Tax incentives for biodiversity conservation in the Western Cape

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Abstract
Biodiversity conservation tax incentives were inserted into the Income Tax Act 58 of 1962 in terms of the Revenue Laws Amendment Act 60 of 2008 and are now contained in section 37C. The objectives of this study were to quantify the maximum potential revenue loss, to National Treasury, as a result of these tax incentives granted to landowners in the Western Cape; to identify and discuss alternative policy instruments to encourage conservation; and to investigate the perceptions of landowners in the Western Cape on the tax and alternative incentives available for conservation. The study found that the maximum tax revenue foregone should amount to a tiny percentage of total estimated revenue income for the 2008/2009 fiscal year, while projected future losses could also be insignificant. Landowners prefer direct financial incentives and exemption from property taxes, and contend that direct assistance with conservation activities would also be beneficial. The use of municipal value in the valuation of land would promote objectiveness and consistency. Finally, only a third of the landowners indicated that tax incentives would encourage them to commit more land for conservation.

Key words
Biodiversity conservation tax incentives; Tax incentives for conservation; Section 37C; conservation on private land; Section 18A deductions; Fiscal and economic incentives; Conservation policy instruments; Western Cape Stewardship Programme

1 Introduction
Tax incentives granted to private landowners for conservation costs incurred have often been labelled as inequitable. This is because tax neutrality may not be met. Tax neutrality requires that tax incentives should be consistent, administratively simple and have an equitable impact on all taxpayers (Binning & Young 1999). Botha (2004) highlights the fact that until recently, meeting the latter requirement has been a problem in implementing tax incentives for conservation in South Africa. The main reason is the perception that these incentives will favour the relatively wealthy, predominantly white, private landowners.

However, biodiversity has a number of key features which set it aside from conventional resource management issues. The first is that, in many instances, biodiversity loss is irreversible. Secondly, ecosystem diversity is limited in its ability to withstand the stress imposed by environmental degradation. This could result in the possibility of major environmental catastrophes (Young,
According to Botha (2004), securing private land for biodiversity conservation is essential. He also states that this can be done by recognising commitment to and investment in voluntary biodiversity conservation in farming and other land-use systems. Using tax incentives beneficial to private landowners could encourage their cooperation and the sustainable conservation of South Africa’s valuable biodiversity.

The Australian Conservation Foundation (ACF) (2008) is convinced that nature conservation on private land has a number of vital functions in protecting biodiversity. The preservation of natural landscape features and of micro-climates fostering water retention and water quality, soil conservation and the establishment of environmental corridors are included. In addition, it realises conservation on land that is too small or expensive for public ownership.

National Treasury therefore proposed the introduction of certain biodiversity conservation tax incentives in its 2008 Budget Review. The conservation tax incentives were promulgated as part of the Revenue Laws Amendment Act 60 of 2008 and became effective on 8 January 2009. These tax incentives have been introduced to encourage biodiversity conservation and management by private landowners and are now contained in section 37C of the Income Tax Act 58 of 1962 (National Treasury 2009).

2 Research objectives and importance of the study

The new tax incentives are available to landowners who have concluded conservation contracts on their land in terms of the Western Cape Stewardship Programme for Conservation.

During the process of drafting the Revenue Laws Amendment Bill of 2008, public comment was considered and discussions were held between National Treasury and conservation agencies. The following problem areas were identified:

- The main concern for National Treasury was that these incentives would lead to a significant loss in tax revenue. Biodiversity conservation tax incentives should not be available to any landowner wishing to claim additional tax deductions.
- However, the question has been raised by conservation agencies and landowners alike about whether the tax incentives would actually benefit landowners and consequently encourage conservation on private land.
- Lastly, the author raises the question about which incentive(s) would be beneficial to landowners and enhance conservation efforts.

The objectives of the study were as follows:

- to identify and discuss the different policy instruments to encourage conservation;
- to quantify the maximum potential revenue loss to National Treasury as a result of these tax incentives granted to landowners in the Western Cape for the 2008/2009 fiscal year, as well as the projected loss should potential landowners be contracted for conservation; and
- to investigate the perceptions of landowners in the Western Cape on tax and alternative incentives available for conservation.

3 Background to the study

The study focuses on landowners in the Western Cape because it is in this province that the first conservation contracts were signed between landowners, Cape Nature
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and Government (through the MEC for Environment) in terms of the Western Cape Stewardship Programme for Conservation (Purnell 2008). Cape Nature is governed by the Western Cape Nature Conservation Board Act 15 of 1998, and was previously known as the Western Cape Nature Conservation Board.

As a starting point, the different conservation policy instruments or incentives are identified and evaluated in terms of their benefits and disadvantages. A brief discussion of the biodiversity conservation needs in the Western Cape is presented. The process of identifying conservation land by conservation agencies is explained, followed by a discussion of the new tax legislation. The findings of a survey conducted among the contracted landowners in the Western Cape are used to calculate the maximum potential revenue loss in income tax foregone and to investigate the perceptions of landowners on tax and alternative conservation incentives.

Before discussing the benefit of tax incentives for biodiversity conservation, it is necessary to define incentives in general and tax incentives in particular. An incentive is a measure that positively influences the way people think and behave in respect of a certain issue. Tax incentives are forms of indirect “reward” provided in the form of tax relief. In other words, the person does not receive a direct reward such as a subsidy payment, but the tax incentive leads to a reduction in taxable income and consequently a reduction in tax paid (Botha 2001).

4 Research methodology

The research methodology applied in this study is explained below.

4.1 Population

The population for the study consisted of the total number of landowners in the Western Cape who, by the end of 2008, had signed biodiversity conservation contracts with Cape Nature and Government in terms of the Western Cape Stewardship Programme for Conservation.

