

# BUDGET 2015/2016

*Putting the pieces together*



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Wills, trusts and estates

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These notes, where applicable, are based on the budget proposals tabled in Parliament by the Minister of Finance on 25 February 2015. The proposals are, however, subject to Parliamentary approval.

This booklet is issued for the use of clients, associates and staff. While every care has been taken, no liability is accepted for the consequences of any inaccuracies. All rates were correct at date of publication.

# SUMMARY OF MAJOR FEATURES

## 1 COMPANIES AND CLOSE CORPORATIONS

- 1.1 The rate of normal tax remains at 28% in respect of years of assessment ending during the 12-month period to 31 March 2016.
- 1.2 Foreign companies will continue to be subject to tax at a rate of 28% on income of a South African source.
- 1.3 The dividend withholding tax (DWT) remains at 15%. The combined tax rate (normal tax and DWT) where all profits are distributed is 38.8%.
- 1.4 The turnover threshold for qualification as a small business corporation (SBC) remains at R20 million. The graduated tax structure has been favourably revised. The tax rates for SBCs appear on page 6.
- 1.5 The rate of tax payable by personal service provider (employment) companies remains at 28%.

## 2 INDIVIDUALS

- 2.1 The maximum marginal rate for individuals for the year of assessment ending 29 February 2016 has been increased to 41% and is applicable where taxable income exceeds R701 300 (previously R673 100).
- 2.2 The minimum rate of tax remains at 18% where taxable income does not exceed R181 900 (previously R174 550).
- 2.3 The primary rebate for all natural persons has been increased to R13 257 (previously R12 726). The additional rebate for persons aged 65 years and older has been increased to R7 407 (previously R7 110). The third rebate for persons 75 years and older has been increased to R2 466 (previously R2 367).
- 2.4 The tax-free portion of interest income remains at R23 800 for taxpayers under 65 years, and R34 500 for persons aged 65 years and older.

## 3 TAX THRESHOLDS

### 3.1 LIABILITY FOR TAX COMMENCES AS FOLLOWS:

- Under 65 years R73 650 (previously R70 700)
- 65 years and older R114 800 (previously R110 200)
- 75 years and older R128 500 (previously R123 350)

## 4 TRUSTS

- 4.1 The rate of tax for the year of assessment ending 29 February 2016 has been increased to 41%.

## 5 MEDICAL SCHEME MEMBERSHIP

From 1 March 2015 the monthly tax credits for medical scheme contributions will be increased to R270 (previously R257) for each of the first two beneficiaries and R181 (previously R172) for each additional beneficiary.

## 6 CAPITAL GAINS TAX

No changes have been proposed in respect of capital gains tax inclusion rates.

## 7 TRANSFER DUTY

The rates and brackets for transfer duties on properties acquired on or after 1 March 2015 will be adjusted to provide relief to middle-income households. The new rates will eliminate transfer duty on all property acquired with a value below R750 000, decrease effective transfer duty liability for properties acquired with a value up to R2.65million and increase liability for properties above this amount.

## 8 TURNOVER TAX

Government has adjusted the rates and thresholds to make the turnover tax more attractive. See note 5 on page 19.

## 9 GENERAL FUEL LEVY AND ROAD ACCIDENT FUND LEVY

The general fuel levy will increase by 30.5c/l with effect from 1 April 2015. On the same day the Road Accident Fund levy will increase by 50c/l.

## 10 FORTHCOMING DEVELOPMENTS

### 10.1 INDIVIDUALS

#### 10.1.1 Retirement Reforms

The retirement reforms due to be effective 1 March 2015 have been postponed to 1 March 2016. The reforms include the alignment of funds.

#### 10.1.2 Medical tax credits as part of PAYE: over 65 years

It is proposed that medical tax credits related to medical scheme contributions be taken into account for both PAYE and provisional tax purposes.

#### 10.1.3 Estate duty and retirement funds

Amendments in 2008 removed the upper age limit at which an individual was required to purchase an annuity if they had an interest in a retirement annuity fund, and excluded retirement fund benefits from the dutiable estate when a member passed away. To eliminate the potential to avoid estate duty by transferring assets into a retirement annuity fund before death, government proposes that an amount equal to the non-deductible contributions to retirement funds be included in the dutiable estate when a retirement fund member passes away.

#### 10.1.4 Exchange Control regulations

From 1 April 2015 South African residents' foreign capital allowance will increase from R4 million to R10 million per calendar year or upon emigration, or R20 million per family unit. The subcategories under the individual single discretionary allowance are removed and the annual R1million single discretionary allowances may be used for any legal purpose abroad.

### 10.2 BUSINESS

#### 10.2.1 General

##### i Unlisted property-owning companies

Unlisted property-owning companies marketed to the general public or held by institutional investors do not qualify for the same special tax dispensation as listed real estate investment trusts. Government proposes that unlisted property-owning companies should qualify for the same tax treatment if they become regulated. A regulatory framework for unlisted property-owning companies will be developed.

##### ii Hedge funds

Government proposes that hedge funds be declared as collective investment schemes, subjecting them to similar rules as other collective investment schemes in terms of the Collective Investment Schemes Control Act (2002). Tax amendments will be considered to minimise any inadvertent tax consequences that may arise from the restructuring of regulated hedge funds.

##### iii Revision of manufacturing assets deduction

Due to changes in the business models of some manufacturing activities, government will review the conditions of the manufacturing assets capital allowance without undermining the current limitation provisions in other sections of the Income Tax Act.

- iv **Special economic zones: definition of qualifying company**  
Government proposes that a company be disqualified from the tax benefit if more than 20 per cent of its expenditure or gross income arises from transactions with connected persons.

#### 10.2.2 International tax

- i **Base erosion and profit shifting**  
Government proposes amendments to improve transfer-pricing documentation and reporting, and changes to the rules for controlled foreign companies and the digital economy. Tax returns will place a greater focus on indicators of potential base erosion and profit shifting.
- ii **Withdrawal of special foreign tax credits for service fees sourced in South Africa**  
Due to the significant compliance burden to both taxpayers and SARS, it is proposed that the special foreign withholding tax credits for services be withdrawn.
- iii **Capital gains tax implications on cross-issue of shares**  
If a South African resident company issues shares as consideration for an acquisition of shares in a foreign company, it will result in a capital gain for the resident company. Government is considering relaxing the provision's requirements.
- iv **Sale of immovable property by non-residents**  
Currently a purchaser does not need to withhold tax from a deposit "until the agreement for that disposal has been entered into". It is proposed that the wording should be amended to clarify the timing of the withholding.
- v **Withholding tax on interest**  
It is proposed that interest for withholding tax purposes be defined. This will ensure that there is no confusion with other definitions related to interest in the Income Tax Act. Provision is also to be made for exemption of interest paid to a non-resident for debt owed by another non-resident, unless the other non-resident was present in South Africa for a period exceeding 183 days or the debt claim is effectively connected to a permanent establishment in South Africa.
- vi **Controlled foreign company rules**  
CFC rules have proven less effective in immediately addressing profit shifting by South African resident companies. Although transfer pricing rules can be applied in these circumstances, the CFC diversionary rules are more effective in taxing profits from these transactions. It is proposed that diversionary rules applicable to the sale of goods by a CFC to a connected resident be reinstated. In addition, consideration will be given to allowing CFCs held by interposed trusts to be subject to tax in South Africa.

#### 10.2.3 Value-added tax

- i **Commercial accommodation**  
It is proposed that the registration and threshold requirements for the supply of commercial accommodation be reviewed to limit potential abuse.

#### 10.2.4 Environmental taxation

- i **Tyre levy**  
South Africa generates an estimated 108 million tonnes of waste each year, of which only 10 per cent is recycled. Government has designed additional environmental levies on a range of waste streams to help divert waste away from landfills towards reuse, recycling and recovery. Government proposes a tyre levy, with effect from the last quarter of 2015, to be implemented through the Customs and Excise Act and collected by SARS.

#### ii Fuel taxes - Diesel refunds

Government proposes to reduce diesel fuel levy refunds to 20 per cent and 50 per cent of the general fuel levy respectively for land mining activities and generation of electricity by Eskom's open-cycle gas turbines. The current full exemption provides a perverse incentive to use diesel excessively. This change will become effective from 1 April 2016. In the interim, government proposes several technical amendments to this system.

#### iii Electricity levies

Government is considering an increase in the electricity levy from 3.5c/kWh to 5.5c/kWh. The additional revenue will be used to fund the broadening of the scope of the energy-efficiency savings tax incentive to include co-generation and an increase in the amount available for this incentive. Also under consideration is enhancing the accelerated depreciation for solar photovoltaic renewable energy. In the absence of a carbon tax, the electricity levy promotes energy efficiency and reduced greenhouse gas emissions.

The proposed increase is a temporary measure to be withdrawn when the carbon tax is introduced in 2016. Government is examining loopholes that unduly favour intensive electricity users, and will consider a levy that would apply to users and exporters of electricity who consume in excess of 800 000 MWh per year.

#### iv Depreciation deductions for hydropower generation

Investments in renewable energy to generate electricity are incentivised through accelerated depreciation deductions. However, a capacity limit of 30 megawatts is in place for hydropower generation because of concerns about possible environmental impact. Consideration will be given to including hydropower generators of more than 30 megawatts if other environmental concerns are addressed. A broader incentive could increase electricity supply and support the transition to a low-carbon economy.

