

SECTION 37C FACT SHEET

BIODIVERSITY TAX INCENTIVES

INTRODUCTION

The following note provides a short outline of the original biodiversity tax incentive pertaining to biodiversity stewardship agreements defined by NEMPAA and NEMBA; section 37C. It is important to note that s 37C was repealed in 2015. However, portions of the section still remain applicable.

SECTION 37C IN CONTEXT

In 2008, s 37C was inserted into the Income Tax Act No. 58 of 1962 (ITA). 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. S 37C was investigated through the Fiscal Benefits Project and findings indicated that s 37C has never been utilised since 2009 and is effectively defunct.

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.

In 2015, a new biodiversity tax incentive, section 37D, was introduced into legislation to the benefit of nature reserves and national parks (refer to Section 37D Fact Sheet for more information). S 37C needs to be amended in line with section 37D in order for it to fulfil its policy mandate and provide financial benefit for protected area management costs and reach the successful implementation status of section 37D.



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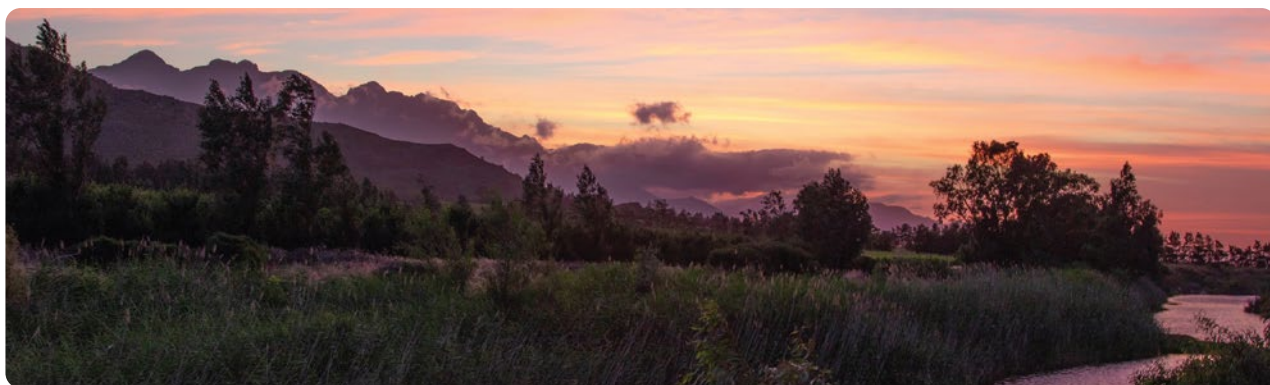
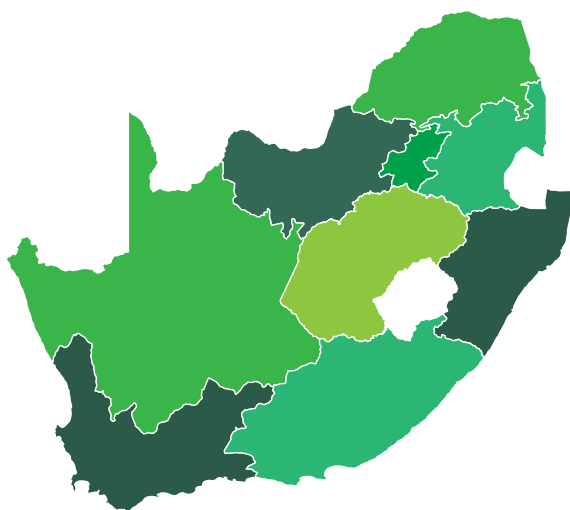
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HOW DOES SECTION 37C WORK?

- S37C (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.
- S37C (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 S37C (3) is linked to the donations cap of 10% as per the rules governing S18A.

IMPLICATIONS FOR SECTION 37C

In theory, a taxpayer may reduce the amount of tax owing in a given year by deducting all costs relating to the declaration and maintenance of a Protected Area (nature reserve, national park, and protected environment) from income generated. The s 37C(3) deduction is capped according to the rules governing donations per section 18A of the ITA and the Fourth Schedule.



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