

# **Tax Amendment Proposals to facilitate conservation**

Discussion paper from a conservation viewpoint.

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## **Why the tax environment?**

Conservationists and environmental managers seldom display financial insight or tax finesse. Although a key element influencing land use decisions, its effects on biodiversity are seldom understood or quantified, and the contribution of natural resources and environmental services are taken for granted. Moreover, outdated policies often persist decades after they become obsolete and the tax regime (for valid reasons) is under-utilised as an instrument of environmental and public benefit. Indeed, these benefits are sometimes deliberately omitted because the function of tax is to generate revenue, not to effect desirable outcomes. But all laws, policies and economic interventions have unintended consequences which will result in shifting behaviours and social dynamics. We have a choice either to use this for the positive or to ignore potentially disastrous social and environmental side effects.

An ideal scenario would be a policy change that results in significant savings for the fiscus, increases efficiency of resource allocation to desirable land management activities thereby securing greater private investment. Do any opportunities exist to increase revenue by curtailing exemptions for environmentally unsound activities? This may be wishful thinking, but the effort should still be made to find optimal solutions.

Obviously, there are significant hurdles to overcome, not least of which is an argument about equity. Are we treating all members of the public equally in our treatment of aspects of the tax regime- or favouring already wealthy and landed individuals? Other obstacles include collection, evasion and enforcement. Economists argue that it is preferable to ensure revenue flows are maximised, and to retain government control over finances through allocations to specific programmes and departments. Deductions would undermine this approach. Whether broad-base collection is more effective or efficient is questionable, and the fact remains that many exemptions and deductions are allowed. Why penalise conservation and sustainable landuse?

There are 3 broad aims of the initiative that this paper introduces.

- 1) Look at existing perverse incentives in the tax regime which might be limiting our ability to conserve and sustainably utilise our natural resources;
- 2) Propose policy changes, where practicable and cost effective, which will result in biodiversity conservation; and
- 3) Where economically efficient and socially desirable, identify preferred opportunities to halt land degradation and resource decline.

## **The Public Benefit nature of conservation**

Is nature conservation (and its allied concepts of sustainable landuse) a public benefit good that should be encouraged? Is it not something that should be provided for by the state out of revenues raised from the general economy? Foregoing a dedicated defence of the public-benefit nature of conservation, Schedule 9 of the 2002 Tax Laws Amendment Bill lists organisations involved nature conservation as eligible for public-benefit status

(Old S 18A of the Income Tax Act of 1967). Furthermore, for the first time in South Africa, Schedule 9 Part II lists donations to nature conservation in transfrontier parks, as tax deductible. Thus, Government has already identified conservation as a public-benefit activity.

Although many people hold the state liable for conservation activities, there are some fundamental reasons why it alone cannot deliver an optimally conserved and cared for environment. The State only physically owns 17% of the country, conserves only 5,8% in statutory reserves, has enormous difficulties in policing any environmental management legislation, and consistently underfunds its conservation agencies. Without the implicit involvement of landowners and resource users, the State will never be able to guarantee the constitutional right of every South African to an environment that is conserved.

### **Existing perverse incentives**

Direct habitat loss due to agricultural, forestry and urban development is by far the greatest threat to biodiversity. Are there implicit tax deductions allowed (for land clearing expenses for example) that might be fuelling these enterprises? Does the diesel rebate system encourage fuel inefficiency in these industries, and permit marginal enterprises at the expense of sound land management? Previously, tax incentives were offered for forestry development that encouraged invasive tree planting in highly undesirable areas. Although no longer applicable, the cost of removing these plantations and the invasions they have spawned is a serious drain on government and private resources.

Removing perverse incentives would be the logical starting point for investigating the tax and subsidy regimes. Often, revenue neutral concessions or exemptions (introduced in previous economic climates for dubious reasons) may still persist with negative consequences for biodiversity. This might also be the first arena to investigate positive benefits for treasury by limiting existing deductions or even introducing environmental taxes.

### **Proposals to promote biodiversity conservation**

Limiting unnecessary damage to ecosystems may be insufficient to counter the environmental threats faced today. The most effective way to conserve critically important ecosystems and nationally endangered and useful species is through direct setting aside of protected areas to conserve them *in-situ*. This can be done in a way that does not require land purchase by the state, does not displace people from the land and minimises economic impacts. (Utilisation seldom threatens species with extinction, and where it does, markets for cultivated products may be created to boost rural economies).