#### 10.2.5 Exchange Control regulations

From 1 April 2015 authorised dealers may process corporate investment up to R1 billion per year, from R500 million previously, as well as the carrying forward of any unused allowance. The dispensation for credit card usage, currently limited to individuals, will be extended to corporates.

### 10.3 MISCELLANEOUS

#### 10.3.1 Excise duties on alcoholic beverages and tobacco products

An additional excise duty category is proposed for grain-based fermented beverages (flavoured alcoholic beverages using 100 per cent unconverted grains). The rate for these beverages will initially be linked to the excise duty for beer, and may be reviewed to ensure a level playing field with fruit-fermented beverages. Other reforms under consideration include providing excise duty relief to wine-based spirits (e.g. brandy). Government also proposes a change in the way the targeted tax burden on alcoholic beverages and tobacco products is expressed. VAT will be removed from the calculation.

#### 10.3.2 National gambling tax bill

The national gambling tax bill will be processed in 2015.

### 10.4 TAX ADMINISTRATION

#### 10.4.1 Self-assessment system for income tax

Amendments are proposed to provide for the move to an income tax self-assessment system.

## 11 TAX TABLE FOR THE YEAR OF ASSESSMENT – 2016

### ALL NATURAL PERSONS AND SPECIAL TRUSTS

TAXABLE INCOME			RATES OF NORMAL TAX				
From	To						
R	R	R				R	
0	–	181 900			18%	of each R1	
181 901	–	284 100	32 742	+	26%	of the amount above	181 900
284 101	–	393 200	59 314	+	31%	of the amount above	284 100
393 201	–	550 100	93 135	+	36%	of the amount above	393 200
550 101	–	701 300	149 619	+	39%	of the amount above	550 100
701 301		and above	208 587	+	41%	of the amount above	701 300

## TAX TIME TABLE

	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb
	2015	2015	2015	2015	2015	2015	2015	2015	2015	2015	2015	2016	2016
<b>PROVISIONAL TAX</b>													
- Companies/CCs													
Year ending:													
- 31 December					30						31		
- 28/9 February	27						31	30					29
- 30 June					30						31		
- Individuals	27						31	30					29
<b>PAYE, SDL &amp; UIF</b>	6	6	7	7	5	7	7	7	7	6	7	7	5
<b>VAT: manual submission</b>	25	25	24	25	25	24	25	25	23	25	24	25	25
<b>VAT: E-filing</b>	27	31	30	29	30	31	31	30	30	30	31	29	29
<b>RAF contributions</b>	27												29
<b>Dividend Withholding Tax</b>	By the last business day of the month following that in which the dividend was paid or became due and payable												

## COMPANIES AND CLOSE CORPORATIONS

(other than mining and long-term insurance)

### 1 NORMAL TAX

Payable on taxable income in respect of financial years ending during the 12-month period to 31 March 2016:

- Companies and close corporations
- Personal service provider companies – see note 6 on page 19
- Income derived by foreign companies from South African sources
- Qualifying small business corporations – see note 8 below
- Companies qualifying for turnover tax regime – see note 5 on page 19

28%  
28%  
28%

### 2 CORPORATE RULES

The corporate rules contained in sections 41 to 47 of the Income Tax Act broadly offer relief from income tax and CGT where assets are transferred to a company, or between companies in the same group. There may also be allied relief from VAT, securities transfer tax and transfer duty.

The corporate rules play a major role in mergers, acquisitions, the restructure of corporate groups and in facilitating Black Economic Empowerment transactions. The rules are complex and formalistic, however, when they can be brought to bear, the results may be remarkable and well worth the effort.

### 3 SECONDARY TAX ON COMPANIES (STC)

STC was replaced by the dividend withholding tax from 1 April 2012. All unused STC credits will be disregarded with effect from 1 April 2015.

### 4 CORPORATE DISTRIBUTIONS

#### 4.1 DIVIDEND WITHHOLDING TAX (DWT)

4.1.1 As of 1 April 2012 DWT, imposed at the rate of 15%, applies to dividends paid or that became due and payable by any resident company (other than a headquarter company).

4.1.2 DWT arising on a dividend (other than a dividend *in specie*) is a liability of the beneficial owner of the dividend - the person entitled to the benefit of the dividend - in most cases the shareholder.

4.1.3 Dividends paid to the following beneficial owners, *inter alia*, are exempt:

- A company that is a resident, regardless of shareholding;
- The government, a provincial administration or municipality;
- A public benefit organisation approved by SARS;
- Retirement and benefit funds;
- A shareholder of a registered micro business as contemplated by the Sixth Schedule of the Income Tax Act to the extent that dividends paid by the micro business to shareholders do not exceed R200 000 during the year of assessment;
- A portfolio of a collective investment scheme in securities; and
- Any person to the extent that the dividend was subject to the secondary tax on companies.

The exemption from DWT will, however, only be allowed if the beneficial owner provides a written declaration and undertaking in respect of the exemption to the company declaring the dividend. Once such declaration and undertaking has been submitted, the company may rely thereon for exemption from DWT until such time as the beneficial owner indicates otherwise. The requirement to provide the written declaration and undertaking does not apply where the beneficial owner forms part of the same group of companies as the company declaring the dividend.

4.1.4 In the case of non-resident beneficial owners receiving dividends, the double tax agreement between South Africa and the country of residence of the beneficial owner may determine a DWT rate lower than the prescribed rate of 15%. Such beneficial owners must submit the declaration and undertaking in respect of the applicable DWT rate to the company declaring the dividend as is the case with exempt beneficial owners.

4.1.5 While the DWT is a tax payable by the beneficial owner of the dividend (other than a dividend *in specie*), the collection of the DWT will remain an obligation of the company declaring the dividend. The company must determine the amount of DWT in respect of each beneficial owner's dividend and withhold the amount from the dividend to be paid. The beneficial owner will therefore receive the net dividend after DWT and the company declaring the dividend must pay the DWT and make the necessary declaration of the calculation of the DWT to SARS. The declaration and payment of the DWT must be made by the end of the month following the month in which the dividend is paid or becomes due and payable.

4.1.6 Where an exempt beneficial owner acquires a right to a dividend by way of cession, after the announcement or declaration of the dividend, the dividend is deemed to be a dividend paid for the benefit of the cedent. The dividend so ceded will comprise income to the cessionary. (These provisions do not apply where the cession of rights to the dividend is accompanied by cession of all the rights attached to the share.)

4.1.7 For a discussion regarding dividends paid by real estate investment trusts (REITs) see note 7, below.

#### 4.2 DEEMED DIVIDENDS

4.2.1 In certain circumstances, where debt is owed to a company by a resident shareholder (that is not exempt from DWT) and such debt carries no interest or interest below the official rate, a deemed dividend will arise, calculated on the interest differential.

4.2.2 With effect from 1 April 2014, interest paid by a company may be regarded to be hybrid interest or as having been paid on hybrid debt instruments. Such interest may be deemed to be a dividend *in specie*.

4.2.3 A company that ceases to be a resident, or becomes a headquarter company, will be deemed to have declared and paid a dividend *in specie* equivalent to the market value of its shares less the contributed tax capital.

4.2.4 Where, as part of an asset-for-share transaction, the market value of the shares issued exceeds the market value of the asset acquired, the excess amount is deemed to be a dividend *in specie*.

4.2.5 Any amount of interest received by or accrued to a person during a year of assessment in respect of a debenture forming part of a linked unit held by that person in a company that is a REIT, or a 'controlled company' in relation to a REIT, must be deemed to be a dividend received by or accrued to that person.

4.2.6 Any amount of interest paid in respect of a linked unit in a REIT, or a 'controlled company' in relation to a REIT, must be deemed to be a dividend paid by that REIT.

4.2.7 In terms of the transfer pricing legislation, certain transfer pricing adjustments are regarded as dividends *in specie* with effect from 1 January 2015. See note 1.4 on page 15.

#### 4.3 SHARE BUYBACKS

Where a company effects a share buyback, the excess of the buyback amount over and above amounts of contributed tax capital will be treated as a dividend. The non-dividend component of the buyback price will have CGT implications. In certain circumstances, the buyback by a listed company of its own shares will not be considered to be a dividend. In such cases, the buyback consideration will constitute proceeds for CGT purposes.

## 5 COLLECTIVE INVESTMENT SCHEMES IN SECURITIES (CISSs)

A CISS, although not treated as a company for tax purposes (except in certain limited instances) is a person for income tax purposes. A CISS acts as a conduit in respect of income (other than an amount of a capital nature) received by it, to the extent that it is distributed to unit holders within 12 months of its receipt. Dividends paid to a CISS are exempt from DWT, but any dividends received by unit holders will be subject to the DWT provisions (see note 4 above). Amounts not distributed within 12 months are taxed in the CISS at 40%, but are tax free in the hands of the investor when ultimately distributed.