4.2 Data collection methodology

Data were collected by means of a brief questionnaire. The responses to this questionnaire were obtained through personal interviews with landowners.

4.3 Sample

A sample was not selected because 100 percent of the population was surveyed. The population size amounted to 40 owners of conservation land situated in various areas of the Western Cape. Thirty-eight responses were obtained from the 40 landowners, which represents 95 percent of the population. The author was unable to reach the landowners who failed to respond to the questionnaire. The two non-respondent landowners’ land covered approximately 79 hectares of the total of approximately 45 000 hectares under conservation contracts, amounting to approximately 0.1 percent of the area contracted under conservation contracts.

4.4 Theoretical background

South African income tax legislation and academic literature on biodiversity conservation policy instruments served as the theoretical background to the study and the questionnaire.

4.5 Limitations

The following limitations were identified:
- Conservation contracts were only concluded during the latter part of 2008,
which indicates that the process is relatively young. Many landowners have not yet incurred significant expenses on their conservation land, which will affect the findings for two types of contracts investigated. A follow-up study should provide the author with more information in this regard.

- Four of the properties declared as nature reserves were purchased at cost prices denominated in pounds, before the rand became South Africa’s currency. This indicates that determining the deduction for these properties was problematic. In order to address this problem, the market value, based on the most recent valuation of the land, was used.

- South African income tax law, contained in the Income Tax Act 58 of 1962, served as the basis for the empirical study. Hence a study of alternative legislation was not required. A literature review on biodiversity conservation policy instruments provided additional background.

- In calculating the potential loss in income tax revenue, it is uncertain which types of contracts will be committed to. Calculations were performed to assess the potential outcome for each type of conservation contract, should 60, 80 or 100 percent of the potential land be committed under conservation. The projected loss was calculated using the maximum tax benefit per hectare obtained in the different areas of the Western Cape covered by the study.

5 Conservation incentives and policy instruments

Conservation policy instruments include motivational, voluntary, fiscal and economic, property-based and regulatory incentives (Botha 2001). The different conservation incentives and policy instruments are presented and discussed in the sections below.

5.1 Motivational, educational and information instruments

Motivational incentives provide the basis on which all other policy instruments are built. When people are positively influenced and convinced that biodiversity conservation is a worthwhile effort, they are more likely to respond positively to the other policy instruments (Young, Gunningham, Elix, Lambert, Howard, Grabosky & McCrone 1996a).

Motivational incentives involve educating and motivating people to conserve biodiversity. These incentives address the core values of people and how they think about the issue of conservation. In the USA, these are also termed “facilitative incentives”, aimed at educating and providing technical assistance to landowners. They involve the transfer of conservation information to landowners to improve decision making and facilitate adopting and applying sound environmental practices (Casey, Vickerman, Hummon & Taylor 2006). Information is essential in changing people’s behaviour and attitudes. Environmentally inappropriate behaviour is sometimes caused by ignorance and not by perversity or selfishness (Young et al. 1996a).

The success of motivational incentives is not easily measured (Casey et al. 2006). However, it provides a channel of communication between the conservation agencies and landowners. Cape Nature in the Western Cape has field staff members who communicate regularly with landowners and through whom this education and motivation are facilitated (Purnell 2008).
Resource users perceive motivational incentives as equitable, noninterventionist and socially acceptable and they encourage a change in behaviour (Young et al. 1996a). However, according to Casey et al. (2006), there is one major drawback in this educational process, namely the lack of resources. To increase the quality and quantity of such a continuous educational process, adequate funding is crucial (Casey et al. 2006). Another weakness is the lack of a precautionary element, and this incentive cannot be depended upon to protect biodiversity on its own (Young et al. 1996a).

5.2 Voluntary schemes
Voluntary schemes are nonregulatory, noncompulsory programmes that encourage conservation, but have no direct financial reward for landowners (Casey et al. 2006). Voluntary schemes provide recognition for "doing the right thing" (Botha 2001). These schemes are likely to be most effective when there is significant overlapping between public interest in conservation and the private interests of resource users, and when the latter fully appreciate the value of biodiversity conservation (Young et al. 1996b).

The “Land for Wildlife” programme in Victoria, Australia, is an example of a voluntary programme, aimed at fostering an attitudinal change in landowners (Young et al. 1996a). In South Africa, a typical example of a voluntary programme is that of the conservancies in the Western Cape. Typically, landowners can have their land “declared” as a conservancy, but no formal or minimal restrictions are placed on them. Conservancies provide an entry level for landowners who, sometime in the future, may intend becoming part of a more formal conservation contract.

Currently, the conservancies in the Western Cape cover approximately 20 024 hectares (Cape Nature 2008). Landowners who have their land in conservancies are provided with advice and assistance on land management plans and farm maps (Kaapse Natuurbewaring 2008). These types of commitments of land for conservation will not benefit from the new tax incentives. Although they do provide some conscious commitment on the part of landowners, they do not guarantee any tangible benefit for conservation because there is no contractual obligation on the landowner (Purnell 2008).

Voluntary incentives have low administrative costs, high community acceptability and minimal equity implications, while promoting an ethic of custodianship on a property. However, in some instances, there is a significant gap between public interest in biodiversity conservation and the private interests of landowners and land-users, which poses limitations on motivational incentives (Young et al. 1996a).

