

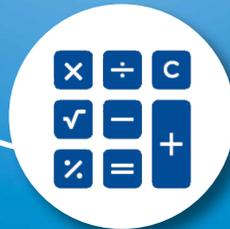
A NATIONAL 1st

First successful biodiversity tax incentive in South Africa



BIRDLIFE SOUTH AFRICA'S
FISCAL BENEFITS PROJECT

Biodiversity Tax Incentive



CONSERVATION

This new biodiversity tax incentive protects birds and their habitats by formally protecting key biodiversity areas and providing financial sustainability to do so

REWARDS

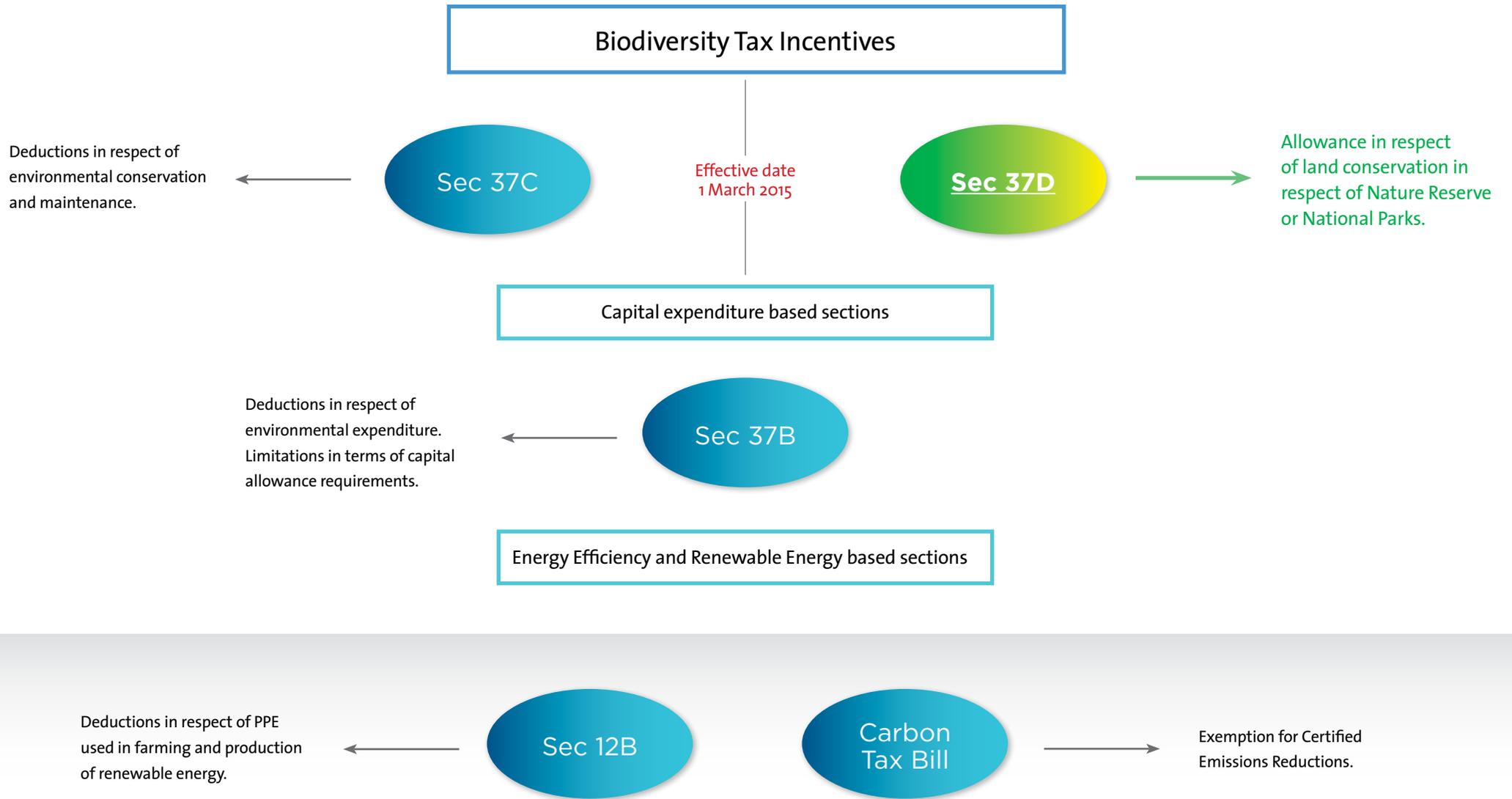
Offers landowners a financial reward for their conservation commitment when declaring Nature Reserves on privately owned land