## 6 COLLECTIVE INVESTMENT SCHEMES IN PROPERTY (CISPs)

For years of assessment commencing before 1 April 2013, a CISP was not a legal entity and not a person for income tax purposes. A CISP acts as a conduit in respect of income received by it. Dividends received by or accrued to unit holders before 31 March 2013 are, subject to certain exclusions, not exempt from income tax. For years of assessment commencing on or after 1 April 2013, a CISP was deemed to be both a person and a company for income tax purposes. With effect from 1 January 2015 only a CISP which is regarded as a REIT will be a company as defined. Other CISPs cease to be regarded as companies for income tax purposes. For a discussion of a CISP that constitutes a REIT, see note 7 below.

## 7 REAL ESTATE INVESTMENT TRUSTS (REITs)

- 7.1 With effect from 1 April 2013 the concept of REITs was introduced into our income tax legislation. A REIT is defined as a company, that is a resident, and the shares of which are listed on an exchange as shares in a REIT as defined in the JSE Limited listing requirements.
- 7.2 In general CISPs and Property Loan Stock Companies, which adhere to the REIT definition, will fall within the ambit of the new tax legislation for any year of assessment commencing on or after 1 April 2013.
- 7.3 All distributions by a REIT are regarded as dividends declared and treated as follows in the hands of the unit holders:
- Residents – the dividends received will be subject to income tax and, accordingly, will not be subject to DWT
  - Non-residents – any dividends received or accrued before 1 January 2014 (except dividends *in specie*) will be exempt from DWT; any dividends received thereafter will be subject to DWT (subject to the provisions of the relevant double tax agreement)
- 7.4 Where more than 75% of the gross income received by the REIT in the preceding year of assessment consists of 'rental income', the REIT will be allowed (subject to limitations) to deduct distributions to unit holders in determining the taxable income of the REIT. If the 75% requirement is not met, no deduction is allowed in the REIT and the REIT will pay income tax at 28%, subject to the income tax provisions of a normal company.

## 8 SMALL BUSINESS CORPORATIONS (SBCs)

In order to qualify as a SBC, the following requirements must be met:

- gross income of the SBC may not exceed R20million (R14million for years of assessment ending on or before 31 March 2013) for the year of assessment (pro-rata for shorter periods)
- the shareholders or members of the SBC must all be natural persons
- the shareholders or members may not hold the shares or members interest in any private or unlisted companies apart from certain exceptions, some of which are as follows:
  - dormant companies with assets not exceeding a market value of R5 000
  - terminating companies
  - bodies corporate
  - share block companies
  - venture capital companies
- the SBC may not be a personal service provider (refer note 6 on page 19)
- not more than 20% of total receipts and accruals may consist collectively of 'investment income' and income derived from the rendering of a 'personal service'.

The rates of normal tax applicable to SBCs in respect of any year of assessment ending during the period of 12 months ending on 31 March 2016, are as follows:

TAXABLE INCOME			RATES OF NORMAL TAX			
From	To					
R	R		R			R
0	-	73 650	0			
73 651	-	365 000	0	+	7%	of the amount above 73 650
365 001	-	550 000	20 395	+	21%	of the amount above 365 000
550 001		and above	59 245	+	28%	of the amount above 550 000

# INDIVIDUALS

## 1 MAXIMUM RATE OF TAX

- 1.1 Applicable to taxable income in excess of  
1.2 Maximum marginal rate of tax

2016	2015
R701 301	R673 100
41%	40%

## 2 TAX REBATES

Amounts deductible from tax payable:

### 2.1 PRIMARY

All natural persons

R13 257	R12 726
---------	---------

### 2.2 SECONDARY

All natural persons 65 years and older

R7 407	R7 110
--------	--------

### 2.3 TERTIARY

All natural persons 75 years and older

R2 466	R2 367
--------	--------

### 2.4 MEDICAL SCHEME FEES TAX CREDIT

- each of member and first dependant (per month)
- each additional dependant (per month)

R270	R257
R181	R172

### 2.5 ADDITIONAL MEDICAL EXPENSES TAX CREDIT

#### 2.5.1 Under 65 years of age not suffering from a disability

- 25% of medical scheme contributions that exceed four times the allowable medical scheme fees tax credit as per note 2.4 above; and
- 25% of any other qualifying medical expenses in excess of 7.5% of taxable income (excluding any retirement fund lumpsum/withdrawal benefit/severance benefit)

#### 2.5.2 65 years of age and over; or under 65 years of age and suffering from a disability

- 33.3% of medical scheme contributions that exceed three times the allowable medical scheme fees tax credit as per note 2.4 above; and
- 33.3% of any other qualifying medical expenses (excluding any retirement fund lumpsum/withdrawal benefit/severance benefit)

## 3 TAX-FREE PORTION OF INTEREST INCOME

- 3.1 All natural persons under 65 years of age  
3.2 All natural persons 65 years and older

R23 800	R23 800
R34 500	R34 500

## 4 TAX-FREE INVESTMENT ACCOUNTS

- 4.1 Annual contribution limit  
4.2 Life time contribution limit  
4.3 Income and capital gains are tax free  
4.4 Contributions in excess of the above limits are subject to a once-off tax charge of 40%

R30 000	-
R500 000	-

## 5 DEDUCTIONS

Amounts deductible from income include:

### 5.1 CURRENT PENSION FUND CONTRIBUTIONS

A maximum deduction of the greater of 7.5% of remuneration from employment or R1 750

### 5.2 CURRENT RETIREMENT ANNUITY FUND CONTRIBUTIONS

The maximum deduction allowable is the greatest of –

- 15% of income, net of admissible expenses, excluding employment from which employee/director derives remuneration and is a member of a pension/provident fund;
- R3 500 less current contributions to a pension fund; and
- R1 750

### 5.3 ARREAR RETIREMENT ANNUITY FUND CONTRIBUTIONS

R1 800	R1 800
--------	--------

### 5.4 ARREAR PENSION FUND CONTRIBUTIONS

#### 5.4.1 General limitation

R1 800	R1 800
--------	--------

#### 5.4.2 Former non-statutory force members

unlimited	unlimited
-----------	-----------

### 5.5 DONATIONS TO CERTAIN PUBLIC BENEFIT ORGANISATIONS

The deduction of donations actually paid or transferred during a year of assessment is limited to 10% of taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit and before any deduction of the donation and allowable medical expenses). With effect from years of assessment commencing on or after 1 March 2014 any excess may be carried forward to the succeeding year and will be deemed to have been actually paid or transferred in that year.

### 5.6 TURNOVER TAX – MICRO BUSINESS

For a discussion on turnover tax, see note 5 on page 19

# TAX PAYABLE, MARGINAL AND AVERAGE RATES OF TAX

## ALL NATURAL PERSONS

TAXABLE INCOME	2016			2015		
	INCOME TAX PAYABLE*	MARGINAL RATE	AVERAGE RATE	INCOME TAX PAYABLE*	MARGINAL RATE	AVERAGE RATE
	R	%	%	R	%	%
70 700	0	18.0	0.0	0	18.0	0.0
72 000	0	18.0	0.0	234	18.0	0.3
73 650	0	18.0	0.0	531	18.0	0.7
84 000	1 863	18.0	2.2	2 394	18.0	2.9
96 000	4 023	18.0	4.2	4 554	18.0	4.7
100 000	4 743	18.0	4.7	5 274	18.0	5.3
108 000	6 183	18.0	5.7	6 714	18.0	6.2
120 000	8 343	18.0	7.0	8 874	18.0	7.4
132 000	10 503	18.0	8.0	11 034	18.0	8.4
140 000	11 943	18.0	8.5	12 474	18.0	8.9
144 000	12 663	18.0	8.8	13 194	18.0	9.2
150 000	13 743	18.0	9.2	14 274	18.0	9.5
156 000	14 823	18.0	9.5	15 354	18.0	9.8
174 551	18 162	18.0	10.4	18 693	18.0	10.7
180 000	19 143	18.0	10.6	20 056	25.0	11.1
181 901	19 485	26.0	10.7	20 531	25.0	11.3
200 000	24 191	26.0	12.1	25 056	25.0	12.5
240 000	34 591	26.0	14.4	35 056	25.0	14.6
250 000	37 191	26.0	14.9	37 556	25.0	15.0
272 701	43 093	26.0	15.8	43 231	30.0	15.9
284 101	46 057	31.0	16.2	46 651	30.0	16.4
300 000	50 986	31.0	17.0	51 421	30.0	17.1
325 000	58 736	31.0	18.1	58 921	30.0	18.1
343 500	64 471	31.0	18.8	64 471	30.0	18.8
360 000	69 586	31.0	19.3	69 421	30.0	19.3
377 451	74 996	31.0	19.9	74 656	35.0	19.8
393 200	79 878	36.0	20.3	80 169	35.0	20.4
400 000	82 326	36.0	20.6	82 548	35.0	20.6
420 000	89 526	36.0	21.3	89 548	35.0	21.3
450 000	100 326	36.0	22.3	100 048	35.0	22.2
480 000	111 126	36.0	23.2	110 548	35.0	23.0
500 000	118 326	36.0	23.7	117 548	35.0	23.5
528 001	128 406	36.0	24.3	127 348	38.0	24.1
540 000	132 726	36.0	24.6	131 908	38.0	24.4
550 101	136 362	39.0	24.8	135 746	38.0	24.7
600 000	155 823	39.0	26.0	154 708	38.0	25.8
673 101	184 332	39.0	27.4	182 486	40.0	27.1
701 301	195 330	41.0	27.9	193 766	40.0	27.6
720 000	202 997	41.0	28.2	201 246	40.0	28.0
750 000	215 297	41.0	26.7	213 246	40.0	28.4
840 000	252 197	41.0	30.0	249 246	40.0	29.7
900 000	276 797	41.0	30.8	273 246	40.0	30.4
960 000	301 397	41.0	31.4	297 246	40.0	31.0
1 000 000	317 797	41.0	31.8	313 246	40.0	31.3
1 200 000	399 797	41.0	33.3	393 246	40.0	32.8
1 300 000	440 797	41.0	33.9	433 246	40.0	33.3
1 400 000	481 797	41.0	34.4	473 246	40.0	33.8
1 500 000	527 797	41.0	34.9	513 246	40.0	34.2
1 600 000	563 797	41.0	35.2	553 246	40.0	34.6
1 700 000	604 797	41.0	35.6	593 246	40.0	34.9
1 800 000	645 797	41.0	35.9	633 246	40.0	35.2
1 900 000	686 797	41.0	36.1	673 246	40.0	35.4
2 000 000	727 797	41.0	36.4	713 246	40.0	35.7

\* In calculating income tax payable, the primary rebate has been deducted from tax payable.  
In the case of all natural persons 65 years and older, no account has been taken of the additional rebate/s.