5.3 Fiscal and economic incentives
Fiscal and economic incentives include the granting of financial rewards to landowners for providing a conservation service, for example, the payment of a direct subsidy to the landowner (Botha 2001). In the USA, these types of incentives include compensation programmes and cost sharing of new conservation technologies (Casey et al. 2006). Compensation programmes involve direct payments to landowners in return for conservation projects or activities. To ensure the success of these payments, they should be made dependent on some predetermined level of proactive or preventive action on the part of the landowners (Casey et al. 2006). Cost-sharing programmes in the USA involve landowners and government sharing the cost of implementing conservation measures, with government or conservation
agencies providing technical assistance and education (Casey et al. 2006).

Botha (2001) recommends that subsidies for private conservation be introduced in South Africa. Subsidies are favoured because they can be budgeted for, audited and directly controlled (Botha 2001). In this way the behaviour of landowners is influenced without intervention in their affairs and they are encouraged to source the most cost-effective solutions to a problem. Decision making is decentralised to the landowners, who are often best informed about their particular situation (Young et al. 1996a). However, overuse of financial incentives may also not be beneficial. If incentives are paid and subsequently withdrawn for some or other reason, biodiversity may be lost if the valuable conservation work is undone. This is where property-based incentives such as the conservation covenants used in Australia can be useful (Young et al. 1996b).

5.4 Property-based incentives

Property-based incentives provide added benefits to landowners in return for a commitment to conservation (Botha 2001). These incentives are the contractual mechanisms that effect changes in ownership or habitat-use rights. Examples are conservation easements, covenants, deed restrictions and stewardship exchange agreements (Casey et al. 2006). Land is committed to conservation by its owner for a number of years, with certain development restrictions placed on landowners. In return for this, landowners are granted assistance in conservation efforts on their land.

According to Casey et al. (2006), tax benefits are usually associated with these types of agreements. This has become relevant in South Africa with section 37C granting tax incentives to landowners committing their land for conservation.

The value of property-based incentives is their cost-effectiveness and lack of intrusiveness. These characteristics suggest that property-based incentives should be central to conservation policy combinations (Young et al. 1996a). However, the effectiveness of property-based incentives is dependent on the institutional mechanisms used to develop, review and enforce those (Young et al. 1996b).

5.5 Regulatory incentives

Regulatory incentives are the rules and laws that guide behaviour and generally involve the proactive prevention of biodiversity loss (Botha 2001). They include Acts and legislation prescribing how the environment should or should not be dealt with. They should prevent irreversible loss, but also need to work with positive mechanisms to ensure ongoing conservation (Botha 2001).

Where education and motivation fail, for instance, when people are unwilling to cooperate in the conservation effort, and where other incentives are ineffective, regulation may be the best way to exert pressure and compel people to protect biodiversity. In certain instances, the fact that specific behaviour is prescribed by legislation may be sufficient to create moral inhibitions against engaging in adverse behaviour (Young et al. 1996b). However, regulation is often criticised for being intrusive, inefficient and expensive. It may also prevent people from seeking more efficient ways of utilising resources (Young et al. 1996a).

5.6 Combination of conservation incentives

No one incentive is going to be effective in all situations. People’s needs differ, and they respond differently to the various...
policy instruments. A combination of incentives would be most effective in achieving the desired levels of conservation (Botha 2004).

In addition, one policy instrument, such as granting a clearing certificate for a piece of land, may actually cause biodiversity loss if endangered species are also present in the area to be cleared. Ideally, government and conservation agencies should identify threats to species and habitats through environmental studies and work with landowners to achieve biodiversity goals (Young et al. 1996b).

6 Biodiversity conservation needs in the Western Cape

South Africa, and the Western Cape in particular, are immensely rich in biodiversity, with a massive variety of locally unique species and habitats (Cape Gateway 2008). Conservation agencies evaluate the degree of threat facing ecosystems (nationally accepted vegetation types are used for simplicity in most instances) against a conservation threshold or minimum value for the amount of remaining natural habitat. This threshold is the bare minimum of a particular ecosystem that must be kept in a natural state in order to retain a high proportion of the biodiversity in that ecosystem (Kirkwood 2009).

The required minimum amount of an original ecosystem in the Western Cape is 30 percent. An ecosystem status evaluation is conducted to assess the extent of an ecosystem’s remaining vegetation, classifying the status of vegetation from “least threatened” to “critically endangered”, with the statuses “vulnerable” and “endangered” lying somewhere between the two extreme statuses. This evaluation is a multi-agency cooperative effort under the auspices of the Department of Environmental Affairs and Tourism and will be updated every three to five years (Kirkwood 2009).

In the Western Cape, a number of vegetation and habitat types are estimated to be “critically endangered”. However, those vegetation types listed as “endangered” and “vulnerable” are the types in which the real conservation gains are to be made. Kirkwood (2009) suggests that, ideally, a proportion of each vegetation type should be formally protected, even vegetation listed as “least threatened”. These are vegetation types in areas that have not been converted to agriculture or urban areas and will undergo catastrophic biodiversity loss if fire and invasive plants are not managed (Kirkwood 2009).

Analyses of the latest conservation thresholds imply that meeting 50 percent of the conservation threshold in formal conservation, say, under stewardship contracts, would equate to about 5 000 landowners. These potential landowners collectively own approximately 281,823 hectares of land targeted for conservation contracts (Kirkwood 2009). This figure is used to calculate the potential outcome as presented in table 9.5.

6.1 Conservation and identifying valuable biodiversity land

Cape Nature initiated a stewardship programme for conservation in the Western Cape. Conservation agencies identify ecologically sensitive and biodiversity-rich areas and contact is made with the landowner. The landowners are requested to enter into contracts with Cape Nature and Government, in terms of which the private land is committed for conservation (Purnell 2008).