TAX BENEFIT

Landowners can deduct the value of the land they declare as a Protected Area from their taxable income

FISCAL BENEFITS PROJECT

Environmental Tax Overview



TAX PRACTICE ALERT: Tax Return Filed *with Section 37D*

FISCAL BENEFITS PROJECT

BirdLife South Africa's Fiscal Benefits Project has successfully included the very first biodiversity tax incentive for Nature Reserves in an annual tax return. Section 37D allows a landowner who has declared a Nature Reserve to deduct the value of the land from their taxable income. This was achieved on behalf of a landowner for the very first time in South Africa at the end of 2016.

The Fiscal Benefits Project was launched in 2015 with the aim of testing the use and applicability of biodiversity tax incentives as a benefit for landowners declaring Protected Areas through the Biodiversity Stewardship initiative. The Fiscal Benefits Project began with the achievement of introducing a new tax incentive into national legislation with the inclusion of [section 37D](#) in the Income Tax Act. Section 37D is designed to give landowners a tax deduction for their conservation commitment. It allows the value of a Nature Reserve to be deducted from taxable income, thereby reducing the tax owed by a landowner.

Section 37D provides a fiscal benefit for the long term protection and effective management of areas vital to conservation and ecosystem functioning. The incentive enables landowners to claim a tax deduction based on the value of their land declared as a Nature Reserve.

This tax incentive is globally unique and its successful inclusion in a tax return creates the first ever tangible, fiscal benefit as a reward for landscape level conservation. The historic appropriation of section 37D belongs to one of the Fiscal Benefits Project's pilot sites where testing of the incentive has taken place. This ultimate achievement now paves the way for other privately-owned Nature Reserves to receive recognition through fiscal means.

South Africa's biodiversity tax incentives and work on Privately Protected Areas is highly innovative and has received international recognition. It is the collaborative effort of the National Treasury, the South African Revenue Service, the Department of Environmental Affairs and the Biodiversity Stewardship community of practice in both the public and private sectors.

BirdLife South Africa's Fiscal Benefits Project is a novel approach to biodiversity finance and leads the way in the use of biodiversity tax incentives. The Fiscal Benefits Project continues to assist landowners to access environmental tax incentives and to bolster biodiversity conservation efforts nationwide.

TAX LEGISLATION ALERT: Binding General Ruling No.24 *Reissued*

BIODIVERSITY STEWARDSHIP FISCAL BENEFITS PROJECT

The South African Revenue Service (SARS) has recently reissued Binding General Ruling No.24 (the Ruling). The Ruling deals with requirements under s18A of the Income Tax Act in order to qualify for the expense deduction set out in s37C(3) which pertains to National Parks, Nature Reserves and Protected Environments. Due to ongoing uncertainty regarding these requirements, SARS has now reissued this Ruling in February 2016 after initially issuing the Ruling in 2014.

Section 37C of the Income Tax Act No.58 of 1962 (the Act) specifically provides for the tax deductibility of expenditure actually incurred by a taxpayer to *conserve or maintain* land owned by the taxpayer. S37C(3) provides for this deduction if the conservation or maintenance is carried out in terms of a declaration made under s20, 23 or 28 of the National Environmental Management: Protected Areas Act No.57 of 2003 (NEMPA) and is declared for a duration of at least 30 years. Deductions are thus applicable to areas declared as a *National Park (NP)*, *Nature Reserve (NR)* or *Protected Environment (PE)* upon the publication of the relevant Government Gazette. This deduction is deemed to be a donation and filtered through s18A of the Act. This deeming provision is the main source of uncertainty and the motivation for the Ruling.

