnotes

[1] The Davis Tax Committee, 5 November 2013, Media Statement: The Davis Tax Committee Calls for Contributions.
[2] Davis Tax Committee, 5 November 2013, Media Statement: Committee Calls for Contributions.
[3] Committee's Terms of Reference, paragraph 1.
[4] Terms of Reference, paragraph 2.
[5] Paragraph 3.
[6] Committee Terms of Reference.
[7] *Tax,* I. Hetherington & E. Davie, 1999, part of the series *Laws Affecting Small Business* complied by the Free Market Foundation and published by the Friedrich-Naumann-Stiftung, Johannesburg.
[8] *Laws Affecting Small Business, Tax* (see endnote 7), 'Synopsis'.
[9] R215 000 is the equivalent after adjustment for inflation of the amount of R100 000 which we proposed in 1999: see endnote 7.
[10] *Laws Affecting Small Business: Tax*, Recommendation 2.
[11] These submissions are derived in updated form from *Laws Affecting Small Business: Tax* (see endnote 7), 'The case for simplifying tax laws and regulations'.
[12] *National Income Dynamics Study 2013 Wave 3 Overview*, p.3. (Southern Africa Labour and Development Research Unit, School of Economics, University of Cape Town, 17 December 2013.)
[13] *Laws Affecting Small Business: Tax*, Recommendation 4.
[14] Income Tax Act 58 of 1962 s 5(1).
[15] Value-Added Tax Act 89 of 1991 s 15(1).
[16] Value-Added Tax Act s 15(2)(b)(i) and (ii).
[17] Value-Added Tax Act s 15(2A).
[18] Value-Added Tax Act s 23(1).
[19] Value-Added Tax Act s 23(3)(b)(i) and (ii).
[20] Value-Added Tax Act s 15(2B).
[21] Income Tax Act s 24(1).
[22] Income Tax Act s 24(2).
[23] *Laws Affecting Small Business: Tax*, Recommendation 5.
[24] Income Tax Act s 64C(2).
[25] Income Tax Act s 64B.
[26] Income Tax Act s 64B(19) read with s 64D 'effective date'; Revenue Laws Amendment Act 60 of 2008 s 55(2) and s 56(2), Govt Notice 1073 of 20 December 2011.
[27] Act 34 of 2005.
[28] National Credit Act s 105(1)(a) and (3)(a) read with s 171(1)(a).
[29] National Credit Act s 1 'consumer' para (h).
[30] National Credit Act s 1 'credit agreement'.
[31] National Credit Act s 8(1)(b) and (4)(f)(ii).
[32] See National Credit Act s 10(1)(b)(iii)(aa).
[33] Govt Notice R489 of 31 May 2006, 'Regulations made in terms of the National Credit Act, 2005,' reg 42.
[34] National Credit Act s 4(1)(a)(i) read with s 7(1).
[35] See National Credit Act s 7(1) read with s 2(4); Govt Notice 713 of 1 June 2006, 'Determination of Thresholds', reg 2.
[36] National Credit Act s 9(4)(b) read with s 7(1)(b).
[37] Govt Notice 713 of 1 June 2006, 'Determination of Thresholds', reg 3(2).
[38] National Credit Act s 4(1)(b) read with s 7(1).
[39] See endnote 35.
[40] 2014 Budget Speech, Minister of Finance, Pravin Gordhan, 26 February 2014, p 18.
[41] 2014 Budget Speech, p 17.
[42] 2014 Budget Speech, p 18.
[43] Income Tax Act s 1(1), 'company', para (f).
[44] In terms of the Co-operatives Act of 1981 or of 2005: Income Tax Act s 1(1) 'co-operative'.
[45] Income Tax Act s 5(1)(d).
[46] Section 5(2).
[47] The current definition of a Small Business Corporation appears in the Income Tax Act in extensive form in s 12E(4)(a)(i) and (ii)(*aa*)–(*ff*)(A) and (B), (*hh*)(A) and (B) and (*ii*), (iii) and (iv), (c) and (d). The definition (abbreviated and paraphrased) is to this effect: A Small Business Corporation means a private company, close corporation or co-operative, if at all times in the year of assessment all holders of its shares are natural persons, and—
(i) Its gross income for the year does not exceed R20m;
(ii) None of its shareholders or members at any time during the year of assessment holds shares or interests in the equity of another company (other than permissible shares and interests, viz. shares in a listed company, property collective-investment scheme, or a sectional-title body corporate or share-block company or the like, a friendly society, or a venture-capital company; or less than 5% of the interest in a social, consumer, burial-society or similar co-operative whose trading income in the year is all from members, yor

shares in an entity that has not during any year carried on a trade or owned assets exceeding R5 000 in value; or shares in an entity that has taken formal steps to wind up or deregister);