# TAXATION OF CERTAIN FRINGE BENEFITS AND ALLOWANCES

## 1 INTRODUCTION

The cash equivalent of fringe benefits granted by an employer or an associated institution to an employee is determined in terms of the provisions of the Seventh Schedule to the Income Tax Act and is included in the gross income of the employee.

The gross allowances granted to an employee are taxable in the hands of the employee. Deductions for which the employee qualifies should be claimed in the employee's tax return.

## 2 RIGHT OF USE OF MOTOR VEHICLE

2.1 The monthly value of private use is based on 3.5% of the determined value of the vehicle (see notes 2.6 and 2.7 below). Where the vehicle is the subject of a maintenance plan (as defined) at the time that the employer acquired the vehicle the amount is reduced to 3.25%. These rates also apply where a second (or further) vehicle is provided.

Where the vehicle is acquired by the employer under an 'operating lease' the monthly value of private use is based on the actual cost incurred by the employer under that operating lease as well as cost of fuel in respect of that vehicle. Where maintenance, license and insurance in respect of the vehicle have been split from the main rental agreement, it would result in additional fringe benefits that have to be valued separately.

2.2 Employees' tax must be withheld from 80% of the monthly taxable benefit; however, the inclusion rate is reduced to 20% where the employer is satisfied that at least 80% of the use will be for business purposes.

2.3 Where the employee can provide accurate records of distances travelled for business purposes the taxable value may be reduced on assessment.

2.4 The taxable value is also subject to an adjustment on assessment where accurate records of distances travelled for private purposes are kept and the employee bears the full cost of maintenance, insurance, licensing or fuel.

2.5 The private use by an employee of his employer's vehicle is deemed to have no value if either:

- 2.5.1
  - the vehicle is available to, and is in fact used by, employees in general;
  - the private use is infrequent or merely incidental to its business use; and
  - the vehicle is not normally kept at or near the residence of the employee concerned when not in use outside of business hours;

or

- 2.5.2
  - the employee is regularly required to use the vehicle for performance of his duties outside normal work hours, and is not permitted to use the vehicle for private purposes, other than:
    - a) travelling between his place of residence and his place of work; or
    - b) private use which is infrequent or is merely incidental to its business use.

2.6 In respect of motor vehicles acquired before 1 March 2015 the determined value of a motor vehicle means:

- a) where the vehicle was acquired under a *bona fide* agreement of sale between parties dealing at arm's length, the original cost of the vehicle including VAT, but excluding finance charges or interest;
- b) where the vehicle was acquired under paragraph (b) of an instalment credit agreement as defined for VAT purposes, whether such lease is terminated or not, the cash value as determined in terms of the Value-Added Tax Act; or
- c) where the vehicle was acquired in any other manner, including a donation, the market value at the time when the employer first obtained the vehicle or the right of use of vehicle.

2.7 In respect of motor vehicles acquired on or after 1 March 2015 the determined value of a motor vehicle means:

- a) where the vehicle was acquired under paragraph (b) of an instalment credit agreement as defined for VAT purposes, the cash value as determined in terms of the Value-Added Tax Act; or
- b) where the vehicle was held under a lease, whether such lease is terminated or not, the retail market value thereof at the time the employer first obtained the right of use of the vehicle;
- c) in all other cases the retail market value thereof at the time the employer acquired the vehicle, as determined by the Minister of Finance by Regulation.

2.8 In the case of a vehicle acquired by the employer twelve months or more prior to the employee first being granted the right of use thereof, the determined value will be reduced by a depreciation allowance of 15% per completed year on a reducing balance basis.

## 3 TRAVEL ALLOWANCES

3.1 Where an allowance is granted by an employer to his employee as compensation for the use by the employee of his private vehicle for the employer's business the portion of the allowance not expended on business travel is taxable in the employee's hands.

3.2 Where the employee is granted the right to use a vehicle and in addition receives an allowance or advance in respect of the same vehicle, the full allowance or advance is taxable in the employee's hands.

3.3 In order to claim business travel expenditure, opening and closing odometer readings must be recorded and a logbook recording business travel needs to be maintained. The claim may be determined based on:

- a) actual expenditure; or
- b) a deemed cost per kilometre calculated in accordance with the cost scale in the table in note 3.5.

3.4 Where the claim for business travel is based on actual expenditure and the vehicle is leased, the total amount of payments for the lease may not in a year of assessment exceed the fixed cost element in the table in note 3.5. Where the vehicle is not leased its wear and tear must be determined over a period of seven years from date of acquisition, based on a cost limited to R560 000. Finance charges must be limited to an amount that would have been incurred had the original debt been R560 000.

## TAXATION OF CERTAIN FRINGE BENEFITS AND ALLOWANCES

3.5 The deemed costs referred to in note 3.3 are calculated in accordance with the cost scale set out hereunder:

WHERE THE VALUE OF THE VEHICLE				FIXED COST R	FUEL COST c	MAINTENANCE COST c
Does not exceed R80 000				26 105	78.7	29.3
Exceeds	R 80 000	but does not exceed	R160 000	46 505	87.9	36.7
Exceeds	R160 000	but does not exceed	R240 000	66 976	95.5	40.4
Exceeds	R240 000	but does not exceed	R320 000	84 945	102.7	44.1
Exceeds	R320 000	but does not exceed	R400 000	102 974	109.9	51.8
Exceeds	R400 000	but does not exceed	R480 000	121 886	126.1	60.8
Exceeds	R480 000	but does not exceed	R560 000	140 797	130.4	75.6
Exceeds	R560 000			140 797	130.4	75.6

3.6 An example of the calculation using the cost scale is as follows:

Value of vehicle (see note 3.9 below)			<u>R280 000</u>
Kilometres travelled on business (as per log book)			5 000
Kilometres travelled privately			15 000
Total kilometres			<u>20 000</u>
Allowance received (R3 000 per month)			36 000
Deduct:			
Fixed cost element	$\frac{84\,945}{20\,000}$	424.73 cents	
Fuel cost element		102.70 cents	
Maintenance cost element		<u>44.10 cents</u>	
		<u>571.53 cents</u>	
5 000 kilometres at 571.53 cents			<u>28 576.50</u>
Taxable amount			<u>R 7 423.50</u>

- 3.7 Where the allowance received is based on the actual distance travelled (i.e. at a rate per kilometre), the employee has the option of determining the deemed cost referred to in note 3.3 in accordance with a rate of 318 cents per kilometre provided that the employee receives no other compensation in the form of an allowance or reimbursement and the annual distance travelled for business purposes does not exceed 8 000 kilometres.
- 3.8 Any allowance received including an allowance as contemplated in note 3.7 needs to be declared on the employee's IRP5 certificate.
- 3.9 The value of a motor vehicle is equal to the 'determined value' as defined in notes 2.6 and 2.7 above.
- 3.10 An allowance includes all amounts paid to or on behalf of an employee in respect of motor expenses, e.g. fuel costs, repairs, etc. The taxable portion of the allowance is determined on assessment.
- 3.11 Rental received by an employee who leases his vehicle to his employer is deemed a travel allowance.
- 3.12 Where a vehicle is used for business purposes for a portion of a year, the fixed cost element is pro-rated in the ratio that the period of use bears to a full year.
- 3.13 Employees' tax must be withheld from 80% of a travel allowance (excluding a travel allowance contemplated in note 3.7 above) received by an employee; however, the inclusion rate is reduced to 20% where the employer is satisfied that at least 80% of the use will be for business purposes.
- 3.14 The guidelines in notes 3.1 to 3.13 also apply to any person, other than an employee, who is granted a travel allowance as compensation for the use by such person of a private vehicle for the purposes of the business of the person paying the allowance.

## 4 MEDICAL SCHEME CONTRIBUTIONS

All medical scheme contributions paid by the employer constitute taxable fringe benefits. With effect from 1 March 2012, the employer is permitted to take the medical scheme fees tax credit into account in determining the amount of employees' tax to be withheld from the employee's remuneration.