Section 37C aims to provide a fiscal benefit for the environmental protection of areas vital to biodiversity conservation and ecosystem services by enabling landowners to claim tax deductions based on their conservation commitment.

Ordinarily, section 18A(2) expressly prohibits a deduction for any donation under s18A(1) without the supporting receipt being issued. Section 37C(3), however, deems the deductible amounts to be a donation paid or transferred to the government for which a receipt has been issued under s18A(2). The original intention of this deeming provision, as set out in the corresponding explanatory memoranda, sought to provide the taxpayer undertaking a conservation commitment envisioned by NEMPA, with a deduction without their being an actual donation for which a receipt would customarily have been issued. Uncertainty arose as to the application of s37C(3) in conjunction with the rules set out in s18A(2) based on the wording that the deduction is contingent on the requirements of s18A of the Act.

Based on the above, SARS has ruled that a deduction claimed for the purposes outlined under s37C(3) and determined in accordance with s18A, will be deemed a donation and qualify for a deduction regardless that a standard receipt has not been issued in terms of s18A(2). The Ruling applies as of 15 February 2016. Its validity remains until such time as SARS determines to purposefully withdraw the Ruling or amend it or the Act itself.

To date, there is only one known attempt to access the biodiversity conservation incentive lodged in S37C(3); which has been largely responsible for the Ruling. SARS' re-enforcement of the original intention of s37C(3), through the Ruling's interpretation of the legislation, is encouraging. This is of particular relevance in light of stricter tax administration laws, compliance rules and conservation challenges.

BirdLife South Africa's Biodiversity Stewardship Fiscal Benefits Projects continues to engage SARS on these issues and assist landowners to access environmental tax incentives to bolster biodiversity conservation efforts nationwide.

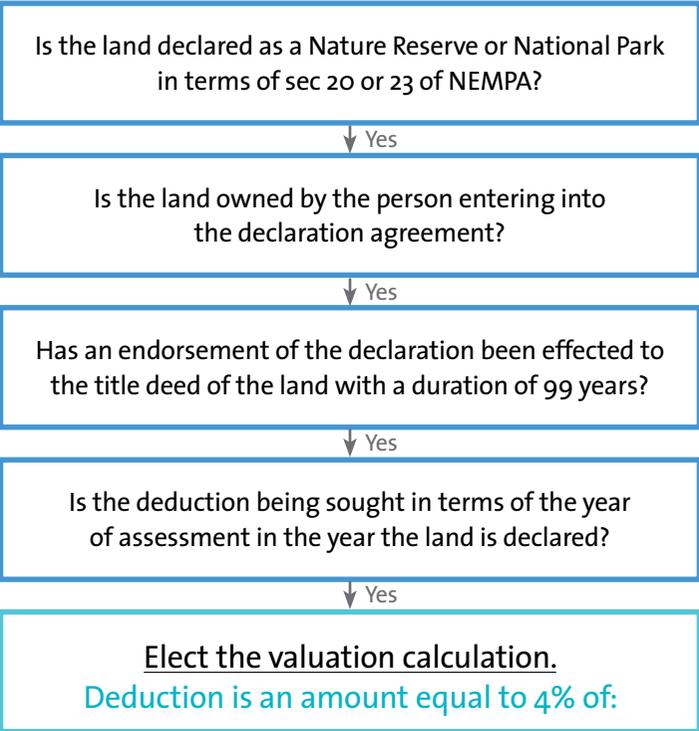
FISCAL BENEFITS PROJECT SECTION 37D:

Allowance in respect of land conservation in respect of Nature Reserves or National Parks



The following shows the individual requirements of sec 37D. Each requirement must be met in order to access the incentive:

NB: Where the answer to a requirement is NO, the section is no longer applicable and no incentive may be appropriated.



Expenditure incurred in respect of:

- the acquisition of the land, and
- improvements to the land (excl. borrowing/finance costs)

IF expenditure is greater than the market or municipal value of the declared land.