Participation by landowners is optional and the ownership of the land is not
transferred to Cape Nature (Kaapse Natuurbewaring 2008). In the case of the first three plans, commitments by landowners are obtained through contracts signed between landowners, Cape Nature and Government under contract law. It is this contractual commitment with private landowners that enables them to claim the tax deductions.

6.2 The Western Cape Stewardship Programme for Conservation

The first option for private landowners is a contracted nature reserve or national park where critically endangered habitat is generally involved. These are often areas adjacent to existing statutory nature reserves or areas that are large enough to support sustainable ecosystems. In the case of nature reserves or national parks, the landowner commits the land for a period of at least 99 years or in perpetuity (Kaapse Natuurbewaring 2008).

The second option is similar to the contracted nature reserves and national parks, and is a contract for a protected area. Under this contract, the landowner commits the land for a period of at least 30 years. The third option comprises a biodiversity agreement, which is for at least five years, and which is most appropriate for wetlands and water catchment areas (Kaapse Natuurbewaring 2008).

By December 2008, the Cape Nature Stewardship Programme for Conservation had contracted approximately 45 000 hectares of privately owned land as nature reserves, national parks, protected areas or areas under biodiversity management agreements. In the case of national parks, nature reserves or protected areas, no infrastructure development or land-use rights are allowed on the nature reserves, but landowners remain the title deed holders of the property. In exchange for this commitment, landowners are provided with significant assistance in habitat management and receive increased acknowledgment and marketing exposure. In addition, Cape Nature and other conservation agencies promise increased lobbying for incentive benefits, such as negotiating tax incentives with National Treasury (Cape Nature 2008).

Under a biodiversity agreement, the land has to be managed in a manner that supports the natural processes. In exchange, the landowner is assisted in fire management, the management of invasive vegetation and animals, and through extensive advisory services for planning and eradicating invasive vegetation (Kaapse Natuurbewaring 2008).

The first three types of conservation contracts are addressed by the new tax incentives contained in section 37C of the Income Tax Act 59 of 1962. Finally, there is the option of conservancies. Since a conservancy does not place any restrictions on the landowners, no tax benefit is granted in terms of the proposed legislation.

7 Tax legislation in South Africa: private landowners

7.1 Legislation prior to 2009

Prior to the Revenue Laws Amendment Act 60 of 2008 (effective from 8 January 2009), the legislation had provided minimal tax relief in respect of private landowners’ efforts to promote biodiversity conservation and management. Donations to certain organisations, however, were deductible for income tax purposes in terms of section 18A of the Income Tax Act 58 of 1962. Among these organisations were public benefit organisations (PBOs) as contemplated in Part I of the Ninth Schedule to this Act. Paragraph 7(a) of the Ninth Schedule provided a list of...
organisations engaged in conservation and the rehabilitation or protection of the natural environment, including flora, fauna and the biosphere (Ninth Schedule to the Income Tax Act 58 of 1962). These organisations were classified as qualifying PBOs. Natural persons could claim, as an income tax deduction, any donation made to a qualifying PBO, limited to 10 percent of taxable income before this deduction and the medical deduction of section 18, the latter applicable in the case of natural persons. The non-natural person’s deduction was limited to 10 percent of taxable income before the donations deduction (section 18A of the Income Tax Act 58 of 1962). These donations have to have been actually paid and a section 18A-certificate obtained from the PBO.

Paragraph 12 of the First Schedule to the Income Tax Act 58 of 1962 provided an income tax deduction to farmers for expenditure incurred in respect of the prevention of soil erosion, the eradication of noxious plants and invasive alien vegetation and for erecting fencing (Income Tax Act 58 of 1962).

The First Schedule to the Act provides other tax incentives granted to farmers which may have a negative effect on biodiversity conservation. These incentives include income tax deductions for expenditure incurred for the planting of trees, shrubs or perennial plants, for the production of grapes or other fruit, nuts, tea, coffee, hops, sugar, vegetable oils or fibres and the establishment of the land used for cultivating such vegetation (First Schedule to the Income Tax Act 58 of 1962). While these deductions are beneficial to the promotion of farming operations, they do not add to biodiversity conservation efforts. They effectively encourage devegetation, which generally involves destroying natural or indigenous vegetation and replacing it with agricultural vegetation. Botha (2001) labels these "perverse incentives" because they inspire inappropriate conservation behaviour. Another case in point would be a subsidy for ploughing virgin land.

7.2 New legislation

The provisions in the Income Tax Act 58 of 1962, prior to the Revenue Laws Amendment Act 60 of 2008 (effective from 8 July 2008), have not been removed and are still available to taxpayers. In terms of paragraph 12(1), a deduction is granted for capital expenditure incurred in the prevention of soil erosion and for expenditure incurred in the eradication of noxious plants (First Schedule to the Income Tax Act 58 of 1962). In addition, the new tax incentives are included in the Act under section 37C. The deduction is granted in terms of expenditure incurred by landowners in developing an approved conservation management plan on their land. The conservation management plan is facilitated in terms of the National Environmental Management: National Biodiversity Act (2004) or the National Environmental Management: Protected Areas Act (2003), its aim being to promote biodiversity conservation on private land (National Treasury 2008).

