Environmental policy integration in terms of section 37D of the Income Tax Act 58 of 1962

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Abstract

Environmental policy integration is essential in achieving environmental sustainability goals across non-environmental sectors. Dilution of environmental goals in environmental policy integration should be avoided. The conservation tax incentive of the repealed section 37C(5) read with section 18A of the Income Tax Act 58 of 1962, replaced by section 37D, represents environmental policy integration in tax legislation. The study primarily aimed to determine whether the replacement will benefit contracted landowners, using historical comparative methodology. Secondarily, a historical review of the literature on environmental policy integration and alternative incentives for private conservation efforts was performed. Although contracted landowners might obtain a smaller tax benefit annually, they will receive the same total tax benefit over the entire period of the deduction. They will have certainty regarding their annual tax benefit. As certainty is preferred by most landowners, the study concluded that dilution of environmental policy integration goals will not result from the amended legislation.

Keywords

Income Tax Act 58 of 1962, conservation tax incentive, Western Cape Stewardship Programme for Conservation, environmental policy integration, conservation policy instruments

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1. INTRODUCTION AND BACKGROUND

The global sustainability agenda requires that environmental conservation goals be recognised along with economic and social objectives (World Commission on Environment and Development (WCED), 1987). The integration of environmental goals in non-environmental sector policy is referred to as environmental policy integration (EPI). The importance of EPI was highlighted in the first Environmental Action Plan (Commission of the European Communities (CEC), 1973), as well as in subsequent Environmental Action Plans of the European Community (CEC, 1977, 1983, 1993, 2001, 2002). Emphasis was also placed on EPI at the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992, in the Maastricht Treaty (1993) and the Amsterdam Treaty (1997) (Persson, 2004). Attention given to EPI by both the European Union and the United Nations placed EPI central to the environmental and development discourse (Lafferty & Hovden, 2002). Also, in developing countries where precedence is generally given to economic growth and development, it is emphasised that development should be planned to minimise environmental degradation (Fuggle, 1990). The implementation of EPI is thus necessary in developed and developing countries alike.

However, implementing EPI does not necessarily mean that environmental goals are achieved. Persson (2004) states the dilution of environmental goals should be avoided during the EPI process. This should be done by ensuring that the negative environmental consequences of non-environmental policy are identified and prevented. More importantly, the positive environmental consequences of non-environmental policy should be maximised.

In South African income tax legislation the integration of environmental goals in non-environmental policy has taken shape in the form of a conservation tax incentive. This incentive was previously granted in terms of the now repealed section 37C(5) read with section 18A of the Income Tax Act 58 of 1962 (the Act) (Republic of South Africa, 1962). In terms of these sections, a tax benefit (deduction) for a deemed donation was granted to landowners who had contracted their private land under conservation contracts (Cape Nature, 2008). Most of these conservation contracts are regulated by the Western Cape Stewardship Programme for Conservation (WCSPC), which allows for such conservation contracts by means of a declaration of private land as a nature reserve or national park. These declarations are made in terms of the National Environmental Management: Protected Areas Act 57 of 2003 (Republic of South Africa, 1962; Republic of South Africa, 2003). Landowners (hereafter referred to as 'contracted landowners') sign conservation contracts with Cape Nature and Government in terms of the WCSPC. The objective of the WCSPC is the conservation of environmentally sensitive and biodiversity-rich areas on private land (Purnell, 2008). Participation by landowners is optional and the ownership of the land is not transferred to Cape Nature or the government (Kaapse Natuurbewaring, 2008). However, the land is deemed to have been donated to Government to effect the tax incentive in terms of the now repealed section 37C(5) read with section 18A of the Act (Republic of South Africa, 1962). This conservation tax incentive was first introduced into the Act in 2009 (National Treasury, 2009).

Consequent to the implementation of the conservation tax incentive, Van Wyk (2010) found that tax benefits for conservation efforts were not favoured by landowners. The most important reason is that many landowners did not have sufficient taxable income to make use of the possible benefit, as the availability of taxable income is a requirement for the deductibility of a donation in terms of section 18A. Consequently, landowners preferred certainty and predictability in respect of the benefit they might receive. If there is uncertainty about the magnitude of taxable

income, it is difficult to predict the magnitude of the tax deduction for a donation (Van Wyk, 2010).

The study by Van Wyk (2010) resulted in certain submissions to National Treasury (Van Wyk, Botha, Cumming & Wilson, 2011) regarding the pre-amendment legislation. Section 108 of the Constitution of South Africa requires that National Treasury follow a transparent process in the amendment of tax legislation (Republic of South Africa, 1996). Initially, a Green Paper is published to set out the prospective amendments to the legislation, providing opportunity for public comment. After consideration of the public comment received, a White Paper of the proposed amendments and a Draft Bill follows, after which an Act with the relevant amendments is published (Stiglingh, Koekemoer, Van Zyl, Wilcocks & De Swardt, 2015). Public comment mainly provides National Treasury with possible factors to consider in the amendment of legislation.