(iii) No more than 20% of its income and capital gains consists of (a) investment income (dividends, royalties, rent, annuities or the like; interest or income subject to the same revenue treatment as income from money lent; and proceeds from investment or trading in financial instruments, marketable securities or fixed property), and (b) income from rendering a personal service (a service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, etc., etc., if performed personally by a person holding an interest in the entity, which does not throughout the year employ three or more full-time employees engaged full-time in the entity's business of rendering that service, other than a shareholder or member of the entity or person connected to him); and

(iv) The company is not a personal service provider (viz., a company where services rendered on its behalf to its clients are rendered personally by a person connected to the company, and either (a) this person would be regarded as the client's employee if rendered by him directly to the client rather than on behalf of the company, or (b) the duties must be performed mainly at the client's premises and this person or the company is subject to control or supervision by the client as to how they are or are to be performed, or (c) more than 80 per cent of the income of the company during the year of assessment from services rendered consists or is likely to consist of amounts received directly or indirectly from any one client or any institution associated with the client, except if the company throughout the year employs three or more full-time employees engaged full-time in the business of the company rendering such services, other than an employee who is a shareholder in the company or person connected to him).

48 By the Taxation Laws Amendment Act 30 of 2000 Schedule 1 para 4(b).

49 By the Taxation Laws Amendment Act 30 of 2002 s 17(1).

50 By the Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003 s 37(1).

51 By the Taxation Laws Amendment Act 9 of 2005 s 9(1)(d).

52 By the Small Business Tax Amnesty and Amendment of Taxation Laws Act 9 of 2006 s 24.

53 By the Rates and Monetary Amounts and Amendment of Revenue Laws Act 23 of 2013 s 7(1).

54 See, for example, s 9(2)(b) read with s 9(1)(d) of the Taxation Laws Amendment Act 9 of 2005 (referred to in endnote51).

55 D Clegg & R Stretch *Income Tax in South Africa*, para 2.1.16.

56 Rates and Monetary Amounts and Amendment of Revenue Laws Act 23 of 2013 s 7(2).

57 Trevor A Manuel, Minister of Finance, Budget Speech, 23 February 2000, p 20.

58 Taxation Laws Amendment Act 30 of 2000 s 12(b) read with Schedule 1 paras 2(b) and 4(b).

59 Revenue Laws Amendment Act 30 of 2000 s 12(b) read with Schedule 1 para 2(b).

60 Ibid schedule 1 para 2(a).

61 Including close corporations and co-operatives: endnotes 43 and 44 above.

62 Gold-mining companies, long-term insurers, public-benefit organisations, recreational clubs and registered micro businesses.

63 Taxation Laws Amendment Act 30 of 2002 s 8(c) read with schedule 1 para 2(b).

64 Ibid schedule 1 para 2(a).

65 Taxation Laws Amendment Act 9 of 2005 s 2(b) read with schedule 1 para 2(b).

66 Ibid schedule 1 para 2(a).

67 Small Business Tax Amnesty and Amendment of Taxation Laws Act 9 of 2006 s 18(b) read with schedule 1 para 2(b).

68 Ibid schedule 1 para 2(a).

69 Rates and Monetary Amounts and Amendment of Revenue Laws Act 2013 s 2(3)(b) read with Appendix I para 5.

70 7 % of the difference between R67 111 and R365 000 is R20 852.

71 21 % of the difference between R365 000 and R550 000 is R38 850. Plus R20 852 (tax on the amount between R67 111 and R365 000) a Small Business Corporation with taxable income of R550 000 will pay tax of R59 702.

72 Rates and Monetary Amounts and Amendment of Revenue Laws Act 2013 s 2(3)(b) read with Appendix I para 3(a).

73 Rates and Monetary Amounts and Amendment of Revenue Laws Act 2013 s 2(3)(b) read with Appendix I paras 3 and 5.

74 R20 852 plus R59 702: see endnotes 70 and 71).

75 The difference between R154 000 and R80 554.

76 National Treasury and SARS, 2013 Tax Statistics, p 91.

77 *Mail & Guardian*, 30 August 2013, 'Bitter end of tax restrictions for micro businesses'.