2(a) **Either/Or** 2(b)

However, IF the expenditure defined under 2(a) is less than the land's market or municipal value then the election does not apply and the formula must be used.

Amount determined according to the Prescribed formula: $A=B+(C \times D)$

A = amount to be determined
 B = cost of acquisition of land and improvements
 C = capital gain per 8thSch(cost is lower of market or municipal value on date of agreement)
 D = 66,6% (natural persons and special trusts) or 33,3% (other) IF market or municipal value exceeds 2a.

BIODIVERSITY TAX INCENTIVES

Section 37D

FACT SHEET 1: Fiscal Benefits Project

INTRODUCTION

The following note seeks to provide a short outline of the amendments to the biodiversity tax incentives, relating only to Nature Reserves or National Parks. This note may not be used as tax advice and is purely informative in nature.

HISTORY

In 2008, section 37C was inserted into the Income Tax Act. This section was created with the aim of providing a financial reward for landowners engaging in Biodiversity Stewardship agreements to conserve the biodiversity and environmental value of their land. S 37C did not, however, provide the practical benefit originally envisioned due to the nature of the wording of the section itself as well as other practical implementation issues.

As a result, a lobbying process with National Treasury began in an attempt to provide a tax incentive that effectively fulfilled the original motivation of s 37C; to provide landowners with a tangible fiscal benefit. This process reached a successful conclusion at the end of 2014 with the inclusion of a re-worded tax incentive, **section 37D**, in the Income Tax Act, effective as of 1 March 2015.

The suggested amendments were drafted as an amended s 37C and a newly inserted s 37D. The amendments dealt only with Nature Reserves and National Parks. The rest of s 37C, governing tax incentives for other Protected Areas and Biodiversity Management Agreements, remains unchanged (see the Fiscal Benefits Project Fact Sheet Two). S 37D applies on or after 1 March 2015.

FUTURE PROGRESS

The accepted changes are being tested through BirdLife South Africa's Fiscal Benefits Project. The Project was launched 1 February 2015 and involves a feasibility study whereby s 37C and s 37D are being fully investigated at selected Biodiversity Stewardship pilot sites with a range of landowners. S 37D has now been placed in the tax return of a landowner and has shown to be effective and practically applicable.

The Fiscal Benefits Project is funded by the Global Environment Facility through the Biodiversity and Land Use Project implemented by SANBI and the WWF Nedbank Green Trust and is being run in collaboration with various Biodiversity Stewardship and Protected Area Expansion stakeholders and National Government.

MAIN TAX CHANGES TO BIODIVERSITY TAX INCENTIVES

- Section 37C subsections (1) to (4), relating to other forms of PAs, remains unchanged.
- Section 37C subsections (5), (6) and (7), relating to Nature Reserves or National Parks, have been deleted and replaced with the newly formulated Section 37D.

- Section 37D governs an allowance for land conservation in respect of Nature Reserves or National Parks declared on or after 1 March 2015.

THE NEW SECTION 37D

- Section 37D allows for a 4% straight line deduction on the value of the land declared. This means that a landowner who declares their land as a Nature Reserve or National Park may deduct 4% of the value of that declared land from their taxable income each year for 25 years.
- The tax incentive governed by section 37D can only accrue to the title deed holder of the land.
- The land must be declared as a Nature Reserve or National Park in terms of section 20 or 23 of NEMPA with the endorsement reflected on the title deed of the land for a minimum period of 99 years.
- If the landowner maintains a right of use of the land then the deduction is apportioned accordingly.
- The deduction becomes effective in the year the land is declared and in each subsequent year of assessment. It is important to remember that these straight line deductions only apply, at this current point in time, to land declared on or after 1 March 2015.
- Should the Biodiversity Stewardship agreement or Protected Area status be terminated, the landowner will be liable for certain tax penalties. The landowners' responsibilities in terms of the declaration agreement are defined by NEMPA.
- The section applies to taxpayers in profit making or loss positions and has benefits for both scenarios.