In the process of amending the conservation incentive, the following factors were considered by National Treasury:

- Landowner uncertainty regarding the actual tax benefit to be derived in the case of a deemed donation; and
- Landowners with lower taxable income do not obtain an equitable benefit when the deemed donation deduction is dependent on taxable income available (National Treasury, 2014a).

To ensure that the most important conservation land is actually targeted by the incentive, emphasis should be removed from the taxable income of the landowner when the tax deduction is granted (National Treasury, 2014a). The premise of certainty is thus important when tax benefits for conservation efforts are granted, and confirms the findings of Van Wyk (2010). This reinforces the objective initially stated by National Treasury (2009) that environmental goals should be prioritised in tax legislation.

The new section 37D of the Act might provide the certainty required. This amendment became effective for years of assessment commencing on or after 1 March 2015 (National Treasury, 2014b).

2. PROBLEM STATEMENT

Following the replacement of the conservation incentive provided by section 37C(5) read with section 18A, with section 37D, the question arises whether the amended legislation might provide contracted landowners with a smaller tax benefit than prior to the amendment. If this is the case, conservation efforts on private land might become ineffective, as landowners might be less willing to sign conservation contracts. This might lead to conservation goals not being attained (Van Wyk, et al., 2011). It is thus necessary to investigate whether environmental goals, integrated in tax policy might become diluted due to the replacement.

3. OBJECTIVES AND RESEARCH METHODOLOGY

The main objective of the study is to assess whether contracted landowners will benefit from the new legislation. Landowners will benefit if they receive a larger tax benefit or, alternatively, if the new legislation provides certainty regarding the tax benefit obtained. This will provide an indication of whether environmental goals might be diluted as a result of the replacement. To

determine this, data collected from a study by Van Wyk (2010) is re-assessed by applying historical comparative research methodology. This methodology allows for observation and analysis in the same social system or context (the tax benefit obtained by contracted landowners) at more than one point in time (Warwick & Osherson, 1973).

This quantitative approach involves a comparison of the application of the relevant sections from the Act based on the same data collected from contracted landowners. The data consists of:

- the size of contracted land (in hectares);
- the cost of the land upon acquisition by the contracted landowners;
- the market value of the land upon conclusion of the conservation contracts; and
- the type of taxpayer (natural person, special trust, normal trust, company) (Van Wyk, 2010).

The annual tax benefit and the total tax benefit per geographical area of the Western Cape are calculated (Van Wyk, 2010). This is done considering both the replaced versions of the legislation and the new legislation.

Prior to the quantitative study, a historical review of literature available on EPI and on alternative incentives for conservation efforts on private land is performed. The objective will be to highlight the characteristics of effective EPI and to give consideration to alternative incentives.

To reach the abovementioned objectives, the article is structured in the following manner:

- A scrutiny of the meaning of EPI and the characteristics of effective EPI;
- The pre-amendment versions of section 37C(5) read with section 18A are presented;
- The tax benefit for contracted landowners surveyed by Van Wyk (2010) is calculated to elucidate the effect of the pre-amendment legislation and to provide a benchmark for comparison with the hypothetical tax benefit provided by the new legislation based on the same data;
- The newly introduced section 37D is presented;
- A hypothetical re-assessment of the tax benefit for contracted landowners in terms of section 37D is calculated based on the same data used by Van Wyk (2010);
- A summarised comparison of the contents and outcomes (i.e. tax benefit) of the now repealed section 37C(5) read with section 18A, to that of section 37D of the Act;
- A brief investigation of alternative conservation incentives applied internationally;
- Summary, conclusions and recommendations.

3.1 Key assumptions

In applying the new legislation, key assumptions of the study are:

- Landowners will more readily conclude conservation contracts if they feel that they will benefit from the new legislation;
- Landowners will benefit from the new legislation either if they will receive a larger tax benefit or, alternatively, if they have certainty regarding the amount of the tax benefit they will receive (Van Wyk, 2010);
- A greater uptake by landowners of conservation contracts will ensure that environmental conservation goals are optimised, and not diluted in the EPI process;

- The hypothetical tax benefit for contracted landowners in terms of the new legislation is calculated using the same data as used by Van Wyk (2010) and assuming that conservation contracts have been concluded on or after 1 March 2015; and
- The hypothetical tax benefit for contracted landowners will be calculated using market value to calculate the approximate capital gain on the relevant properties that are deemed to have been donated or disposed of on the date of declaration of the property as a nature reserve or national park. The municipal value was not taken into account in the study by Van Wyk (2010). The study by Van Wyk (2010) focused on calculating the maximum revenue loss to National Treasury at the time and it was ascertained that market value exceeded municipal value at the time. Historical comparative methodology requires the analysis of historical data (Warwick & Osherson, 1973) that remains constant. This study uses amended legislation as the changing variable.