## 5 ENTERTAINMENT ALLOWANCES AND EXPENDITURE

- 5.1 All entertainment allowances or advances granted to employees are taxable.
- 5.2 However, any amount received as an advance for, or as a reimbursement of, expenditure actually incurred by the employee in entertaining on behalf of the employer is not taxable, provided the employee has produced proof and has accounted in full that such expenditure was incurred as aforesaid.
- 5.3 Entertainment expenditure incurred by employees whose income is mainly derived from commission is deductible.

## 6 RESIDENTIAL ACCOMMODATION

- 6.1 The taxable benefit of the use of residential accommodation shall be the rental value less any consideration given by the employee.
- 6.2 The rental value is determined in terms of a prescribed formula.
- 6.3 Where the employer-provided accommodation is rented from an unconnected third party, the rental value is determined as the lower of the cost to the employer in providing the accommodation or the rental value as determined in terms of the prescribed formula.
- 6.4 Accommodation provided by the employer to employees resident in the Republic who are temporarily away from home on business in the Republic is exempt from tax.

- 6.5 In the case of non-resident employees who retain their usual place of residence outside the Republic, the exclusion takes two forms:
- a) an exclusion for up to two years from date of arrival provided that the non-resident employee was not present in the Republic for more than 90 days in the year of assessment immediately preceding the date of arrival. The exemption is limited to an amount of R25 000 per month; and
  - b) an exclusion for all periods of physical presence in the Republic which total less than 90 days in any one year of assessment.

## **7 CERTAIN OTHER FRINGE BENEFITS**

### **7.1 LOANS**

A taxable benefit accrues if a loan is granted to an employee either interest free, or at a rate less than the official rate of interest. The taxable benefit is the difference between the interest calculated at the official rate of 6.75% p.a. (6.50% p.a. prior to 1 August 2014), and the actual rate paid by the employee, if any. However, no value is placed on any loan granted to an employee if the loan does not exceed R3 000 at any time, or on any loan granted to an employee to enable him to further his studies (see also Bursaries and Scholarships - note 7.10 below).

### **7.2 SUBSISTENCE ALLOWANCES**

- 7.2.1 Where an employee or office-holder is required by reason of his duties to spend at least one night away from his usual place of residence, any subsistence allowance will, subject to certain limits, not be included in his taxable income. The exclusion is limited to R109 (R103 prior to 1 March 2015) for each day where the allowance is paid to defray incidental costs, or R353 (R335 prior to 1 March 2015) per day where the employee also bears the cost of meals. Where the allowance is paid in respect of travelling outside the Republic, the exclusion will depend on the country/group of countries visited. The rates are published on our website: [www.mazars.co.za](http://www.mazars.co.za)
- 7.2.2 Where an allowance was paid to an employee during any month and the employee has not, by the last day of the following month, either spent the night away from his usual place of residence or refunded that allowance to his employer, the amount will be included in his taxable income for employees' tax purposes.

### **7.3 SALE OF ASSETS**

- 7.3.1 Where an employee acquired an asset from his employer for a consideration less than market value, the employee is taxed on the difference between the market value of the asset and the consideration, if any, paid by the employee.
- 7.3.2 With effect from 1 March 2014 employees will not be taxed when acquiring housing from their employers at a price below market value, if the following requirements are met:
- a) the employee's 'remuneration proxy' (annualised remuneration in the previous tax year) during the tax year in which the acquisition takes place may not exceed R250 000;
  - b) the market value of the property that is acquired by the employee, may not exceed R450 000 at date of acquisition; and
  - c) the employee may not be a connected person in relation to the employer.

### **7.4 RELOCATION COSTS**

The costs of transporting an employee, his family and household from his previous place of residence to another – on appointment or on termination of service – is exempt from tax. Also exempt are the costs of settling in as well as provision of temporary accommodation for a period of up to 183 days pending the obtaining of permanent residential accommodation.

### **7.5 USE OF ASSETS (OTHER THAN RESIDENTIAL ACCOMMODATION OR MOTOR VEHICLES)**

- 7.5.1 An employee is taxed on the value of any benefit derived in the form of the right of use of any asset (amenities enjoyed at work are exempt).
- 7.5.2 Where the asset is rented, the value of private use is the rent paid by the employer for the period during which the asset is used by the employee. Where the asset is owned by the employer, the value of private use is calculated at 15% of the lower of cost or market value.
- 7.5.3 Any amounts paid by the employee for the use of the assets are deducted in calculating the taxable benefit accruing to the employee.
- 7.5.4 No value is placed on the private or domestic use of telephone or computer equipment provided by the employer where it is mainly used for the employer's business.

### **7.6 HOLIDAY ACCOMMODATION**

If the accommodation is hired by the employer, the employee is taxed on all costs borne by the employer. In all other cases the employee is taxed at an amount calculated at the prevailing rate per day at which such accommodation could normally be let.

### **7.7 FREE OR CHEAP SERVICES**

#### **7.7.1 General**

Services provided to an employee by his employer for no cost, or for an amount lower than the cost of such services to the employer, are taxed on the difference between the cost to the employer and the amount paid by the employee.

#### **7.7.2 Limitation on taxation of benefits**

- If an employer provides free travel facilities to the relative of an employee to visit an employee at a place of business of the employer which is more than 250 kilometres away from the main residence of the employee, this facility will not be taxable in the hands of the employee. The employee must, however, be required to spend more than 183 days away from his or her main residence during the year of assessment.
- No value is placed on any communication service provided to an employee if the service is used mainly for the employer's business.

### **7.8 PAYMENT OF EMPLOYEE'S DEBT OR RELEASE OF EMPLOYEE FROM OBLIGATION TO PAY A DEBT**

- 7.8.1 Where an employer has paid an amount owing by the employee to a third person or released the employee from an obligation to pay an amount owing to the employer, the employee is taxed on the difference between the value of the debt and the consideration, if any, paid by the employee.
- 7.8.2 No value is placed on the taxable benefit where the employer has paid:
- Subscriptions due by the employee to a professional body if membership is a condition of employment; and
  - Insurance premiums indemnifying an employee solely against claims arising from the negligent acts or omissions on the part of the employee rendering services to the employer.

## TAXATION OF CERTAIN FRINGE BENEFITS AND ALLOWANCES

### 7.9 EMPLOYEE SHARE INCENTIVE SCHEMES

- 7.9.1 Gains resulting from the vesting of any equity instrument are taxed in the hands of the taxpayer provided such equity instrument was acquired by the taxpayer by virtue of his or her employment or office of director or from any person by arrangement with the taxpayer's employer.
- 7.9.2 An employee acquiring shares in terms of a Broad-Based Employee Share Plan approved on or after 26 October 2004 may acquire shares at par value or for no consideration without the employee incurring a fringe-benefits' tax liability, provided that the employee does not receive shares with a market value totalling more than R50 000 in a five-year period. Loans from employers to acquire these shares having a market value of R50 000 or less are free of fringe-benefits' tax.

### 7.10 BURSARIES AND SCHOLARSHIPS

- 7.10.1 'Bona fide' bursaries and scholarships made available by an employer or an associated institution to an employee or a relative of an employee to further education at a recognised educational or research institution are, in certain circumstances, exempt from income tax.
- 7.10.2 Different rules apply depending on whether the bursary or scholarship has been awarded to the employee or the relative.
- In the case where the bursary or scholarship is granted to an employee the employee must undertake to reimburse the employer if the employee fails to complete his or her studies for reasons other than death, ill-health or injury.
  - Where the bursary is awarded to a relative of an employee an exemption will only be available if the employee's annual remuneration does not exceed R250 000 (R100 000 for years of assessment commencing prior to 1 March 2013). For years of assessment commencing on or after 1 March 2013 the exemption is moreover limited to R10 000 per year of assessment in the case of qualifications up to and including NQF level 4 (also known as matric or grade 12). A monetary limit of R30 000 per year of assessment applies in respect of qualifications ranging from NQF level 5 up to and including level 10. For years of assessment commencing prior to 1 March 2013 the exemption was limited to R10 000 irrespective of the level of education.

### 7.11 LONG SERVICE AND BRAVERY AWARDS

Assets acquired at less than actual value constitute a fringe benefit, unless such assets represent a long service or bravery award, in which case the first R5 000 shall not result in a fringe benefit. Long service is defined as an initial unbroken period of at least 15 years' service and, thereafter, periods of at least 10 years of unbroken service.

### 7.12 EMPLOYER-OWNED INSURANCE POLICIES

- 7.12.1 Premiums paid by an employer under a policy of insurance directly or indirectly for the benefit of an employee, his spouse, child, dependent or nominee constitute taxable benefits.
- 7.12.2 With effect from 1 March 2015 premiums paid by natural persons in respect of life, disability and severe illness policies will no longer be deductible even if the premiums are paid under a "loss-of-income" policy. However, pay-outs, whether in the form of a lump sum or an annuity will be tax free regardless of whether the policy is aimed at capital or income protection.

## 8 CONTRIBUTIONS TO PENSION, PROVIDENT OR RETIREMENT ANNUITY FUNDS

- 8.1 Currently, employer contributions to pension or provident funds are not treated as a taxable benefit.
- 8.2 With effect from 1 March 2016 employer contributions to all retirement funds will be treated as a taxable benefit in the hands of employees. A distinction will be made between defined contribution and defined benefit funds. In the case of defined contribution funds, the employer contribution allocable to an employee will be treated as the taxable value of the taxable benefit. For defined benefit funds, the taxable value of the taxable benefit will be determined through the application of a special formula.
- 8.3 Employer contributions treated as a taxable benefit are deemed to be contributions made by the employee to the fund. The deduction will be limited to the lesser of:
- 27.5% of the higher of remuneration or taxable income; and
  - R350 000.