78 Income Tax Act s 11(a).

79 D Clegg & R Stretch *Income Tax in South Africa*, para 10.2.9.

80 Silke (ed. A P de Koker & R C Williams) *South African Income Tax*, para 8.117.

81 Under any of the specific-deduction provisions for: machinery or plant used in farming or renewable-energy production, hotel assets, aircraft or ships, assets used for storage or packing of agricultural products, rolling stock, or environmental treatment-and-recycling or waste-disposal assets: ss 12B, 12C, 12DA and 37B of the Act.

82 Income Tax Act s 11(e). There are provisos.

83 Silke (op cit), para 8.39B.

84 Income Tax Act s 12C(1)(a) read with s 12C(1) proviso (c).

85 Budget Speech, Minister of Finance, T A Manuel, 21 February 2001, p 40.

86 Section 12E(4)(a)(i).

87 By the Revenue Laws Amendment Act 19 of 2001, s 12.

88 Other than mining or farming.

89 Or a process of a similar nature, in the Commissioner's opinion.

90 Section 12E(1)

91 Budget Speech, 2005, Minister of Finance, Trevor A Manuel, 23 February 2005, p 28.
92 Silke (op cit), para 8.39D.
93 Section 12E(4)(a)(i).
94 By the Taxation Laws Amendment Act 9 of 2005, s 9(1)(a).
95 See text accompanying endnotes 80 and 82.
96 Section 12E(1A)(a) and (b).
97 Budget Speech, 2008, Minister of Finance, Trevor A Manuel, 20 February 2008,
98 By the Revenue Laws Amendment Act 60 of 2008, s 54(1).
99 Income Tax Act, s 48A.
100 Income Tax Act, s 48B(1).
101 Income Tax Act, s 1(1) sv 'company' paras (c) and (f).
102 Income Tax Act, Sixth Schedule para 1 'qualifying turnover'.
103 Income Tax Act, s 48 read with Sixth Schedule para 2(1).
104 Income Tax Act, Sixth Schedule para 3(a), (b)(i) and (ii), (c), (e)(i) and (ii), (f)(i), (ii) and (iii)(aa)(A) and (B) and (bb), (iv) and (v), (g)(i),(ii) and (iii) read with para 4. Briefly paraphrased:
A person does not qualify as a micro business for a year of assessment, if—
(a) the person at any time in the year holds shares or an interest in the equity of a company (other than permissible shares and interests, viz. a shares or interest in a listed company, collective investment scheme portfolio, sectional-title body corporate or share-block company or the like, or venture-capital company; or less than 5% of the interest in a social, consumer, burial-society or similar co-operative whose trading income in the year is all from members; or less than 5% of the interest in a savings co-operative bank; or a friendly society);
(b) more than 20 per cent of the person's total receipts during that year consists of (i) if the person is a natural person, income from rendering a professional service, (ii) if the person is a company, investment income and income from rendering a professional service.
(c) at any time in that year the person is a personal service provider, or labour broker (other than a labour broker exempted from being treated an employee for the withholding of employee's tax);
(d) the amounts received by the person from the disposal of fixed property and any other capital asset used mainly for business, other than a financial instrument, exceeds R1,5 million over a period comprising the current and the immediately preceding two years of assessment, or the shorter period during which he was a registered micro business;
(e) in the case of a company, its year of assessment ends on a date other than the end of February; or at any time during its year of assessment any shareholder is not a natural person or holds any shares or interest in the equity of another company (other than a listed company, collective investment scheme portfolio, etc., see para (a) above) unless that other company has not during any year of assessment carried on any trade and owned assets with a total market value exceeding R5 000; or taken formal steps to wind up or deregister; or if it is a public benefit organisation or recreational club; or (if the person is a member of a partnership in that year of assessment) any partner is not a natural person, or the person is a partner in more than one partnership in that year.
105 Income Tax Act, Sixth Schedule para 8(1). A registered micro business may voluntarily elect to be deregistered, provided it has been a registered micro business for at least three years: Sixth Schedule para 9.
106 Excluding trading stock.
107 Income Tax Act, Sixth Schedule para 5 read with paras 6 and 7.
108 Paras 11(1), (2) and (4).
109 Para 11(6) and (7).
110 Para 13.
111 Para 14.
112 Income Tax Act s 10(1)(zJ).
113 Other than one *in specie*.
114 Income Tax Act s 64E(1).
115 Income Tax Act s 64F(1)(h).
116 Income Tax Act, Sixth Schedule para 9.
117 Taxation Laws Amendment Act 17 of 2009, s 6(2).
118 Taxation Laws Amendment Act 2009, Schedule 1 para 97.
119 Taxation Laws Amendment Act 7 of 2010, s 5(2).
120 Taxation Laws Amendment Act 2010, Schedule 1 para 7.
121 Taxation Laws Amendment Act 24 of 2011, s 6(2) and Schedule 1 para 7.
122 Taxation Laws Amendment Act 2011, s 6(6).
123 Taxation Laws Amendment Act 2011, Schedule 1 para 7.
124 Rates and Monetary Amounts and Amendment of Revenue Laws Act 13 of 2012 s 1(2) and (5).
125 Rates and Monetary Amounts and Amendment of Revenue Laws Act 2012 Schedule 1 para 6.
126 Rates and Monetary Amounts and Amendment of Revenue Laws Act 23 of 2013 s 2(2) and (4)
127 Rates and Monetary Amounts and Amendment of Revenue Laws Act 2013 Schedule 1 para 6.
128 2012 Budget Speech, Minister of Finance Pravin Gordhan, 22 February 2012, p 15.
129 Income Tax Act, Sixth Schedule para 11(4A).
130 Income Tax Act s 89bis(1) read with Fourth Schedule para 2(1).
131 By the Tax Administration Laws Amendment of Act 39 of 2013 s 15(1)(a).
132 Tax Administration Laws Amendment of Act 2013, s 15(2).