Before applying the pre-amendment and new legislation in the historical comparative analysis, EPI and the characteristics of effective EPI are investigated.

4. ENVIRONMENTAL POLICY INTEGRATION (EPI)

4.1 Definition and objectives of EPI

EPI's main objective is the specific integration of environmental goals in existing, traditionally non-environmental policy areas. While environmental goals have not been part of decision-making before, EPI now makes environmental goals one of the decision premises in other policy areas (Persson, 2004). It is necessary to consider what policy integration and specifically EPI mean. Underdal (1980:162) first defined policy integration as

> one where all significant consequences of policy decisions are recognised as decision premises, where policy options are evaluated on the basis of their effects on some aggregate measure of utility, and where the different policy elements are consistent with each other.

This definition implies that all policy elements (goals or objectives) should be equal and consistent with one another.

However, it is not always possible to give priority to all policy elements, thus Lafferty and Hovden (2002:15) added to this definition by defining EPI as:

> The incorporation of environmental objectives into all stages of policymaking in non-environmental policy sectors, with a specific recognition of this goal as a guiding principle for the planning and execution of policy; accompanied by an attempt to aggregate presumed environmental consequences into an overall evaluation of policy, and a commitment to minimise contradictions between environmental and sectorial policies by giving principled priority to the former over the latter.

Lafferty and Hovden's definition of EPI thus emphasises that, where possible, environmental goals should be given priority or be the "guiding principle" in policy integration (Persson, 2004). This principled priority approach should ensure that environmental goals are not diluted in EPI.

4.2 Characteristics of effective EPI

To ensure that environmental goals are not diluted in EPI, one needs to consider the characteristics of effective EPI. Traditionally EPI has been implemented and evaluated based on procedural criteria, referring to political commitments, declarations, action plans, strategies,

budget allocations and monitoring. However, to ensure that environmental goals are not diluted, emphasis should be placed on implementing and evaluating EPI by considering concrete policy outcomes (Mickwitz & Kivimaa, 2004). EPI should thus be used for achieving specific environmental goals, rather than environmental goals being an incidental by-product of policy integration.

Moreover, to ensure that environmental goals are achieved Collier (1997) states that effective EPI should:

- Achieve sustainable development and prevent environmental degradation;
- Remove contradictions between policies as well as within policies; and
- Realise mutual benefits and the goal of making policies mutually supportive.

4.3 EPI in South African tax legislation

The integration of biodiversity conservation considerations into fiscal policy was stated as one of the priority actions in the National Biodiversity Framework (NBF) (National Treasury, 2006, 2009). This integration was previously achieved by means of the now repealed conservation tax incentive in terms of section 37C(5) read with section 18A of the Act. This incentive, together with certain other conservation incentives (i.e. tax deduction of conservation management expenditure), was introduced into the Act in 2009 after a call for the development and use of fiscal incentives for the conservation of biodiversity on private and communal land. National Treasury made it clear that environmental goals are given priority when integrated into tax legislation (National Treasury, 2009).

New or amended tax legislation should aim to adhere to the main principles of taxation, namely equity (neutrality), certainty, convenience (simple, easy to implement and administratively efficient) and, economic efficiency (Smith, 1976). However, certain other objectives were stated as important in the design of the conservation tax incentives. These are:

- They should ensure conservation and the sustainable use of biodiversity through sound land management;
- The fiscal incentives should accrue to persons who provide a public good, which is in this case the conservation of biodiversity;
- Biodiversity and other environmental taxes should be part of a tax shifting exercise, rather than increasing the overall tax burden of the country;
- Cohesion needs to be found between the tax and regulatory systems, and perverse incentives and anomalies need to be addressed;
- Conservation tax incentives do not aim at raising revenue but rather at encouraging behaviour change. Importantly, this objective makes the biodiversity outcomes more important than raising revenue; and
- The equity principle does not apply to the conservation tax incentives, as it aims at incentivising behaviour and not at attaining equity among taxpayers. This causes the equity principle to be secondary to other objectives listed (National Treasury, 2009).