The Revenue Laws Amendment Act 60 of 2008 also provides for the framework for PBOs to be reviewed for impediments regarding tax deductions. Where property is donated to a PBO or parastatal conservation agency and is declared a nature reserve or national park under the National Environmental Management: Protected Areas Act (2003), an income tax deduction is granted in terms of section 18A of the Income Tax Act 58 of 1962 (National Treasury 2008). Consequently, the new legislation does not replace the current legislation, but broadens its ambit. This study focused on the income tax effects of the new legislation.
7.2.1 **Section 37C (1) to (7) of the Income Tax Act 58 of 1962**

The new section contained in the Act reads as follows:

“(1) Expenditure actually incurred by a taxpayer to conserve or maintain land is deemed to be expenditure incurred in the production of income and for purposes of a trade carried on by that taxpayer, if—

(a) the conservation or maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004); and

(b) The land utilised by the taxpayer for the production of income consists of, includes or is in the immediate proximity of the land that is the subject of the agreement contemplated in paragraph (a).

(2)(a) Any deduction of expenditure contemplated in subsection (1) must not be allowed to the extent that the expenditure exceeds the income of the taxpayer derived from trade carried on by the taxpayer on the land in any year of assessment.

(b) The amount by which the deduction exceeds the income of the taxpayer so derived must be deemed to be expenditure incurred by the taxpayer in the following year of assessment.

(3) An amount equal to the expenditure actually incurred by a taxpayer to conserve or maintain land owned by the taxpayer is for purposes of section 18A deemed to be a donation by the taxpayer actually paid or transferred during the year to the Government for which a receipt has been issued in terms of section 18A(2), if the conservation or maintenance is carried out in terms of a declaration that has a duration of at least 30 years in terms of section 20, 23 or 28 of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003).

(4) If during the current or any previous year of assessment a deduction is or was allowed to the taxpayer in terms of subsection (1) or (3) in respect of expenditure incurred to conserve or maintain land in terms of an agreement or declaration contemplated in those subsections, and the taxpayer subsequently is in breach of that agreement or violates that declaration, an amount equal to the deductions allowed in respect of expenditure incurred within the period of five years preceding the breach or violation must be included in the income of the taxpayer for the current year of assessment.

(5) If—

(a) land (or a portion thereof) is declared a national park or nature reserve in terms of an agreement under section 20(3) or 23(3) of the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003); and

(b) the declaration is endorsed on the title deed of the land and has a duration of at least 99 years, an amount equal to ten percent of the lesser of the cost or market value of the land or portion is for purposes of section 18A and paragraph 62 of the Eighth Schedule deemed to be a donation paid or transferred to the Government for which a receipt has been issued in terms of section 18A(2), in the year of assessment in which the land is so declared and each of the succeeding nine years of assessment.

(6) If a taxpayer retains a right of use of land contemplated in subsection (5), the amount deemed to be a donation in terms of that subsection is an amount that bears to the amount determined in terms of that subsection the same ratio as the market value of the land bears to the market value of the land had that land not been subject to the right of use.

(7) If during the current or any previous year of assessment a deduction is or was allowed to the taxpayer in terms of subsection (5) in respect of a deemed donation in terms of a declaration contemplated in that subsection, and the taxpayer subsequently violates that declaration, an amount equal to the deduction allowed in respect of the deemed donation within the period of five years preceding the violation must be included in the income of the taxpayer for the current year of assessment.”

8 **Stewardship contracts concluded**

In order to assess the potential effect of the new legislation, landowners contracted under the Western Cape Stewardship
Programme for Conservation were surveyed. The data collected were used to determine what the maximum possible deduction would be for landowners, and the consequent maximum tax revenue foregone by National Treasury. In order to perform these calculations, the following assumptions were made:

- All relevant landowners have sufficient taxable income available to set off the deductions.
- The landowner’s entire property is committed under the conservation contract. This ensures that apportionment is not necessary and the maximum potential deduction is calculated.

8.1 Research questionnaire

To facilitate the study, a research questionnaire was designed. Questions to meet the objectives of the study were compiled after consideration of the new legislation and academic literature on conservation policy instruments, and in collaboration with senior staff at Cape Nature. Information on aspects of conservation and vegetation types was obtained from Cape Nature.

8.2 Methodology applied in performing calculations

Using the results of the survey, the following steps were taken to perform the calculations:

1. Determine the type of contract concluded with the landowner.
2. For a nature reserve or national park, determine what the cost of the land was to the landowner, as well as its market value when the conservation contract was concluded.
3. Determine the lesser of the cost or the market value.
4. Calculate the potential section 18A deduction for the current and the following nine years of assessment, which is 10 percent of the chosen lesser value per annum.
5. Calculate the potential tax benefit by multiplying the total deduction by average tax rates ranging between 18 and 40 percent. This range was used because it accommodated the lowest tax rate applicable to natural persons and certain special trusts (18 percent), the tax rate applicable to companies and close corporations (28 percent) and the maximum marginal tax rate applicable to natural persons, certain other special trusts and to normal trusts (40 percent) (Stiglingh, Koekemoer, Van Schalkwyk, Wilcocks, De Swardt & Jordaan 2009).
6. In the case of a contract for a protected area, determine the extent of the costs incurred by the landowner for the maintenance and conservation of the area. The total of these costs is deemed to be a section 18A donation.
7. Calculate the potential tax benefit by multiplying the total deduction by average tax rates ranging between 18 and 40 percent.
8. In the case of contracts for biodiversity agreements, determine the extent of the costs incurred by the landowner for the conservation and maintenance of the relevant land. The total of these costs is the tax deduction that can be claimed against taxable income from the land or land which is in immediate proximity of such conservation land.
9. Calculate the potential tax benefit per contract type and per area of the Western Cape for the 2008/2009 fiscal year by multiplying the total deduction by average tax rates ranging between 18 and 40 percent.
10 Identify the area with the highest maximum tax benefit per hectare.

11 Calculate a maximum tax benefit for the 2008/2009 fiscal year by multiplying the number of hectares contracted by the maximum tax benefit per hectare identified in (10) above.

