

SECTION 37D FACT SHEET

BIODIVERSITY TAX INCENTIVES

INTRODUCTION

The following fact sheet provides a brief outline of Section 37D, South Africa's first effective biodiversity tax incentive for Nature Reserves and National Parks declared on communal or private land. Please note that this fact sheet is for information purposes only and may not be used as tax advice.

SECTION 37D

Section 37D of the Income Tax Act No. 58 of 1962 (ITA) provides South African nature reserves and national parks declared in terms of the National Environmental Management: Protected Areas Act No. 57 of 2003 (NEMPAA) with a dedicated biodiversity tax incentive. Section 37D allows a taxpayer to deduct the value of their land, declared in terms of NEMPAA, from taxable income. It supports the national biodiversity stewardship approach to securing protected areas through contractual agreements on non-state land and is providing much needed financial sustainability to critical conservation efforts nationwide.

HOW DOES SECTION 37D WORK?

- Section 37D attaches to land declared as a nature reserve or national park in terms of section 20 or 23 of NEMPAA and is available to the taxpayer who owns the land declared;
- The land must also be subject to a title deed endorsement for a minimum of 99 years;
- Section 37D allows for a 4% straight line deduction on the value of the land declared. This is deducted from the taxpayer's taxable income each tax year for 25 years;
- The value of the land is determined based on actual cost and improvements, or using a prescribed formula taking municipal or market value into account. The calculation requires knowledge of the section and its application;
- If a right of use of the land is maintained then the deduction is apportioned accordingly. Examples of right of use include, but are not limited to: agricultural activities, or commercial tourism.
- The deduction becomes effective in the year in which the land is declared and the title deed endorsement is effected, provided the last of these requirements is on or after 1 March 2015;
- Should the protected area status be terminated in accordance with NEMPAA, the taxpayer will be liable for certain tax penalties;
- The deduction may be set off against taxable income or may be used to increase an assessed loss (tax loss).

Refer to the Section 37D Flow Chart and Accessing Section 37D Diagram for further information.

For further information please contact:

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THE VALUE OF SECTION 37D

Generally, the value of land is not deductible for tax purposes. However, the section 37D deduction offers a unique opportunity to deduct the value of land and provides for a reduction in the tax owing of communal and private landowners who have made a long term commitment to the conservation of South Africa's biodiversity and ecological infrastructure by declaring protected areas. This deduction provides for increased tax efficiency, cash flow, and business growth, aiding in the protected area's ability to secure its financial sustainability and long term future.

HOW DID THIS INNOVATION COME ABOUT?

The innovation for this finance solution was originally achieved through the Fiscal Benefits Project, launched by Candice Stevens in 2015 at BirdLife South Africa with catalytic support from the WWF Nedbank Green Trust, and subsequently run through Wilderness Foundation Africa in collaboration with BirdLife South Africa. The Fiscal Benefits Project was funded by the GEF 5 Biodiversity and Land Use Project in partnership with the South African National Biodiversity Institute (SANBI) and formally came to an end on the 31/12/2019. The ongoing implementation of section 37D is housed within Innovative Finance at Wilderness Foundation Africa and undertaken by its National Tax Extension Service.

SECTION 37D'S CONTRIBUTION TO SOUTH AFRICA'S CONSERVATION FINANCE SHORTFALL

Sustainable landscapes are critically important, providing ecological infrastructure for biodiversity, people and the economy and underpinning the United Nations' Sustainable Development Goals. South Africa currently faces a substantial financial shortfall in spending to safeguard our landscapes and to address our environmental challenges. Addressing this conservation finance shortfall is vital. Protected and conserved areas, as the cornerstones to sustainable landscapes, require financial sustainability if they are to continue providing enduring benefits to all South Africans.

Refer to the Section 37D Milestones Infographic for further information.

The section 37D tax benefit, which is catered for protected areas, is estimated to contribute over R1.4 billion and reduce South Africa's biodiversity finance gap of 64%, by approximately 8.8% (Source: UNDP BIOFIN).

SECTION 37D AND THE BIODIVERSITY ECONOMY IN SOUTH AFRICA

The Biodiversity Economy of South Africa encompasses the businesses and economic activities that either directly depend on biodiversity for their core business or that contribute to conservation of biodiversity through their activities. President Cyril Ramaphosa noted at the Biodiversity Economy Launch in 2018 that: "sustainable maintenance of biodiversity can contribute to our efforts to eradicate poverty and create economic opportunities for our people".

Section 37D provides a form of biodiversity finance and makes a valuable contribution to the growth of new and emerging sectors within South Africa's Biodiversity Economy, by enabling private and communal landowners to grow their businesses with tax efficiency and greater liquidity. This is of particular relevance to start-ups within the Biodiversity Economy. By way of example, one of the nature reserves within South Africa to receive section 37D, utilised their tax deduction to build an additional commercial tourism lodge and employ additional people in their eco-tourism venture.