The above objectives of National Treasury, together with certain other factors, necessitate that contracted landowners receive the maximum potential tax benefit from the conservation incentive. Other factors are:

- Biodiversity stewardship is regarded as a significant tool to achieve biodiversity conservation targets;
- Contracted landowners relinquish their development rights on the contracted land (Van Wyk et al., 2011);
- Landowners incur loss of market value on their land (Van Wyk, 2010); and
- In certain instances landowners forego future income from the contracted land by not being able to develop the land for agriculture or other commercial purposes in the future (Van Wyk et al., 2011).

The restriction on infrastructure development and agriculture on contracted land is imposed by the relevant legislation (Stiglingh, et al., 2015). The relevant legislation will be discussed and applied in the following sections, presenting pre-amendment legislation first and new legislation thereafter.

5. PRE-AMENDMENT LEGISLATION

5.1 Pre-amendment section 37C(5) of the Income Tax Act No.58 of 1962

(5) If—

(a) land (or a portion thereof) is declared a national park or nature reserve in terms of an agreement under section 20(3) or 23(3) of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003); and

(b) the declaration is endorsed on the title deed of the land and has a duration of at least 99 years,

the declaration of the land without regard to any right of use retained by any taxpayer is deemed to be a donation of immovable property for purposes of section 18A and paragraph 62 of the Eighth Schedule to the Government for which a receipt has been issued in terms of section 18A(2), in the year of assessment in which the land is so declared (Republic of South Africa, 1962).

This section effectively allowed for a once-off donation of the entire contracted land. The deductibility and valuation of the donation fell within the ambit of section 18A of the Act.

5.2 Pre-amendment section 18A of the Income Tax Act No. 58 of 1962

(1) Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any bona fide donations by that taxpayer in cash or of property made in kind, which was actually paid or transferred during the year of assessment to-

...

(c) any department of the government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a) to be used for the purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed-

...

(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section: Provided that any amount of a donation made as contemplated in this subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.

...

(3A) If any deduction is claimed by the taxpayer under the provisions of subsection (1) in respect of any donation of immovable property of a capital nature where the lower of market value or municipal value exceeds cost, the amount of such deduction shall be determined in accordance with the formula:

$$A = B + (C \times D)$$

where:

"A" represents the amount deductible in respect of subsection (1);

"B" represents the cost of the immovable property being donated;

"C" represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and

"D" represents 66,6 per cent in the case of a natural person or a special trust or 33,3 per cent in any other case. (Republic of South Africa, 1962)

The section determines the value of the contracted land for donation purposes at essentially the cost of the land plus any potential capital gain which would not have been subject to capital gains tax, had it been actually disposed of on the date of the deemed donation. Any non-deductible portion of the donation will be carried forward and will qualify for deduction in the subsequent year of assessment, subject to the same restriction of 10% of taxable income before the section 18A deduction. However, one of the principles of tax design, namely certainty, might not be met as contracted landowners might be unsure as to the magnitude of the deduction in any particular year of assessment, as it is determined by taxable income available before the deduction.

6. TAX POSITION OF CONTRACTED LANDOWNERS IN TERMS OF THE NOW REPEALED SECTION 37C(5) READ WITH SECTION 18A

Using the data collected by Van Wyk (2010) and applying the repealed section 37C(5) read with section 18A, results calculated are presented in TABLE 1 and TABLE 2.

TABLE 1: Contracted nature reserves or national parks – natural persons and special trusts

Geographical area	*Hectares contracted (ha)*	*Total market value of contracted land (Rand)*	*Total cost of contracted land (Rand)*	*Potential maximum tax deduction per annum in terms of s37C(5) (Rand)*[1]	*Average rate of taxation (18% to 41%)*[3]	*Range of potential tax benefit using average rates of taxation (per annum) (Rand)*[3]
Cederberg	20 985.80	R22 802 200	[2]	R15 186 265	18% - 41%	R2 733 528 – R6 226 369
George	9 429.02	R30 200 000	R3 372 000	R20 113 200	18% - 41%	R3 620 376 – R8 246 412
Hermanus	802.14	R17 100 000	R266 000	R11 388 600	18% - 41%	R2 049 948 – R4 669 326
Paarl	4 448.85	R51 900 000	[2]	R34 565 400	18% - 41%	R6 221 772 – R14 171 814
Somerset West	371.38	R12 500 000	R4 420 000	R1 498 500	18% - 41%	R1 498 500 – R3 413 250
Total	36 037.19	R134 502 200	[2]	R89 578 465	18% - 41%	R16 608 570 – R37 830 634

Source: Author's results

[1]The potential maximum deduction per annum (limited to taxable income) is calculated as:

$$A = B + (C \times D)$$

where:

"A" represents the amount deductible in respect of section 18A(1);

"B" represents the cost of the immovable property being donated;

"C" represents the amount of capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and

"D" represents 66,6% in the case of a natural person or a special trust or 33,3% in any other case (Stiglingh, Koekemoer, Van Schalkwyk, Wilcocks & De Swardt, 2014).