Providing suitable tax incentives for private conservation areas that meet strict eligibility criteria (e.g. must be in nationally identified priority areas, be managed according to an authorised plan, regularly audited, demonstrate local equity, and enjoy a high level of security) may be the most cost-effective way to meet stated government targets of land in the nation's conservation estate. This should not be seen as encouraging a private good, as the landowner assumes restrictions on the property in favour of the wider public.

## **Proposals to encourage sustainable utilisation and halt land degradation**

Setting aside areas for conservation, even in private ownership, will not address broad-scale land management issues that result in dysfunctional ecosystems, reduced grazing potential, soil erosion or alien plant invasion. Economic imperatives of short-term profitability and fiscal policy options have many unintended consequences that result in unsustainable development.

Previous governments through ill-advised assistance schemes, such as drought relief encouraging overstocking and poor grazing management, have actively fostered much environmental degradation. Are there fiscal policies which may be tax neutral, but which encourage greater investment by landowners in sustainable, long-term production systems?

Clearing land was seen as progressive development and was often required in order for landholders to receive subsidies. When pushed to the extreme, this almost eliminated some entire ecosystems, and left much unusable land with little agronomic value. Many cleared areas would never have been economically viable to farm, but once the damage was done, the loss of biodiversity was often irretrievable. Much energy is expended for no reward.

Alien plants present a massive threat to South Africa, especially its water economy, but also to agricultural production and fire vulnerability. Current government investment in clearing programs is not 10% of the amount required to defeat the problem, or even bring it under control. If certain clearly specified, socially desirable, and easily audited activities were declared as tax deductible, would there be a increase in job creation or economic development in alien clearing? Many landowners, despite laws compelling clearing, will not be able to afford even the initial investment and hence would not even qualify for deductions. However, this proposal might allow wealthy landowners to invest more effectively in sustainable land management.

## **Proposals to tax environmentally unsound industries**

Any exemptions that are offered to achieve government environmental management objectives could have their costs offset by generating revenue from industries or enterprises that knowingly and openly impact on biodiversity or have significant off-site costs to be borne by the wider public. Much international research persists in the area of taxing environmentally damaging chemical production, pollution emission duties and damaging industries, and there is significant interest in South Africa.

## **Summary of Issues and Opportunities by Sector**

### **Statutory Agencies and Tax**

Donations, Vat & tax status

*Problem Statement:* Conservation agencies in South Africa are in Government Departments or have recently emerged into parastatal boards. Most do not enjoy

favourable tax positions on any income or donations. Only recently has the SAN Parks Board become VAT exempt.

Few individuals would consider donating cash or land to these agencies unless there were positive income tax, estate planning or similar benefits. Statutory Boards cannot receive conditional donations or bequests without prior consultation with responsible Ministers.

### Conservation Land and Rates liability

*Problem Statement:* Conservation land owned by national or provincial governments will be liable for municipal rates under the new Property Rates Bill being developed by the Department of Provincial and Local Government. Currently, rates are only levied in urban areas, but National Parks that have contractually incorporated private land are exempt from all rates and taxes in these areas. The ten other Conservation Agencies who own or manage the conservation estate (9 provinces and the National Botanical Institute) do not enjoy this status, despite holding land of sometimes greater conservation or national cultural significance than National Parks. This may place an extreme burden on all conservation agencies.

It is imperative to obtain exemptions for priority conservation land before local authorities impose the rates as international experience has shown that it is very difficult and tedious to restrict an income once it is already being raised by municipalities. If the exemption does not apply to the property, but rather the owner of the rights to the property, then it is also imperative that any agency who holds conservation servitudes over priority conservation land must also be exempt (in terms of Part ii of Schedule 9 of the Income Tax Amendment Act) from any potential rates they are liable for.

Without this exemption, it is also very unlikely that private landowners would wish to contract their land into a protected area for the national benefit, despite the fact that they would receive no income from it, and not enjoy any appreciable services. Municipalities would have to be individually approached to craft their rates policies to exempt nationally important conservation land, a significant cost in personnel and resources. Although the Bill permits a national framework, which could bind them to significant rebates, no single agency appears willing to pursue this for the benefit of all others. A perverse incentive exists for municipalities to discourage the formation of protected areas within their borders, as it may signal a loss of revenue, despite the potential economic benefits these areas may deliver.