Excess contributions will be carried forward to the succeeding tax year and will be deemed to be contributions made by the employee to the fund in that year.

## CAPITAL GAINS TAX (CGT)

### 1 INTRODUCTION

- 1.1 CGT was introduced with effect from 1 October 2001 whereafter realised capital gains are subject to tax.
- 1.2 CGT applies to the disposal of a resident's worldwide assets and to a non-resident's immovable property or interest therein, or assets of a permanent establishment, situated in the Republic.

### 2 CALCULATION OF TAX PAYABLE

- 2.1 The capital gain or loss on disposal of an asset is the proceeds less the base cost.
- 2.2 The capital gain or loss on each disposal is first calculated. The sum of all of the gains is then determined, as is the sum of the losses.
- 2.3 A person's aggregate capital gain for the year is the amount by which the person's total capital gains exceed the total capital losses and annual exclusion (in the case of a natural person and a special trust).
- 2.4 The annual exclusion for natural persons and special trusts is R30 000 (R20 000 prior to 1 March 2012). This effectively excludes the first R30 000 of net capital gains or net capital losses from the system.
- 2.5 The assessed capital loss, if any, from the prior year is brought forward and set off against the aggregate capital gain to determine the net capital gain.

- 2.6 Where there is a net capital gain the inclusion rate is then applied to this gain and the resulting amount, known as the taxable capital gain, is included in taxable income and income tax is payable thereon at normal income tax rates.
- 2.7 Where there is a net capital loss, this loss is carried forward to the following year and can only be set off against future capital gains. i.e. a net capital loss does not reduce taxable income.
- 2.8 The table set out below illustrates how a gain of R100 is taxed, based on the following assumptions:
- the individual is taxed at the maximum marginal rate of 41% (40% prior to 1 March 2015)
  - no account is taken of the annual exclusion applicable to individuals;
  - trust tax rate 41% (40% prior to 1 March 2015)
  - no capital losses are brought forward from prior years;
  - no assessed losses brought forward from prior years;
  - tax on dividends is not reduced by any STC credits or any reduction in the current dividends tax rate of 15%; and
  - the full after-tax profit is distributed by the company.

	GAIN	INCLUSION RATE	INCLUDED GAIN	TAX RATE	CGT ON GAIN	% CGT ON GAIN	TAX ON DIVIDENDS (shareholder)	% TAX ON GAIN (combined)
<b>Individual</b>	R100	33.3%	R33.30	41%	R13.65	13.65%	-	13.65%
<b>Company/ Close Corporation (DWT)</b>	R100	66.6%	R66.60	28%	R18.65	18.65%	R12.20	30.85%
<b>Trust *</b>	R100	66.6%	R66.60	41%	R27.31	27.31%	-	27.31%

\* If a gain is allocated or attributed to a resident beneficiary within the year derived, the effective rate of CGT will be as applicable to that beneficiary (see note 7 below).

### 3 DISPOSALS

- 3.1 The event which triggers CGT is the disposal or deemed disposal of an asset.
- 3.2 The general rule in relation to a deemed disposal is that the deemed proceeds are equivalent to the market value. By way of example, where a person ceases to be a resident, the deemed proceeds are equivalent to the market value on the day immediately before the date of ceasing to be a resident.
- 3.3 On death, the deceased is regarded as having disposed of his or her assets to the deceased estate for proceeds equal to the market value at date of death, and the deceased estate would be regarded as having acquired such assets for a base cost equal to that value.

### 4 BASE COST

#### 4.1 ASSET ACQUIRED BEFORE VALUATION DATE (1 OCTOBER 2001)

- 4.1.1 The base cost of an asset acquired prior to the valuation date represents the sum of the valuation date value and certain expenditures incurred subsequent to the valuation date – e.g. in relation to improvements to the asset, as well as certain costs incurred on the sale of the asset.
- 4.1.2 The valuation date value may be determined in one of three ways:
- a) market value;
  - b) 20% of proceeds on disposal of asset (20% Rule); or
  - c) time apportionment base cost.

#### Market value

In the case of listed shares, the market value is the volume-weighted average of the prices on the last five trading days prior to the valuation date. These prices were published in the Government Gazette notice number 23037 dated 25 January 2002.

In the case of a long-term insurance policy, market value is the greater of the surrender value of the policy on the valuation date or the fair market value of the policy according to the insurer, should the policy run its full term.

For any other asset, the market value represents the amount which a willing buyer would have paid a willing seller dealing at arm's length in an open market. In order to demonstrate and be permitted to use this value, it was necessary to perform a valuation within three years of the valuation date, taking into account conditions existing at the valuation date. For intangible assets whose market value exceeds R1million, or other assets whose market value exceeds R10million the market value method may only be used if the valuation was lodged in the prescribed manner.

#### 20% Rule

Under this method, the valuation date value is 20% of the sale proceeds, after deducting from the proceeds allowable expenditure incurred on or after the valuation date.

#### Time apportionment base cost

Under this method, the gain (as determined by subtracting the original cost of the asset from the proceeds) is apportioned over the number of years of ownership of the asset and is taxable for the period subsequent to valuation date. Time-based apportionment effectively excludes capital gains made prior to the valuation date. Where expenditure was incurred in more than one year prior to the valuation date, e.g. improvements were made to the asset, the number of years prior to the valuation date taken into account is limited to 20. A part of a year is considered a full year for purposes of the calculation.

When the expenditure incurred before valuation date cannot be determined, the time-apportionment method of determining the base cost cannot be used.

## CAPITAL GAINS TAX (CGT)

Example illustrating time apportionment base cost (no expenditure after 1 October 2001):

Original cost of asset acquired 1 November 1993		100 000
Asset disposed of 1 March 2015		<u>1 000 000</u>
Total gain after 22 years		<u>R 900 000</u>
Proportion of gain accrued subsequent to valuation date (1 October 2001 to 1 March 2015)		<u>14 years</u>
Portion of total gain taxable	$\frac{\text{Period subsequent to 1 October 2001}}{\text{Total period}}$	$\frac{14}{22}$
Gain on disposal: $\frac{14}{22} \times R900\,000$		<u>R572 727</u>

The analysis is more complex if some of the expenditure was incurred on or after 1 October 2001. In such instances the proceeds will need to be adjusted in terms of a prescribed formula.

### 4.2 ASSET ACQUIRED SUBSEQUENT TO VALUATION DATE

- 4.2.1 For assets acquired after the valuation date the base cost comprises, *inter alia*, the aggregate of the original cost of the asset, costs directly related to acquisition such as agent's fees, transfer or stamp duty, cost of improvement and costs directly related to the sale.
- 4.2.2 In general, holding costs such as interest, repairs, insurance, rates and taxes, etc. are excluded and may not form part of the base cost.

## 5 EXCLUSIONS (NON EXHAUSTIVE AND SUBJECT TO CERTAIN EXCEPTIONS)

- Primary residence (see note 6 below)
- Personal-use assets – used by a natural person for purposes other than the carrying on of a trade. Certain exclusions from this category include immovable property, certain coins, financial instruments, fiduciary and usufructuary interests, as well as certain aircraft and boats
- Assurance and retirement benefits – recipient must be the original beneficial owner or his nominee or dependent
- Small business assets disposed of on attaining 55 years or as a consequence of ill-health or death (natural person had to have interest in the business for a continuous period of at least 5 years prior to the disposal):
  - Business must have a gross asset value of less than R10million
  - The lifetime exclusion is limited to R1.8million (R900 000 prior to 1 March 2012)
- Compensation for personal injury, illness or defamation
- Prize money
- Insurance proceeds received on the loss, destruction or damage of an asset, where the asset is replaced
- Donations to public benefit organisations and the State – the donation must qualify as an income tax deduction
- Assets used to produce exempt income in qualifying circumstances
- On death: R300 000 (R200 000 prior to 1 March 2012)

## 6 PRIMARY RESIDENCE

- 6.1 A primary residence is one in which a natural person (or a special trust) holds an interest, and in which that person (or a beneficiary of that special trust) or his spouse personally and ordinarily resides as his or her main residence.
- 6.2 The first R2million of a gain on the disposal of a primary residence is excluded from CGT (this is known as the "profit exclusion").
- 6.3 The profit exclusion only applies to the extent of residential use.
- 6.4 A further restriction is that the maximum area of land on which the primary residence is located is limited to two hectares. Where the land area exceeds this limit, the exclusion needs to be apportioned.
- 6.5 The disposal of a primary residence where the proceeds do not exceed R2million is not subject to CGT. (This is known as the "gross exclusion"). The gross exclusion, however, does not apply if the person was not ordinarily resident in that residence throughout the period commencing on or after 1 October 2001 during which that person held the interest in the residence. The gross exclusion will also not apply if any part of the residence was used for the carrying of a trade.