[2]The cost of four properties situated in these two geographical areas is not denominated in rand value. The calculation as per the new legislation can therefore not be performed accurately. However, for comparison purposes, a cost of R nil is assumed.

Note: The Cape Metro and Rawsonville properties have been removed from the analysis as data was not available for these.

[3]The tax scales applicable to natural persons and special trusts provide for a minimum marginal tax rate of 18% and a maximum marginal tax rate of 41% (South African Revenue Services (SARS), 2015). These tax rates are used to calculate the minimum and maximum tax benefit multiplying the potential tax deduction per annum with the relevant tax rates.

TABLE 2: Contracted nature reserves or national parks – companies and normal trusts

Geographical area	*Hectares contracted (ha)*	*Total market value of contracted land (rand)*	*Total cost of contracted land (rand)*	*Potential maximum tax deduction per annum in terms of s37C(5) (rand)*[1]	*Potential tax benefit for companies (28%) (rand)*[3]	*Potential tax benefit for normal trusts (41%) (rand)*[3]
Cederberg	20 985.80	R22 802 200	[2]	R7 593 133	R2 126 077	R3 113 185
George	9 429.02	R30 200 000	R3 372 000	R10 056 600	R2 815 848	R4 123 206
Hermanus	802.14	R17 100 000	R266 000	R5 694 300	R1 594 404	R2 334 663
Paarl	4 448.85	R51 900 000	[2]	R17 282 700	R4 839 156	R7 085 907
Somerset West	371.38	R12 500 000	R4 420 000	R4 162 500	R1 165 500	R1 706 625
Total	36 037.19	R134 502 200	[2]	R44 789 233	R12 540 985	R20 567 207

Source: Author's results

[1]The potential maximum deduction per annum (limited to taxable income) is calculated as:

$$A = B + (C \times D)$$

where:

"A" represents the amount deductible in respect of section 18A(1);

"B" represents the cost of the immovable property being donated;

"C" represents the amount of capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for an amount equal to the lower of market value or municipal value on the day the donation is made; and

"D" represents 66,6% in the case of a natural person or a special trust or 33,3% in any other case (Stiglingh, et al., 2014).

[2]The cost of four properties situated in these two geographical areas is not denominated in rand value. The calculation as per the new legislation can therefore not be performed accurately. However, for comparison purposes, a cost of R nil is assumed.

[3]The tax rate applicable to companies is 28% with an inclusion rate of 66.6% for "D" in the formula, while normal trusts have an applicable tax rate of 41% with an inclusion rate for "D" in the formula at 33.3%. The relevant tax rates are applied to the potential tax benefit for companies and trusts respectively (SARS, 2015).

Having assessed the tax benefit for contracted landowners in accordance with the pre-amendment legislation, and to provide a basis for comparison, the effect of the new legislation is investigated next.

7. NEW LEGISLATION

7.1 Section 37D of the Income Tax Act No. 58 of 1962

(1) For the purposes of this section, "declared land" means-

(a) land owned by a person that is declared a national park or nature reserve in terms of an agreement entered into with that person under section 20 or 23 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003); and

(b) an endorsement is effected to the title deed of that land that reflects the declaration contemplated in paragraph (a) and has a duration of at least 99 years.

(2) There must be allowed to be deducted from the income of any person in respect of declared land, in the year of assessment during which that land becomes declared land and in each subsequent year of assessment, an amount equal to four per cent of-

(a) the expenditure incurred in respect of-

(i) the acquisition of the declared land; and

(ii) improvements effected to the declared land (other than borrowing or finance costs).

if that expenditure exceeds the market value or municipal value of that declared land; or

(b) an amount determined in accordance with the formula:

$$A = B + (C \times D)$$

in which formula-

(i) "A" represents the amount to be determined;

(ii) "B" represents the cost of acquisition of the declared land and of any improvements to that land;

(iii) "C" represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had the declared land been disposed of for an amount equal to the lower of the market value or municipal value of that land on the date of the agreement; and

(iv) "D" represents 66,6 per cent in the case of a natural person or special trust or 33,3 per cent in any other case, if the market value of the declared land or municipal value of that declared land exceeds the expenditure contemplated in paragraph (a).