12 Calculate a projected tax benefit per annum, for years following the 2008/2009 fiscal year, using the maximum 2008/2009 deduction per hectare identified in (10) and total estimated hectares targeted by stewardship programmes. For each type of contract available in terms of the programme, make a projection of potential maximum tax benefits to be obtained should 60, 80 or 100 percent of the land be committed under conservation contracts.

The concern of National Revenue that farmers will generally attempt to utilise the deduction is unfounded. Only landowners who have entered into stewardship contracts will be entitled to claim the deduction(s) (Botha 2008). This is supported by the fact that section 37C only allows for the deductions to be claimed if the relevant contracts have been entered into in terms of the National Environmental Management: National Biodiversity Act (2004) or the National Environmental Management: Protected Areas Act (2003) (Income Tax Act 58 of 1962).

9 Analysis and interpretation of the research findings

Using the methodology set out in 8.2, the following findings were made:

Table 9.1 Contracted nature reserves or national parks (private land)

<table>
<thead>
<tr>
<th>Area</th>
<th>Hectares contracted</th>
<th>Total market value of land (rand)</th>
<th>Total cost of land (rand)</th>
<th>Potential maximum tax deduction per annum in terms of s. 37C(5) (rand)*</th>
<th>Average rate of taxation (10 to 40%)</th>
<th>Range of potential tax benefit using average rates of taxation (per annum)</th>
<th>Tax benefit per hectare at 40% tax rate (rand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape Metro</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
<td>0% - 40%</td>
<td>0 to 40%</td>
<td>0</td>
</tr>
<tr>
<td>Cederberg</td>
<td>20 985.80</td>
<td>22 802 200</td>
<td>R22 802 200</td>
<td>R2 280 220</td>
<td>18% - 40%</td>
<td>R410 440 – R912 088</td>
<td>44</td>
</tr>
<tr>
<td>George</td>
<td>9 429.02</td>
<td>20 300 000</td>
<td>R3 372 000</td>
<td>R337 200</td>
<td>18% - 40%</td>
<td>R60 696 – R134 880</td>
<td>14</td>
</tr>
<tr>
<td>Hermanus</td>
<td>802.14</td>
<td>17 100 000</td>
<td>R26 600</td>
<td>R26 600</td>
<td>18% - 40%</td>
<td>R4 786 – R10 640</td>
<td>13</td>
</tr>
<tr>
<td>Paarl</td>
<td>4 448.85</td>
<td>9 519 000</td>
<td>R5 190 000</td>
<td>R5 190 000</td>
<td>18% - 40%</td>
<td>R9 342 000 – R207 600</td>
<td>47</td>
</tr>
<tr>
<td>Rawsonville</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
<td>18% - 40%</td>
<td>0 to 40%</td>
<td>0</td>
</tr>
<tr>
<td>Somerset West</td>
<td>371.38</td>
<td>12 500 000</td>
<td>R4 200 000</td>
<td>R420 000</td>
<td>18% - 40%</td>
<td>R79 560 – R176 800</td>
<td>476***</td>
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<tr>
<td>Total</td>
<td>37 181.98</td>
<td>R134 502 200</td>
<td>R44 200 000</td>
<td>R442 000</td>
<td>18% - 40%</td>
<td>R849 177 – R1 442 008</td>
<td>476***</td>
</tr>
</tbody>
</table>

* The potential maximum deduction per annum is calculated as 10% x lower of cost or market value.
** The cost of four properties is not denominated in rand value. The market value of these properties is therefore used as the maximum tax deduction.
*** The tax benefit per hectare is found to be highest in the Somerset West area. This amount is used to calculate the maximum tax benefit in 2008/2009 (table 9.4) and the potential maximum tax loss (table 9.5).
### Table 9.2 Contracted protected areas (private land)

<table>
<thead>
<tr>
<th>Area</th>
<th>Hectares contracted</th>
<th>Total biodiversity conservation and maintenance expenses (rand)</th>
<th>Potential maximum tax deduction in terms of s. 37C(3) (rand)*</th>
<th>Average rate of taxation (10 to 40%)</th>
<th>Range of potential tax benefit using average rates of taxation</th>
<th>Tax benefit per hectare at 40% tax rate (rand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape Metro</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>18% - 40%</td>
<td>R21 375 – R47 500</td>
<td>0</td>
</tr>
<tr>
<td>Cederberg</td>
<td>2 561.54</td>
<td>R118 750</td>
<td>R118 750</td>
<td>18% - 40%</td>
<td>R4 320 – R9 600</td>
<td>19</td>
</tr>
<tr>
<td>George</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>18% - 40%</td>
<td>R23 760 – R52 800</td>
<td>0</td>
</tr>
<tr>
<td>Hermanus</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>18% - 40%</td>
<td>R45 000 – R100 000</td>
<td>0</td>
</tr>
<tr>
<td>Paarl</td>
<td>499.95</td>
<td>R24 000</td>
<td>R24 000</td>
<td>18% - 40%</td>
<td>R4 320 – R9 600</td>
<td>19</td>
</tr>
<tr>
<td>Rawsonville</td>
<td>1 041.67</td>
<td>R132 000</td>
<td>R132 000</td>
<td>18% - 40%</td>
<td>R23 760 – R52 800</td>
<td>51</td>
</tr>
<tr>
<td>Somerset West</td>
<td>1 048.65</td>
<td>R250 000</td>
<td>R250 000</td>
<td>18% - 40%</td>
<td>R45 000 – R100 000</td>
<td>95***</td>
</tr>
</tbody>
</table>

* The potential maximum tax deduction is calculated as equal to the total of biodiversity conservation and maintenance expenses.
** The tax benefit per hectare is found to be highest in the Somerset West area. This amount is used to calculate the maximum benefit in 2008/2009 (table 9.4) and the potential maximum tax benefit (table 9.5).