[133] Skills Development Levies Act 9 of 1999, s 6(1).
[134] Skills Development Levies Act, s 3(1) and (4).
[135] Unemployment Insurance Contributions Act 4 of 2002, s 7(1).
[136] Unemployment Insurance Contributions Act, s 6(1)(a) and (b).
[137] Unemployment Insurance Contributions Act, s 8(1).
[138] Income Tax Act, Sixth Schedule para 11(4B).
[139] *Mail & Guardian*, 30 August 2013, 'Bitter end of tax restrictions for micro businesses'.
[140] *Mail & Guardian,* 30 August 2013, ibid.
[141] Value-Added Tax Act 89 of 1991 s 23(1).
[142] Value-Added Tax Act s 23(1)(a).
[143] By the Revenue Laws Amendment Act 60 of 2008 s 113(1)(a).
[144] Value-Added Tax Act, s 28(1).
[145] Value-Added Tax Act, s 27(1).
[146] Value-Added Tax Act s 27(2)–(4B).
[147] Value-Added Tax s 27(4) read with s 27(1) 'Category D'.
[148] Value-Added Tax Act s 27(4)(b).
[149] By the Tax Administration Laws Amendment Act 21 of 2012, s 30(2).
[150] Value-Added Tax s 27(4B)(a) read with s 27(1) 'Category F'.
[151] By the Taxation Laws Second Amendment Act 10 of 2005, s 11.
[152] By the Small Business Tax Amnesty and Amendment of Taxation Laws Act 6 of 2006, s 50.
[153] By the Taxation Laws Amendment Act 3 of 2008, s 1(6) read with Appendix III.
[154] Income Tax Act s 12J.
[155] By the Taxation Laws Amendment Act 17 of 2009, s 25.
[156] By the Revenue Laws Amendment 60 of 2008, s 27.
[157] And revised in 2012, by the Taxation Laws Amendment Act 24 of 2011 s 38.
[158] Income Tax Act s 12J(2).
[159] Income Tax Act s 12J(1) 'venture capital company'.
[160] Under ss 7 and 8 of the Financial Advisory and Intermediary Services Act 37 of 2002.
[161] Income Tax Act s 12J(5)(b), (e) and (g).
[162] Income Tax Act s 12J(1), 'qualifying company'.
[163] Income Tax Act s 12J(1), 'impermissible trade'.
[164] Income Tax Act s 12J(3A).
[165] R300 million, where the qualifying company was a junior mining company.
[166] I.e., retrospectively.
[167] Income Tax Act s 12J(6A).
[168] Income Tax Act s 12J(1), 'qualifying shares'.
[169] Income Tax Act s 12J(8).
[170] Income Tax Act s 12J(3).
[171] Income Tax Act s 12J(11).
[172] South African Revenue Service website, Venture Capital Companies, FAQs: 'How is the deduction recouped?', http://www.sars.gov.za/FAQs/Pages/326.aspx (accessed 27 February 2013).
[173] Section 8(4)(a).
[174] Under s 8(4)(a).
[175] Section 9C(2A).
[176] Under s 9C(2).
[177] SARS, Interpretation Note: No. 43 (Issue 4), 6 June 2012, 'Circumstances in which certain amounts received or accrued from the disposal of shares are deemed to be of a capital nature,' para 6.2.
[178] *Mail & Guardian*, 30 August 2013, 'Bitter end of tax restrictions for micro businesses'.