TABLE 3: Contracted nature reserves or national parks – natural persons and special trusts

Geographical area	*Hectares contracted (ha)*	*Total market value of contracted land (Rand)*	*Total cost of contracted land (Rand)*	*Potential maximum tax deduction per annum in terms of s37D (Rand)*[1]	*Average rate of taxation (18% to 41%)*[3]	*Range of potential tax benefit using average rates of taxation (per annum) (Rand)*[3]
Cederberg	20 985.80	R22 802 200	[2]	R607 451	18% - 41%	R109 341 – R249 055
George	9 429.02	R30 200 000	R3 372 000	R804 528	18% - 41%	R144 815 – R329 856
Hermanus	802.14	R17 100 000	R266 000	R455 544	18% - 41%	R81 998 – R186 773
Paarl	4 448.85	R51 900 000	[2]	R1 382 616	18% - 41%	R248 871 – R566 873
Somerset West	371.38	R12 500 000	R4 420 000	R333 000	18% - 41%	R59 940 – R136 530
Total	36 037.19	R134 502 200	[2]	R3 583 139	18% - 41%	R644 965 – R1 469 087

Source: Author's results

[1]The potential maximum deduction per annum is calculated as:

Four %A, where

$$A = B + (C \times D)$$

where:

"A" represents the amount determined;

"B" represents the cost of acquisition of the declared land and of any improvements to that land;

"C" represents the amount of capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for an amount equal to the lower of market value or municipal value on the date of the agreement; and

"D" represents 66,6% in the case of a natural person or a special trust or 33,3% in any other case (Stiglingh, et al., 2015).

[2]The cost of four properties situated in these two geographical areas is not denominated in rand value. The calculation as per the new legislation can therefore not be performed accurately. However, for comparison purposes, a cost of R nil is assumed.

Note: The Cape Metro and Rawsonville properties have been removed from the analysis as data was not available for these.

[3]The tax scales applicable to natural persons and special trusts provide for a minimum marginal tax rate of 18% and a maximum marginal tax rate of 41% (SARS, 2015). These tax rates are used to calculate the minimum and maximum tax benefit multiplying the potential tax deduction per annum with the relevant tax rates.

TABLE 4: Contracted nature reserves or national parks – companies and normal trusts

Geographical area	*Hectares contracted (ha)*	*Total market value of land (Rand)*	*Total cost of land (Rand)*	*Potential maximum tax deduction per annum in terms of s37D (Rand)*[1]	*Potential tax benefit for companies (28%)*	*Potential tax benefit for normal trusts (41%)*[3]
Cederberg	20 985.80	R22 802 200	[2]	R303 725	R85 043	R124 527
George	9 429.02	R30 200 000	R3 372 000	R402 264	R112 634	R164 928
Hermanus	802.14	R17 100 000	R266 000	R227 772	R63 776	R93 387
Paarl	4 448.85	R51 900 000	[2]	R691 308	R193 566	R283 436
Somerset West	371.38	R12 500 000	R4 420 000	R166 500	R46 620	R68 265
Total	36 037.19	R134 502 200	[2]	R1 791 569	R501 639	R734 543

Source: Author's results

[1]The potential maximum deduction per annum is calculated as:

Four % of A, where:

$$A = B + (C \times D)$$

where:

"A" represents the amount to be determined;

"B" represents the cost of acquisition of the declared land and of any improvements to that land;

"C" represents the amount of capital gain (if any), that would have been determined in terms of the Eighth Schedule had it been disposed of for an amount equal to the lower of market value or municipal value on the date of the declaration; and

"D" represents 66,6% in the case of a natural person or a special trust or 33,3% in any other case (Stiglingh, et al., 2015.

[2]The cost of four properties situated in these two geographical areas is not denominated in rand value. The calculation as per the new legislation can therefore not be performed accurately. However, for comparison purposes, a cost of R nil is assumed.

[3]The tax rate applicable to companies is 28% with an inclusion rate of 66.6% for "D" in the formula, while normal trusts have an applicable tax rate of 41% with an inclusion rate for "D" in the formula at 33.3%. The relevant tax rates are applied to the potential tax benefit for companies and trusts respectively (SARS, 2015).

(3) If a person retains the right of use of the declared land, the deduction to be allowed in terms of this section must be limited to an amount that bears the amount determined as contemplated in subsection (2) the same ratio as the market value of the declared land subject to the right of use bears to the market value of the declared land had that declared land not been subject to the right use.

(4) The deductions which may be allowed in terms of this section in respect of the declared land must not in aggregate exceed expenditure incurred as referred to in subsection (2)(*a*) or (*b*), as the case may be.

(5) If the agreement in respect of which the land that becomes declared land is terminated by the person with which the agreement is entered into, an amount equal to the aggregate of the deductions allowed in terms of this section in the five years of assessment preceding the termination must be included in the income of that person in the year of assessment that the agreement is terminated (Republic of South Africa, 1962).