### Table 9.3 Biodiversity agreements (private land)

<table>
<thead>
<tr>
<th>Area</th>
<th>Hectares contracted</th>
<th>Total biodiversity conservation and maintenance expenses (rand)</th>
<th>Potential maximum tax deduction in terms of s. 37C(1) and (2) (rand)**</th>
<th>Average rate of taxation (10 to 40%)</th>
<th>Range of potential tax benefit using average rates of taxation</th>
<th>Tax benefit per hectare at 40% tax rate (rand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape Metro</td>
<td>78.70</td>
<td>0**</td>
<td>0**</td>
<td>18% - 40%</td>
<td>0**</td>
<td>0</td>
</tr>
<tr>
<td>Cederberg</td>
<td>3 708.54</td>
<td>0</td>
<td>0</td>
<td>18% - 40%</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>George</td>
<td>449.74</td>
<td>R25 000</td>
<td>R25 000</td>
<td>18% - 40%</td>
<td>R4 500 – R10 000</td>
<td>22</td>
</tr>
<tr>
<td>Hermanus</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>18% - 40%</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Paarl</td>
<td>2 383.44</td>
<td>0</td>
<td>0</td>
<td>18% - 40%</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Rawsonville</td>
<td>153.33</td>
<td>R32 000</td>
<td>R32 000</td>
<td>18% - 40%</td>
<td>R5 760 – R12 800</td>
<td>83***</td>
</tr>
</tbody>
</table>

* The potential maximum tax deduction is calculated as equal to the total of biodiversity conservation and maintenance expenses.
** These landowners (approximately 1 percent of the population of biodiversity agreements) did not respond and are not included in the survey data.
*** The tax benefit per hectare is found to be highest in the Somerset West area. This amount is used to calculate the maximum tax benefit in 2008/2009 (table 9.4) and the potential maximum tax benefit (table 9.5).

### Table 9.4 Total maximum tax benefit per contract type using maximum tax benefit per hectare calculated in tables 9.1, 9.2 and 9.3 (2008/2009 fiscal year)

<table>
<thead>
<tr>
<th>Contract type</th>
<th>Tax benefit (at maximum rate of 40%) (rand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature reserve</td>
<td>17 698 622 per annum</td>
</tr>
<tr>
<td>Protected area</td>
<td>343 592</td>
</tr>
<tr>
<td>Biodiversity agreement</td>
<td>562 055</td>
</tr>
<tr>
<td>Total</td>
<td>18 604 269</td>
</tr>
</tbody>
</table>

¹ Assumption: All contracted landowners in the Western Cape obtain a tax benefit of R476 per hectare.
² Assumption: All contracted landowners in the Western Cape obtain a tax benefit of R95 per hectare.
³ Assumption: All contracted landowners in the Western Cape obtain a tax benefit of R83 per hectare.
Table 9.5 Potential maximum tax benefit (per annum) with all qualifying potential landowners contracted (based on potential 281 823 hectares)

<table>
<thead>
<tr>
<th>Contract type</th>
<th>Tax benefit (at maximum rate of 40%) if 100% of the land is committed (rand)</th>
<th>Tax benefit (at maximum rate of 40%) if 80% of the land is committed (rand)</th>
<th>Tax benefit (at maximum rate of 40%) if 60% of the land is committed (rand)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature reserve¹</td>
<td>134 147 478</td>
<td>107 318 198</td>
<td>80 488 648</td>
</tr>
<tr>
<td>Protected area²</td>
<td>26 773 185</td>
<td>21 418 548</td>
<td>16 063 911</td>
</tr>
<tr>
<td>Biodiversity agreement³</td>
<td>23 391 309</td>
<td>18 713 047</td>
<td>14 034 785</td>
</tr>
</tbody>
</table>

¹Assumption: All current potential landowners in the Western Cape contracted as nature reserves at R476 per hectare.
²Assumption: All current potential landowners in the Western Cape contracted as protected areas at R95 per hectare.
³Assumption: All current potential landowners in the Western Cape contracted under biodiversity agreements at R83 per hectare.

10 Comments obtained from landowners

The survey also required landowners to provide the reason(s) for entering into the conservation contracts. In addition, the landowners were asked what other incentives might encourage them to commit larger portions of land for conservation.

Landowners were asked what had prompted them to conclude these conservation contracts. They all indicated that it was not the biodiversity conservation tax incentives that had convinced them to conclude these contracts. Instead, they had entered into these agreements mainly out of their personal commitment to conservation. The contracts merely bound them to this commitment, and any additional incentives were merely regarded as a "bonus". However, 67.5 percent of the landowners stated that tax incentives would not encourage them to commit more land for conservation.

Tax deductions for biodiversity conservation are not favoured because most landowners do not have sufficient taxable income to set off this deduction. In the case of farmers’ deductions for alien clearing, fencing and habitat maintenance, these expenses are deductible under paragraph 12 of the First Schedule to the Income Tax Act 58 of 1962. Certain other subsidies were preferred and are discussed in the following sections.

10.1 Fiscal and economic incentives

10.1.1 Subsidies and materials

Fiscal and economic incentives, such as subsidies specifically for conservation and maintenance expenses, are preferred. Similarly, the supply of material by Government or conservation agencies for erecting fencing in and around contracted land could also prove to be an attractive incentive.

In the case of landowners who have sacrificed existing or potential agricultural land for conservation, a direct form of compensation is preferred. This means that farmers should be compensated for future farming income foregone. This, however, would be problematic in the sense that future income would have to be estimated.