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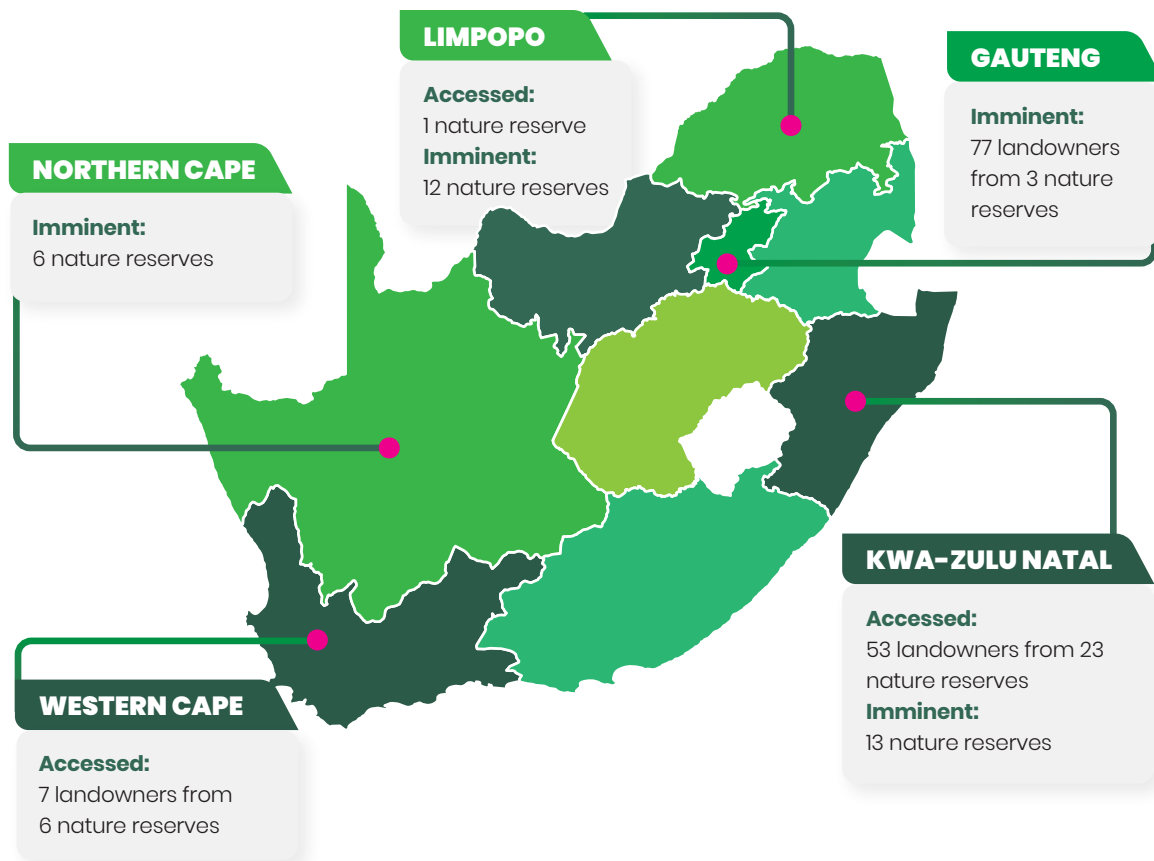
SECTION 37D AND SOUTH AFRICA'S PROTECTED AREA NETWORK

Section 37D has assisted national biodiversity stewardship efforts to expand South Africa's protected area network by supporting, incentivising and providing financial benefits to the declaration of additional nature reserves since its inclusion in legislation in 2015. An approximate 500 000 additional hectares have been added to this network on communal and private land across South Africa over this period, through the dedicated efforts of the biodiversity stewardship community of practice.

Refer to the SANBI Biodiversity Advisor for more information on biodiversity stewardship in South Africa and for access to section 37D tax resources: biodiversityadvisor.sanbi.org

PROTECTED AREAS UTILISING THE SECTION 37D TAX BENEFIT

The 2019 Tax Site Map of all protected areas in South Africa receiving the unique biodiversity tax incentive, section 37D, is depicted below.



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INNOVATIVE FINANCE AT WILDERNESS FOUNDATION AFRICA

Innovative Finance at Wilderness Foundation Africa (WFA) is led by Candice Stevens and is aimed at developing and implementing innovative financial solutions for sustainable landscapes in South Africa. Innovative Finance is pioneering a range of new finance interventions with Fiscal Solutions as one of its key focal areas.

A separate component of Fiscal Solutions is the provision of a National Tax Extension Service for the

established finance solution: section 37D. National Tax Extension focuses on providing niche tax services to protected areas across South Africa to ensure that section 37D is accessed by qualifying taxpayers and financial sustainability is provided to these landscapes. The National Tax Extension Service is led by Ellané van Wyk.

ADDITIONAL INFORMATION

A range of section 37D tax resources are freely available for download from the SANBI Biodiversity Advisor: biodiversityadvisor.sanbi.org or on request. Information includes fact sheets, flow diagrams, technical examples, case studies, and more. Section 37D tax training may also be arranged on request. The full solution may be explored at:

<https://panorama.solutions/en/solution/biodiversity-tax-incentives-south-africas-protected-area-network>.

The National Tax Extension Service supports a range of stakeholders across all of South Africa's landscapes and works in close collaboration with the biodiversity stewardship community of practice. The section 37D innovation and its continued implementation is undertaken in conjunction with National Government and receives support from a range of funders and donors.



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