Thus, section 37D allows for a straight line deduction of the respective values over a period of 25 years (or at 4% per annum). This section is effective for years of assessment commencing on or after 1 March 2015 (National Treasury, 2014).

8. THE TAX POSITION OF CONTRACTED LANDOWNERS IN TERMS OF THE NEW SECTION 37D

Using the data collected by Van Wyk (2010), applying the key assumptions stated in 3.1 and applying section 37D, findings are presented in TABLE 3 and TABLE 4.

9. Comparison of pre-amendment legislation and new legislation

A summarised comparison of the pre-amendment legislation and the new legislation is presented in TABLE 5.

TABLE 5: Comparison of the effect of pre-amendment and new legislation

Effect for tax purposes	*Pre-amendment legislation*	*New legislation*
Donation as determined by section 37C(5)	The entire contracted land donated in the year of the conclusion of the contract, with the valuation of the donation shifted to section 18A	No deemed donation
Calculated total deduction in respect of the contracted land (over the entire period of the deduction)	Natural persons and special trusts: R89 578 465 Companies and normal trusts: R44 789 233	Natural persons and special trusts: R3 583 139 x 25 years = R89 578 465 Companies and normal trusts:

Effect for tax purposes	*Pre-amendment legislation*	*New legislation*
		R1 791 569 x 25 years = R44 789 233
Calculated total maximum hypothetical deduction per annum[1]	Natural persons and special trusts: R89 578 465 Companies and normal trusts: R44 789 233	Natural persons and special trusts: R3 583 139 Companies and normal trusts: R1 791 569
Deductible donation as determined by section 18A	The entire capital gain not subject to capital gains tax, limited to 10% of taxable income, with the excess donation carried forward to the subsequent year of assessment	No deemed donation
Calculated total hypothetical range of tax benefit, assuming sufficient taxable income available before the deduction (for the purposes of the pre-amendment legislation)	Natural persons and special trusts: R16 124 124 – R36 727 171 Companies: R12 540 985 Normal trusts: R18 363 586	Natural persons and special trusts: R644 695 – R1 469 087 Companies: R501 639 Normal trusts: R734 543
Certainty and predictability of the annual deduction	No, as taxable income (if any) first has to be calculated in each year of assessment	Yes, the straight line deduction is granted irrespective of the taxable income (if any) in each year of assessment

Source: Authors' results

[1] Provided sufficient taxable income available, and limited to 10% of taxable income

9.1 Annual benefit obtained by contracted landowners

When comparing the potential hypothetical tax benefit obtained, it is evident that all types of taxpayers will potentially enjoy a smaller annual tax benefit after the replacement of section 37C(5) read with section 18A, by section 37D. However, in the case of the pre-amendment legislation the deductibility of a donation for tax purposes requires that taxable income is available before the deduction.

Pre-amendment, contracted landowners with an assessed loss would not have been able to claim a donations deduction in a particular year of assessment. However, section 18A did provide for a

roll-over of non-deductible portion of donation amounts had sufficient taxable income not been available.

In the case of section 37D, which provides for a straight line deduction, it is not dependent on the availability of taxable income. This makes the section 37D deduction more predictable. The section 37D deduction might also serve to create or increase an assessed loss. This was not possible in the case of a donation deduction.

9.2 Total benefit obtained by contracted landowners over the entire period of the deduction

Notwithstanding the fact that contracted landowners enjoyed a potentially larger tax benefit in accordance with the pre-amendment legislation, the total tax benefit over the entire period of the deduction would remain unchanged.

Having considered the pre-amendment legislation and the new legislation as examples of conservation tax incentives, it is also necessary to briefly consider alternative conservation incentives used internationally.

10. ALTERNATIVE CONSERVATION INCENTIVES APPLIED INTERNATIONALLY

Conservation incentives include motivational incentives, voluntary schemes, fiscal and economic incentives, property-based incentives and regulatory incentives (Botha, 2001).

10.1 Motivational, educational and information instruments

Motivational incentives involve the ongoing education and motivation of the public regarding conservation on private land (Casey, Vickerman, Hummon & Taylor, 2006). Motivational incentives form the basis on which all other policy instruments are built, as they encourage behaviour change (Young et al., 1996a). However, Casey *et al.* (2006) state that adequate funding is crucial for the provision of motivational incentives. In addition, motivational incentives cannot be relied on as the only incentive as it does not provide formal regulation (Young et al., 1996a).