VALUE OF THE LAND

The value of the land is based on one of two possible calculations: the cost of acquiring the land and its improvements or its municipal or market value as based on a prescribed formula. This calculation is detailed and requires knowledge of the application.

WHY IS THIS OF BENEFIT TO THE LANDOWNER?

In most cases, taxpayers are not entitled to large deductions based on the value of land. To be able to deduct part of the value of the land they declare from their taxable income, in any one year of assessment, is often hugely beneficial to individual taxpayers as the reduction in tax owing allows for increased cash flow.

For further information please contact:

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FISCAL BENEFITS PROJECT SECTION 37C:

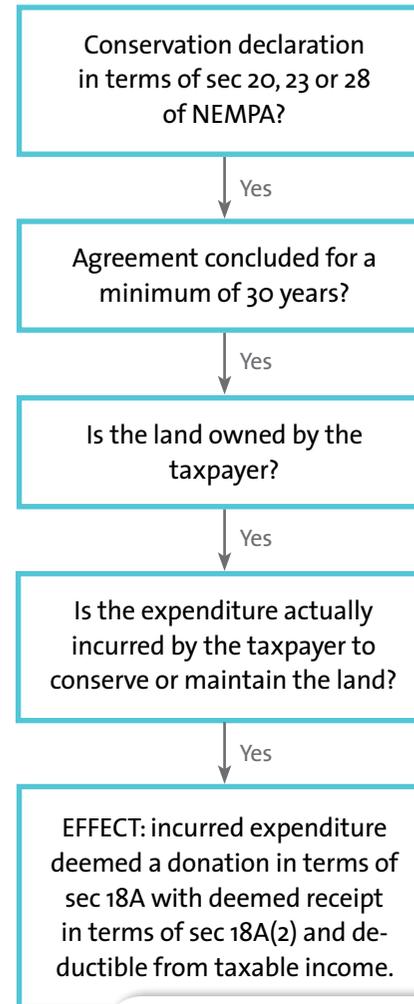
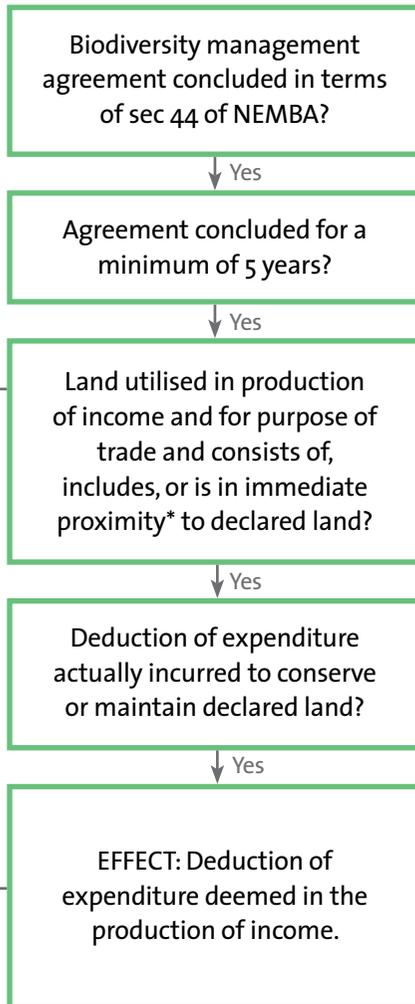
Deduction in respect of environmental conservation and maintenance

The following shows the individual requirements of sec 37C. Each requirement must be met in order to access the incentive:

Primary question: What type of agreement is entered into?

37C(1) **BIODIVERSITY MANAGEMENT AGREEMENT**

PROTECTED AREA: National Park, Nature Reserve, Protected Environment 37C(3)



*Immediate proximity is not defined but the ordinary interpretation should be followed: not necessarily adjoining or contiguous land but easily accessible within a short period of time (e.g.natural corridors).

Deduction may not exceed income in any given year of assessment = creates roll-over effect.

NB: Where the answer to a requirement is NO, the section is no longer applicable and no incentive may be appropriated.