10.1.2 Rebate of property taxes

A fiscal incentive that is favoured is the rebate on property taxes. In the case of a nature reserve, this incentive has been allocated to landowners in that they no longer pay property taxes on land committed as nature reserves.
10.1.3 Capital gains tax deduction
When agricultural land is sacrificed for conservation, the market value of such land decreases – in the case of vineyards, from being worth R200 000 per hectare to approximately R3 000 to R5 000 per hectare. Landowners are of the opinion that they should be compensated in some way for this loss in property value, say, through being granted a capital gains tax deduction for the difference between the value of the land before and after the conservation contract was entered into. This incentive is granted in Australia, where land value decreases as a result of conservation covenants over private land (Shine 2005). Similarly, landowners in the USA deduct between 50 and 100 percent of their adjusted gross income, the adjustment resulting from a decrease in farming income after donating a conservation easement (Colman 2006). Conservation easements are contracts similar to private land contracted as nature reserves.

10.2 Property-based incentives
10.2.1 Direct assistance in respect of conservation and maintenance activities
Landowners contend that, in the case of land contracted under the conservation contracts, it would be more appropriate for conservation agencies to assist in the physical work needed for biodiversity conservation and maintenance. Government could also alleviate the unemployment problem by providing labour to perform the work. In this way, there would be no transfer of Government funding to private landowners and landowners would not have to sacrifice their own time and labour for this purpose. Landowners emphasised that adequate planning, control and monitoring are essential in this regard.

10.2.2 The valuation of conservation land for the purposes of section 37C
Landowners stated that the use of the lower of cost or market value was not beneficial to their tax situation in calculating the section 18A deduction for nature reserves and national parks. Firstly, in the case of landowners who had bought their land more than ten years before the valuation, the cost was significantly lower than market value. In some instances, the land had been owned for more than 40 years. (This was the reason for the limitation of the study discussed in 4.5.) Secondly, market value is a subjective measurement. The use of the municipal value of land would lead to a somewhat larger tax benefit and ensure an objective and consistent measurement of all the land under investigation.

<table>
<thead>
<tr>
<th>Table 10: Summary of findings: other conservation incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of incentive</strong></td>
</tr>
<tr>
<td>Fiscal and economic incentives: government subsidies or materials supplied</td>
</tr>
<tr>
<td>Fiscal and economic incentives: compensation for loss of future farming income</td>
</tr>
<tr>
<td>Fiscal and economic incentives: rebate on property taxes/exemption from property taxes</td>
</tr>
<tr>
<td>Property-based incentives: government assistance in respect of conservation and maintenance activities (labour)</td>
</tr>
<tr>
<td>Property-based incentives: alternative valuation of conservation land for the purposes of section 37C: municipal value</td>
</tr>
</tbody>
</table>

*The percentage of landowners who suggested this incentive. The selection of incentives by landowners was not mutually exclusive.*
11 Conclusion and recommendations

This paper discussed the various conservation policy instruments that are available, highlighting some of their benefits and disadvantages. A brief overview of the conservation needs in the Western Cape was provided and the process of identifying conservation land by conservation agencies discussed. The maximum potential income tax revenue loss to National Treasury, as a result of biodiversity conservation tax incentives granted to landowners in the Western Cape for the 2008/2009 fiscal year, was quantified. In addition, a projected loss in income tax revenue per annum was calculated and presented in table 9.5. A projection for each type of conservation contract was also made. Tax legislation and academic literature on conservation policy instruments served as the basis of the survey and the calculations that were performed. The study concluded with a discussion of the attitudes of landowners in the Western Cape towards conservation tax incentives.

11.1 Findings and recommendations

It is clear from the study that the new tax incentives will not be utilised by landowners in general, but only by those who have concluded valid stewardship contracts. No recommendation is required in this regard.

Taking the limitations of the study into account, the maximum income tax revenue foregone (see table 9.4), should amount to approximately 0.005 percent of total estimated revenue in income tax collected (R380 624 000 000) for the 2008/2009 fiscal year (Treasury 2009). Projected future loss per annum in income tax revenue, if 100 percent of the potential area is committed under conservation contracts, amounts to approximately 0.035 percent in the case of nature reserves, 0.007 percent in the case of protected areas and 0.0006 percent in the case of biodiversity agreements. These projected percentages were based on the total estimated revenue in income tax collected for the 2008/2009 fiscal year. Projections have also been made should 80 or 60 percent of the area be committed under conservation contracts. It is noted that the loss or projected loss in income tax revenue may not be significant, especially if one considers that all landowners may not have sufficient taxable income to set off the deductions in terms of section 37C of the Income Tax Act 59 of 1962.

Landowners seem to prefer the use of fiscal and economic incentives such as subsidies and the supply of materials. Rebates on property taxes already paid and exemption from further property taxes were also considered preferable. In respect of land contracted under conservation contracts, the landowners were of the opinion that direct assistance with conservation activities, in the form of labour provided by Government or conservation agencies, would also be beneficial. Only 32.5 percent of the landowners indicated that tax incentives would encourage them to commit more land for conservation. It is recommended that Government and conservation agencies design an optimal mix of conservation incentives. To achieve this, the opinions of landowners should be taken into account.

In the case of private land declared as nature reserves and protected areas, the use of the lower of cost or market value causes a subjective calculation and inconsistency when sufficient information is not available. The use of a municipal value in the valuation of land when calculating conservation tax incentives would promote objectivity and consistency in calculating the tax deductions granted in terms of conservation contracts.
Bibliography


Van Wyk