10.2 Voluntary schemes

Voluntary schemes are non-regulatory, non-compulsory programmes that encourage conservation (Casey *et al.*, 2006). An example of a voluntary scheme in South Africa is a conservancy agreement. Landowners who have their land in conservancies are provided with advice and assistance regarding conservation management on their properties (Kaapse Natuurbewaring, 2008) but do not benefit from the conservation tax incentives. The main reason is that there is no contractual obligation on landowners (Purnell, 2008). Voluntary incentives have low administrative costs, high community acceptability, and minimal equity implications, while promoting an ethic of custodianship on a property (Young et al., 1996a).

10.3 Fiscal and economic incentives

Fiscal and economic incentives include the granting of financial rewards to landowners for providing a conservation service, for example the payment of a direct subsidy to the landowner.

Subsidies are favoured as they can be budgeted for, audited and directly controlled (Botha, 2001). This was confirmed by Van Wyk (2010) in a survey of contracted landowners, who preferred subsidies for items such as fencing expenditure. In this way the behaviour of landowners is influenced without intervention in their affairs and they are encouraged to source the most cost-effective solutions for a problem. Decision-making is decentralised to the landowners, who are often best informed about their particular situation (Young et al., 1996a).

However, over-using financial incentives may also not be beneficial. If incentives are paid and subsequently withdrawn for some or other reason, biodiversity may be lost if the valuable conservation work is undone (Young et al., 1996b). As an alternative to subsidies, government provision of labour for conservation and maintenance activities on private land might be more effective (Van Wyk, 2010).

10.4 Property-based incentives

These incentives are the contractual mechanisms that bring about changes in ownership or habitat-use rights. Examples are conservation easements, covenants, deed restrictions and stewardship exchange agreements (Shine, 2005; Colman, 2006; Casey et al., 2006). Land is committed to conservation by its owner for a number of years, with certain development restrictions placed on landowners. In return for this, landowners are granted assistance in conservation efforts on their land. Casey *et al.* (2006) states that there usually are tax benefits associated with these types of agreements. These are similar to conservation contracts incentivised by section 37C(5) read with section 18A of the Act.

10.5 Regulatory incentives

Regulatory incentives are the rules and laws that guide behaviour and generally involve the proactive prevention of biodiversity loss (Botha, 2001). When people are unwilling to co-operate in the conservation effort, and where other incentives are not effective, regulation may be the best way to exert pressure and compel people to protect biodiversity. However, regulation is often criticised for being intrusive, inefficient and expensive (Young et al., 1996a).

10.6 Combination of conservation incentives

Having discussed a number of alternative conservation incentives, it is important to note that one incentive in itself is not always effective. Ideally, an optimal mix of conservation incentives should be implemented to attain environmental conservation goals (Botha, 2001).

11. CONCLUSION

The main objective of this study was to assess whether contracted landowners in terms of conservation agreements on their land will benefit from the replacement of section 37C(5) read with section 18A, by section 37D of the Act. Landowners will benefit if they receive a larger tax benefit or, alternatively, if the new legislation provides certainty regarding the tax benefit obtained. This provided an indication on whether environmental goals aimed for by EPI will be diluted as a result of the amendment. To determine this, data collected by Van Wyk (2010) was re-assessed based on the amended legislation and based on a number of assumptions stated in section 3.1.

Prior to this, EPI was investigated to highlight the characteristics of effective EPI. This revealed that EPI should be implemented and evaluated based on concrete outcomes and not on procedural criteria, and that positive environmental consequences of non-environmental policy should be maximised. Environmental goals should thus receive preference in the design of integrated policy.

A comparison of the contents and outcomes of the pre-amendment legislation and the new legislation revealed a number of amendments, especially regarding the magnitude of the potential tax deductions per annum. The pre-amendment legislation allows for a once-off donation of the value of the entire contracted land calculated in terms of a set formula, provided sufficient taxable income is available. In the case of insufficient taxable income, any non-deductible portion of the donation is carried forward to the successive year of assessment.

A re-assessment of the hypothetical tax benefit for contracted landowners' post-amendment, compared to their hypothetical position pre-amendment resulted in contracted landowners potentially qualifying for smaller tax benefits per annum. The tax benefit was also done using a set formula.

However, the new section 37D provides a predictable straight line deduction, independent on whether contracted landowners having sufficient taxable income available. This, together with the total tax deduction over the entire period remaining unchanged enables the study to conclude that environmental objectives are theoretically not diluted by the amendment.

Consideration was also given to alternative tax incentives applied internationally. More direct methods of providing conservation incentives to landowners were identified. These direct methods of providing conservation incentives are often preferred by landowners and conservation agencies alike. An appropriate combination of conservation incentives generally leads to environmental conservation goals being optimised. The amended tax legislation might be a useful tool for EPI in tax legislation when used as part of an effective conservation incentive mix.

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