If the taxpayer is in breach or 'violates' the BDS agreement the penalty in 37C(4) ensues.

BIODIVERSITY TAX INCENTIVES

Section 37C

FACT SHEET 2: Fiscal Benefits Project

INTRODUCTION

The following note provides a short outline of the *original* biodiversity tax incentive pertaining to Biodiversity Stewardship agreements defined by NEMPA and NEMBA; **section 37C**. It is important to note that s 37C was amended in 2015. However, portions of the section still remain applicable. Fact Sheet Two forms part of BirdLife South Africa's Fiscal Benefits Project and is geared towards Stewardship Implementers.

HISTORY

In 2008, s 37C was inserted into the Income Tax Act. The motivation behind the section was to provide a financial reward for landowners engaging in Biodiversity Stewardship agreements that resulted in Protected Areas or Biodiversity Management Agreements so as to conserve the biodiversity and environmental value of their land.

The original s 37C did not fulfil this motivation and only one recorded, unsuccessful attempt to access the benefit has been made to date. The Fiscal Benefits Project is currently investigating and testing biodiversity tax incentives, including s 37C at Pilot sites across the country. Findings from the Fiscal Benefits Project indicate that s 37C's lack of success is a result of the wording of the section itself as well as other practical implementation issues relating to Protected Environments.

A successful lobbying process with National Treasury in 2014 resulted in amendments to s 37C and a new, re-worded tax incentive relating to Nature Reserves and National Parks, section 37D, effective as of 1 March 2015. For more information on this change and s 37D see the Fiscal Benefits Project Fact Sheet One.

SECTION 37C IN CONTEXT

Based on the changes highlighted above, s 37C now deals primarily with Protected Environments and Biodiversity Management Agreements in conjunction with Nature Reserves and National Parks. However, s 37C no longer provides for the main incentive for Nature Reserves or National Parks which are dealt with in s 37D.

CHANGES TO SECTION 37C

- Section 37C subsections (1) to (4) relating to Protected Environments and Biodiversity Management Agreements have not been changed.
- Section 37C subsections (5), (6) and (7) pertaining to Nature Reserves and National Parks have been deleted.

THE ORIGINAL SECTION 37C

- S 37C (1) allows for an expense deduction relating to costs

incurred to declare and maintain land under a Biodiversity Management Agreement (section 44 NEMBA) if declared for a minimum of 5 years. The land must be used to generate income or be near land used for this purpose.

- S 37C (3) allows for expenditure incurred to conserve or maintain land declared as a National Park, Nature Reserve or Protected Environment (sections 20, 23, 28 NEMPA) to be deducted as a deemed donation subject to the limitations within section 18A of the Income Tax Act. The land must be owned by the taxpayer and the agreement must be for a minimum of 30 years. Examples of expenses relating to conservation and management may be seen in the corresponding Protected Area management plans, e.g.: clearing of alien invasive species, etc.
- The value of the expenditure calculated under s 37C (3) is linked to the donations cap of 10% as per the rules governing s 18A.

WHAT DOES THIS MEAN FOR THE LANDOWNER?

The landowner can reduce the amount of tax owing in a given year by deducting all costs relating to the declaration and maintenance of a Protected Area from income generated. The deductions are capped according to the rules governing donations and where applicable may provide increased cash flow as a result of decreasing the amount of tax paid each year.

SHORTCOMINGS OF SECTION 37C

S 37C (1) - (4) has one major shortfall as a result of the practical context within which the section is being applied, namely: the majority of landowners being engaged to declare Protected Areas through the Biodiversity Stewardship tool are farmers who traditionally deduct ALL expenditure. Thus, offering a capped expense related deduction for expenditure that may be deducted in full provides no extra benefit. The Fiscal Benefits Project is engaged to address this short coming in future.

IMPORTANT TO NOTE

This note may not be used as tax advice and is purely informative in nature. The Fiscal Benefits Project is funded by the Global Environment Facility through the Biodiversity and Land Use Project implemented by SANBI and the WWF Nedbank Green Trust.

For further information please contact:

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