## 7 TRUSTS

In circumstances where a gain arises in a trust and a beneficiary of the trust who is a resident has a vested interest or acquires a vested interest in the gain, the gain will be disregarded for purposes of calculating the aggregate capital gain or capital loss of the trust and will be taken into account for purposes of calculating the aggregate capital gain or capital loss of the beneficiary. The vested interest could arise by way of the exercise by the trustees of their discretion. The effect is that a resident beneficiary who enjoys a vested interest in the gain will be subject to CGT on such capital gain and not the trust.

## 8 TAXATION OF GAINS ON LONG-TERM EQUITY INVESTMENTS

With effect from 1 October 2007 all shares disposed of, having been held for a period of three years, will trigger a CGT event.

# INTERNATIONAL TRANSACTIONS

## 1 TRANSFER PRICING AND THIN CAPITALISATION

- 1.1 The provisions relating to transfer pricing and thin capitalisation were replaced with effect from years of assessment commencing on or after 1 April 2012 and apply to an 'affected transaction'.
- 1.2 An 'affected transaction' is broadly defined as any transaction, operation, scheme, agreement or understanding between connected persons of which any term or condition is different from what would have existed had the parties been independent persons dealing at arm's length, which has been directly or indirectly entered into or effected between or for the benefit of either or both:
  - a) a resident and a non-resident;
  - b) a non-resident and another non-resident that has a permanent establishment in South Africa to which the transaction, operation, scheme, agreement or understanding relates;
  - c) a resident and another resident that has a permanent establishment outside South Africa to which the transaction, operation, scheme, agreement or understanding relates; or
  - d) a non-resident and a controlled foreign company (CFC) in relation to any resident.
- 1.3 The taxable income of the South African taxpayer who derives a tax benefit from the affected transaction must be calculated as if the transaction, operation, scheme, agreement or understanding had been entered into on an arm's length basis.
- 1.4 With effect from 1 January 2015, where the South African taxpayer, who derives the tax benefit:
  - a) is a resident company, the adjustment is deemed to be a dividend *in specie* declared and paid by the company to that other person;
  - b) is a resident (other than a company), the adjustment is deemed to be a donation made by that resident;on the last day of the sixth month following the end of the year of assessment in which the adjustment to taxable income was made.
- 1.5 Prior to 1 January 2015 the adjustment to a South African taxpayer's taxable income would have resulted in a secondary adjustment in the form of a deemed loan. Deemed loans still in existence on 1 January 2015 are, where the South African taxpayer:
  - a) is a resident company, deemed to be a dividend *in specie* declared and paid by that company to that other person on 1 January 2015;
  - b) is a resident (other than a company), deemed to be a donation made by that resident on 1 January 2015.
- 1.6 The rules require that the arm's length principle be applied to financial assistance in the same way it is applied to any other transaction, operation, scheme, agreement or understanding.
- 1.7 With effect from years of assessment commencing on or after 1 April 2014 certain outbound loans are subject to transfer pricing relief. A South African resident company will not be subject to South African transfer pricing provisions provided that the following requirements are met:
  - a) the creditor must be a South African tax resident company;
  - b) that creditor or any company that forms part of the same group of companies as that creditor must hold at least 10% of the equity shares and voting rights directly or indirectly in the foreign company (i.e. the debtor);
  - c) the debtor is not obliged to redeem the loan in full within a period of 30 years from the date the loan is incurred; and
  - d) the full redemption of the loan is legally conditional upon the solvency of the foreign company.

## 2 INTEREST LIMITATION RULES – DEBTS OWED TO NON-TAXABLE PERSONS

- 2.1 In addition to the transfer pricing provisions certain debt limitation provisions may affect the deduction of interest in respect of foreign debt.
- 2.2 The aggregate deductions in respect of interest incurred on or after 1 January 2015 may be limited if:
  - The debtor is a South African resident for tax purposes;
  - The debtor and the creditor are in a controlling relationship; and
  - The interest incurred will not be subject to tax during that year of assessment (normal income tax or, from 1 March 2015, the withholding tax on interest paid to a non-resident).
- 2.3 Subject to certain exemptions, the deduction of interest in respect of the qualifying debt is limited to the sum of interest received by or accrued to the debtor, reduced by interest in respect of non-qualifying debt plus a percentage of 'adjusted taxable income' determined in terms of a prescribed formula.
- 2.4 'Adjusted taxable income' is defined as taxable income, reduced by interest received, CFC income and recoveries or recoupments of depreciation allowance for tax purposes; and increased by interest paid, depreciation allowance claimed for tax purposes on capital assets and any assessed loss or balance of assessed loss allowed to be set off against income.
- 2.5 To the extent any amount is disallowed, the excess may be carried forward and treated as interest incurred in the following year.
- 2.6 These provisions serve a similar purpose to the thin capitalisation and transfer pricing rules.

# VALUE-ADDED TAX (VAT)

## 1 INTRODUCTION

- 1.1 VAT is an indirect system of taxation levied on the supply of goods or services made by a vendor in the course or furtherance of an enterprise. VAT is also imposed on the import of goods or services.
- 1.2 The VAT levied on the supply of goods and services by a vendor is known as output tax. The VAT paid on the acquisition of goods and services by a vendor for enterprise purposes is known as input tax.

### 2 REGISTRATION

- 2.1 There have been numerous changes to the provisions setting out who qualifies or is required to register as a VAT vendor. With effect from 1 April 2014, the persons listed below are compelled to or may register as VAT vendors.
- 2.2 A person who carries on an enterprise where the total value of taxable supplies (at standard or zero rates):
- exceeded R1 million in the preceding 12-month period is compelled to register as a vendor;
  - will exceed R1 million in a 12-month period in terms of a contractual obligation in writing is compelled to register as a vendor;
  - exceeds R50 000, and the taxable supplies consist of 'electronic services' which are supplied from a place in an export country, is compelled to register as a vendor (with effect from 1 April 2015, such persons are only required to register if certain criteria are met);
  - exceeded R50 000 in the preceding 12-month period or acquired an enterprise as an going concern, and the seller had supplies in excess of R50 000 in the preceding 12-month period, may register as a vendor;
  - can reasonably be expected to exceed R50 000 in a 12-month period, may register as a vendor, but will be required to account for VAT on the payment basis until such time as taxable supplies exceed R50 000;
  - is likely to make taxable supplies only after a period of time due to the nature of the activities in the enterprise, may register as a vendor (the nature of qualifying activities will be set out in a Gazetted regulation); and
  - exceeds or can reasonably be expected to exceed R60 000 in a 12-month period, and the taxable supplies consist of the supply of 'commercial accommodation', may register as a vendor.
- 2.3 Vendors with taxable supplies below R1 million in a 12-month period may deregister as a vendor, unless the vendor is registered in terms of the conditions set out in note 2.2 c) above.
- 2.4 For the rules relating to registration prior to 1 April 2014, please see the 2013/2014 edition of this publication.

### 3 TYPES OF SUPPLY

The VAT rates applicable relating to the various types of supply are:

<b>Standard-Rated Supply</b>	VAT charged at standard rate of 14% on all goods and services supplied. An input tax credit is allowed on goods and services acquired (subject to certain exceptions).
<b>Zero-Rated Supply</b>	VAT charged at 0% on all goods and services supplied. An input tax credit is allowed on goods and services acquired (subject to certain exceptions).
<b>Exempt Supply</b>	No VAT charged on goods and services supplied. No input tax credit is allowed on goods and services acquired.

#### 3.1 ZERO-RATED SUPPLIES (NON-EXHAUSTIVE AND SUBJECT TO CERTAIN EXCEPTIONS)

- Goods and services exported from the Republic of South Africa;
- Sale of an enterprise as a going concern to a registered vendor;
- Goods let for use in an export country;
- Supply of certain goods used for agricultural, pastoral or other farming purposes (it is proposed that these goods will no longer be subject to zero rate from a date to be determined, but in any event not earlier than 20 January 2016);
- Illuminating paraffin, petrol and other distillate fuels;
- Certain basic food products;
- International transport of passengers and goods.

#### 3.2 TAX EXEMPT SUPPLIES (NON-EXHAUSTIVE AND SUBJECT TO CERTAIN EXCEPTIONS)

- Premiums on life policies and contributions to pension, provident, retirement annuity and medical aid funds, as well as compulsory charges in respect of unit trust schemes;
- Accommodation in a residential dwelling;
- Letting of land for the purpose of providing residential accommodation;
- Services by a body corporate or share-block company to its members, where such costs are met out of levies. This exemption was extended to home owners' associations with effect from 1 April 2014;
- Transport of fare-paying passengers and their belongings by road or railway;
- Educational services provided in pre-primary, primary, secondary and tertiary schools of a public character, both local and foreign, including the supply of incidental goods and services.

### 4 ACCOUNTING AND DOCUMENTATION

#### 4.1 ACCOUNTING BASIS

VAT is generally accounted for on an invoice basis. Natural persons and partnerships of natural persons whose taxable supplies are less than R2.5million in a 12-month period may elect to account on a payments basis.

