

# 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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