A brief summary of the tax incentives in support of

Protected Areas Expansion and Securing Threatened Ecosystems

as provided for in the Income Tax Act 58 of 1962

Tracey Cumming
Botanical Society
May 2009

General Overview

The leading threat to biodiversity in South Africa is habitat loss. In response to this, two main strategies exist, a) to expand our protected area estate, and b) to manage threatened ecosystems sensitively and with production systems that are compatible with retaining biodiversity. This note outlines the tax incentives recently promulgated to support these strategies.

We have a sound legal basis for this in the National Environmental Management: Protected Areas Act (Act 57 of 2003) (PAA) and the National Environmental Management: Biodiversity Act (Act 10 of 2004) (NEMBA). These Acts, amongst other things, establish a planning framework which targets only the most important biodiversity areas, and makes provision for partnership agreements for conserving biodiversity on private and communal land.

Landowners may enter into these partnership agreements to conserve their land for biodiversity in the form of either:

- A Biodiversity Management Agreement (under NEMBA);
- A Protected Environment (under PAA); or
- A Nature Reserve or National Park (under PAA).

The latter two agreements also require formal declaration and restrictions on their land.

In order to be as effective as possible, the above declarations and agreements are being implemented with additional contracts, which outline agreed upon management plans for the land, and stipulate time frames. These time frames and management requirements are aligned with the degree of protection of biodiversity. For example, a Biodiversity Management Agreement would typically have limited management requirements, still allow a number of other activities on the land, and would extend for a relatively short period of time, such as five to ten years. At the other end of the spectrum, a Nature Reserve is more likely to be long term, such as 99 years or in perpetuity, with more substantial restrictions on the use of the land.

These agreements are currently being implemented through organised stewardship programmes developed within provincial conservation agencies. These programmes target biodiversity priority areas, provide an extension service to participating landowners, draw up and manage the above mentioned contracts, assist the declaration process and audit the agreements. There is a role for other agencies, such as NGO’s, to become involved in this process. However, effective stewardship programmes are relatively resource heavy, and collaboration between agencies in order to assist the process would be most effective.

In response to the commitments of landowners to secure biodiversity on their land, Treasury has recognised that:

A. Landowners have forgone use rights to their land, which have inherent value, and
B. Landowners often incur substantial costs in managing their land under these agreements.

As a result, a number of fiscal mechanisms have been developed to support what is essentially a

cost carried by an individual for the public good. Three different scenarios are to be addressed by tax mechanisms, each providing a more secure conservation agreement, and demanding a higher level of commitment and cost from the landowner.

These mechanisms are outlined below.

Biodiversity Management Agreement, Minimum contract of 5 years

All **conservation** and **maintenance** expenses incurred in terms of a Biodiversity Management Agreement are to be treated as expenditure incurred in the production of income and for purposes of trade. Examples of these expenses could be rehabilitation expenses, alien clearing or burning fire breaks. However, expenses are only deductible if the activity is reflected in the management plan connected to the Biodiversity Management Agreement.

Important factors:

- The taxpayer may only make these deductions from income generated from the land subject to the Biodiversity Management Agreement, or land in the immediate proximity. The Act does not define 'immediate proximity', but it is taken to mean neighbouring, or within a few kilometres of the land under the BMA.

- The deduction may not exceed the income of the taxpayer derived in the year of assessment. However, the amount by which the deduction exceeds the income will be deemed to be expenditure incurred by the taxpayer in the following year of assessment. In other words, a roll-over of deductions into the next tax year is allowed.

Farmers entering into Biodiversity Management Agreements are subject to the same deductions, with the only difference being:

- The deductions are allowed for under paragraph 12(1A) of the First Schedule. This portion of the Income Tax Act deals specifically with all allowable deductions made by farmers.

- The deductions are limited to income derived by the taxpayer from farming activities on the land or within the immediate proximity of the land.

Recoupment clause

- If the taxpayer is in breach of the agreement, the amount of the deductions previously allowed in the five years preceding the contravention would be recouped[1].

A note for SARS registered farmers:
Additionally, and not dependent on any biodiversity management agreement or protected area declaration, the list of expenses allowable for deduction for farming purposes has been amended to include **expenses incurred for alien and invasive vegetation.**

[1] SARS would recover the money by including it in the amount owed to them in the tax year in which the breach arose

Protected Environment, Nature Reserve, National Park, Minimum contract of 30 years

All **conservation** and **maintenance** expenses are deemed to be Section 18A deductible donations. This means that expenses related to the management of the land, as required by the Management Plan, can be deducted from the taxpayer's taxable income[2]. Activities not required in the management plan are not deductible.

18A Deductions
An '18A deduction' refers to deductions from taxable income allowable under Section 18A of the Income Tax Act 58 of 1962 (Chapter II, Part I, Section 18A).

This Section allows the taxpayer to deduct from their taxable income donations made in cash or of property made in kind to Public Benefit Organisations, which includes Government Departments.

NB: An 18A deduction may not exceed 10% of the taxpayer's taxable income.

Recoupment clause

- If the taxpayer is in breach of the agreement, he/she will be subject to a recoupment of the deductions previously allowed in the five years preceding the contravention.

Nature Reserve, National Park, Minimum contract of 99 years

The value of land is deemed to be a Section 18A deductible donation. This means that the taxpayer may deduct the value of the land from their taxable income. This deduction must follow some prescribed guidelines, outlined below.

- Taxpayers under this agreement are still entitled to deduct management expenses from their income, as outlined above.

Calculating the value:
If the land owner does not retain any right of use of the property under declaration (such as residential or commercial use)

- The landowner may deduct 10% p.a. of the value of the land over ten years, starting on the year of declaration.
- The deductible amount is initially equal to 10% of the lesser of:
  - the cost to purchase the land, or
  - the market value of the land
- In other words, each year, for ten years, the land owner may deduct:

10%	x	Lesser of cost or market value declared

[2] Gross income – exemptions = Income
Income – Deductions + Taxable Capital Gains = Taxable Income

If the land owner does retain some right of use over the property

- The landowner may deduct 10% p.a. of the value of the land over ten years, starting on the year of declaration.
- The deductible amount is initially equal to 10% of the lesser of:
    - the cost to purchase the land, or
    - the market value of the land
- This 10% amount must then be multiplied by the ratio of the market value of the declared land reduced by the right of use as that amount bears to the value of the declared land as if that declared land had been donated full, as depicted in the formula below:

$$10\% \times \text{Lesser of cost or market value declared} \times \frac{\text{Market value of land declared subject to the right of use}}{\text{Market value of land declared if there had been no right of use retained}}$$

Duration of deduction

- The taxpayer may deduct the amount in the year of declaration, and again in each of the following nine years. This means that by the end of the ten year period, the full base value (cost or market value as the case may be, reduced to take account of any right of use that was retained), may have been deducted.
- There is no allowance for a roll–over of deductions into the following year, should there be no or insufficient income from which to make the deduction in any given year.

Recoupment clause

- If the taxpayer is in breach of the agreement, he/she will be subject to a recoupment of the deductions previously allowed in the five years preceding the contravention.

The fiscal mechanisms described above will be effective from the 2009/2010 tax year.

For relevant legislation go to http://www.treasury.gov.za/

This project is carried out at the request of DEAT, and is funded by DEAT and C.A.P.E.