### **Non Profit Conservation Organisations**

Extending Public Benefit status, examining eligibility criteria, promoting Conservation NGOs

*Problem Statement:* Stricter eligibility criteria for Non-profit organisations to be recognised as Public Benefit Organisations (PBOs) have had unintended consequences for conservation orientated NGOs. To achieve moderate financial viability or security, many NGOs and CBOs engage in sustainable industries based on conservation initiatives. However, they often exceed the requirement of a maximum 15% of total turnover coming from these endeavours, lose their eligibility and cannot achieve income streams to cover overheads. This creates a perverse incentive for these conservation

initiatives ever to become truly self-sustaining, and restricts financial benefits to intended community recipients and latent sustainable utilisation industries (e.g. wildflower harvesting, community conservation development projects).

There is an on-going dispute between the Commissioner of SARS and the KwaZulu-Natal Conservancies movement as conservancies are not being regarded as non-profit organisations despite significant investment of internally generated and donated funds in conservation activities. This is a perverse incentive encouraging people **not** to form effective civil bodies to carry out public-benefit activities at no cost to government.

Although it may be possible to lobby for a blanket exemption for all conservation orientated PBOs, treasury would most likely not favour this. There are more than 40000 non-profit organisations, who employ more people than the mining industry, but less than half of which are known to SARS, and there are significant resource and capacity constraints for dealing with this number of PBOs. There is obviously a need to tighten up eligibility criteria, but this must be balanced with the interests of the employees and the civil services provided by them.

## **Private Conservation and the Tax environment**

Donations to Protected Areas, Conservation Agencies and priority ecosystems

*Problem Statement:* Philanthropic donations to protected areas (except Transfronteir Parks), Government and Parastatal Conservation Agencies and Boards or to NGOs conserving critically endangered ecosystems currently attract donations tax. In many other countries, this form of philanthropic investment in the environment and government conservation priorities is actively encouraged.

Clarifying the donating of land or rights, and quantifying possible benefit from Income, Donations taxes

*Problem Statement:* Getting land or development rights donated to conservation are one of the best ways to prevent loss of biodiversity. There are few precedents for quantifying the value of donations of land or rights to Conservation Agencies or NGOs. Without a readily robust and defensible quantification of the monetary value, Revenue Services will be reluctant to even provide for any eligibility criteria. This is a hindrance to enabling direct financial flows from wealthy landowners and patrons to conservation priorities. Donation benefits are also capped at a relatively low level (R25 000), which would easily be surpassed by the ceding of even a modest area of conservation land.

Is it pragmatic or administratively feasible to record the quantum of donation onto a properties title deed or bond? Are we constrained by a 99 year contract structure or are perpetual leases possible? How would these agreements and donations be properly audited and policed?

Estate duties, and bequests to conservation in land or rights

*Problem Statement:* Many critically important conservation worthy areas on private land are threatened during intergenerational transfer or bequest as properties often have to be

subdivided or developments pursued to pay the costs of Estate Duties. Further, lack of conservation-aware estate-planning advice and legal technicalities (e.g. necessitating the use of the word “bequeath”) are a significant perverse incentive preventing private investment in the environment.

Extending existing incentives (such as the diesel rebate) to conservation initiatives

*Problem Statement:* Currently, industries using diesel but not making heavy use of the road network are allowed a rebate per litre used (a significant portion of the fuel price is for road maintenance levies). Industries identified for this rebate, although vital to the economy, are also primarily responsible for the greatest losses of biodiversity viz Crop agriculture, Forestry and Mining. This rebate may enable marginal activities (such as ploughing or clearing land) to become viable. Moreover, diesel use in off-road situations such as alien clearing and ecosystem rehabilitation by landowners is not eligible for this rebate.

*Recommendation:* Extending this rebate to specified conservation initiatives and land uses, where little use is made of the road network, may catalyse greater investment by private landowners and conservation initiatives in sound environmental management

### **Where do we go from here?**

This paper has tried to identify a broad, but not comprehensive, suite of possible areas of tax policy that require further investigation to encourage conservation as a viable landuse. Cogent arguments must be developed with clear analyses of fiscal outcomes for as many of the proposed options as possible. Some may not require detailed examination, depending on the requirements of Treasury, but the impacts of others will have to be quantified and the costs and benefits weighed up.

First, agreement is required between conservation professionals and decision-makers as to which policy options are to be tackled first, and how these may be aligned with government objectives of conservation or land management.

Second, legal services will be required to craft the proposals into workable formulations that mitigate negative outcomes, and economic analyses undertaken to demonstrate their possible fiscal effects.

Finally, suitable mutually acceptable proposals can be promoted for adoption.

### *Postscript:*

- 1- What role can the Land Bank play in providing a land value for quantifying donations? And are there any opportunities in the Land Bank’s social and environmental equity policies to secure reduced interest rates for “covenanted” properties.
- 2- Similarly the Development Bank of SA