#### 4.2 TAX INVOICES

- 4.2.1 An input tax deduction can only be claimed if the recipient is in possession of a valid tax invoice. Tax invoices must contain the following information:
- the words 'tax invoice' in a prominent place;
  - name, address and VAT registration number of the supplier;
  - name, address and, where recipient is a registered vendor, the VAT registration number of the recipient (not required for supplies less than R5 000);
  - individual serialised number and date on which invoice is issued;

- e) full and proper description of goods (indicating, where applicable, that the goods are second-hand) or services supplied;
- f) quantity or volume of goods or services supplied (not required for supplies less than R5 000);
- g) either:
  - i) the value of the supply, the VAT amount and the total; or
  - ii) the total consideration, the rate of VAT charged; and
    - the amount of VAT charged; or
    - a statement that the total consideration is inclusive of VAT; and
- h) value of supply must be in the currency of the Republic.

4.2.2 No tax invoice need be issued for a supply less than R50.

4.2.3 A tax invoice must be issued within 21 days of the supply having been made.

4.2.4 The recipient vendor has five years within which to claim the input VAT from the date that the vendor became entitled to such input claim.

### 4.3 TAX PERIODS - VAT RETURNS

4.3.1 VAT returns generally cover a period of two months, unless turnover exceeds R30million in a 12-month period in which case a monthly return must be submitted.

4.3.2 Farmers may submit VAT returns every six months if their turnover is less than R1.5million in a 12-month period (subject to written application and certain exceptions).

4.3.3 A vendor that is a micro business that is registered in terms of the Income Tax Act may submit VAT returns every six months (subject to written application and certain exceptions from 1 March 2014).

4.3.4 Group administration and rental companies issuing tax invoices once a year may render VAT returns once a year (subject to written application and certain exceptions).

4.3.5 Businesses with a turnover of less than R1.5million in a 12-month period may file VAT returns every four months (subject to written application and certain exceptions). This category will be eliminated with effect from periods commencing on or after 1 July 2015 and vendors falling into this category will be required to submit VAT returns every two months.

## SUNDRY TAX PROVISIONS

### 1 EMPLOYEES' TAX

Employees' tax (PAYE) is the tax withheld by an employer from an employee's remuneration. The amount of employees' tax is calculated in accordance with tax tables issued by SARS and is paid to SARS by the employer. Directors of companies and members of close corporations are also regarded as employees for this purpose.

#### 1.1 PART-TIME EMPLOYEES

Employees' tax is deducted at a rate of 25% from employees earning part-time remuneration.

#### 1.2 VARIABLE CASH REMUNERATION

With effect from 1 March 2013 the tax events in respect of leave pay, overtime pay, commissions, bonuses and travel allowances or advances were aligned and are deemed to occur when the amount is paid both for purposes of PAYE withholding and deduction by the employer for income tax purposes.

#### 1.3 EMPLOYMENT TAX INCENTIVE

1.3.1 With effect from 1 January 2014 a four year incentive to benefit employers paying employees' tax to SARS was introduced. The value of the incentive is calculated (see table below) based on the remuneration paid to qualifying employees and deducted from the monthly employees' tax liability payable to SARS, reducing the effective cost of employment for the employer.

MONTHLY REMUNERATION OF EMPLOYEE	EMPLOYMENT TAX INCENTIVE PER MONTH DURING THE FIRST 12 MONTHS AS APPLICABLE FOR EACH QUALIFYING EMPLOYEE	EMPLOYMENT TAX INCENTIVE PER MONTH DURING THE NEXT 12 MONTHS OF EMPLOYMENT AS APPLICABLE FOR EACH QUALIFYING EMPLOYEE
R0 - R2 000	50% of monthly remuneration	25% of monthly remuneration
R2 001 - R4 000	R1 000	R500
R4 001 - R6 000	Formula: R1 000 – [0.5 x (monthly remuneration – R4 000)]	Formula: R500 – [0.25 x (monthly remuneration – R4 000)]

1.3.2 In order for the employer to qualify for the incentive, the employee:

- Will need to have commenced employment with their employer on or after 1 October 2013;
- Will need to be between the ages of 18 and 29 years of age at the end of the month in respect of which the employment tax incentive is claimed;
- Will need to be in possession of a South African identity card or a valid asylum seeker permit that commenced on or after 1 October 2013; and
- Must receive monthly wages not exceeding R6 000 per month. Where there is no prescribed sectorial determination indicating the minimum wage of an industry, the minimum monthly remuneration will need to be in excess of R2 000 per month.

1.3.3 The above incentives are apportioned where the employee works for less than 160 hours per month.

1.3.4 Should the employer be carrying on business within Special Economic Zones (SEZs) designated by notice by the Minister of Finance in the Government Gazette and pre-selected industries, the age requirements will not apply.

## SUNDRY TAX PROVISIONS

- 1.3.5 The incentive excludes employees who are domestic workers, connected persons in relation to the employer and wages paid that are below the levels prescribed by a collective agreement or governed by sectorial determination or a binding bargaining council agreement.
- 1.3.6 A penalty of 100% will be payable (in addition to paying back the incentive to SARS) in instances where it is found that the incentive was claimed in respect of an ineligible employee.
- 1.3.7 The incentive is unavailable whilst the employer is in default of any of its obligations under any fiscal act.

## 2 PROVISIONAL TAX

- 2.1 Provisional tax payments are advance payments in respect of the taxpayer's ultimate tax liability for the year. Two payments of provisional tax are required each year:
- the first, six months after the commencement of the tax year;
  - the second at the end of the tax year; and
  - the third top-up (discussed below).

- 2.2 A provisional taxpayer is any natural person or trust earning taxable income other than remuneration (subject to certain exemptions – see note 2.7 below), any company or close corporation and any person who is notified by SARS. All provisional taxpayers are required to register as taxpayers with SARS.

### 2.3 Penalties:

- 2.3.1 Where any amount of provisional tax due in terms of an estimate is paid late, a penalty will be imposed amounting to 10% of the amount paid late/not paid.

- 2.3.2 In the case of an underestimate of taxable income in respect of the second provisional tax payment –

- a) Where the actual taxable income is R1million or less and the estimated taxable income is lower than the 'basic amount' and is also lower than 90% of actual taxable income, the resultant penalty will be 20% of the difference between the tax payable (after applicable rebates) on:
- the lesser of 90% of taxable income and the basic amount; and
  - the amount of employees' tax and provisional tax paid by the end of the year of assessment.
- b) Where the actual taxable income exceeds R1million and the estimated taxable income is less than 80% of the actual taxable income the resultant penalty will be 20% of the difference between the tax payable on:
- 80% of the actual taxable income (after applicable rebates); and
  - the amount of employees' tax and provisional tax paid by the end of the year of assessment.

- 2.3.3 Effective for years of assessment commencing on or after 1 March 2014 a penalty imposed as set out in note 2.3.2 will be reduced by any penalty imposed as set out in note 2.3.1 in relation to the same year of assessment.

- 2.3.4 It should be noted that the non-submission of the second estimate of taxable income will result in the deemed submission of a nil estimate.

- 2.4 A third optional top-up payment is due seven months after the end of the tax year (if the year-end is February) and six months after the end of the tax year in all other cases and is required in order to discharge the taxpayer's liability for tax in that year, if interest is to be avoided. Individuals and companies (including close corporations), whose taxable incomes do not exceed R50 000 and R20 000 respectively, do not need to make such top-up payment.

- 2.5 Non-deductible interest on underpayment of provisional tax will be charged at 9.25% (9% prior to 1 November 2014) per annum whereas taxable interest on overpayment will accrue at 5.25% (5% prior to 1 November 2014) per annum. Payments to SARS will be allocated first to penalties, then to interest and lastly to the tax due.

- 2.6 If not satisfied with the provisional tax estimate, the Commissioner has the discretion to increase any provisional tax estimate to an amount he considers reasonable. Such discretion might be exercised in circumstances such as:

- An increase in taxable income resulting from events like legislative changes, mergers and acquisitions;
- Financial results that support an increase in taxable income; and
- An estimate submitted by the taxpayer based on a basic amount that is more than two years old.

- 2.7 Persons exempt from the payment of provisional tax include:

- Natural persons earning non-business taxable income below the threshold; or
- Natural persons earning taxable income derived from interest, foreign dividends and rental from the letting of fixed property that does not exceed R30 000 per annum.

## 3 RESIDENCE-BASED TAX SYSTEM

- 3.1 South African residents are, subject to certain exemptions, taxed on their worldwide income and capital gains.

- 3.2 Non-residents are, subject to certain exemptions and the provisions of any relevant double tax agreement (DTA), taxed on their income and capital gains of a South African source.

- 3.3 A natural person is a resident of South Africa if the person is:

- Ordinarily resident in South Africa; or
- Considered resident by virtue of time spent in South Africa – the so-called time or physical presence test.

- 3.4 A company or trust is a resident of South Africa if it:

- Is incorporated, established or formed in South Africa; or
- Has its place of effective management in South Africa.

- 3.5 A person is deemed not to be a resident of South Africa if exclusively a resident of another country for purposes of the application of a DTA.

- 3.6 The application of DTAs and credit relief provisions may limit or avoid tax being paid twice on the same amount.

- 3.7 In certain circumstances, the income of a controlled foreign company (CFC) will be taxed in the South African shareholder's hands in proportion to the South African shareholder's participation rights.

## 4 FOREIGN DIVIDENDS

- 4.1 Foreign dividends received or accrued on or after:
- 1 March 2012 – by natural persons, deceased estates, insolvent estates or trusts
  - 1 April 2012 – by companies
- are taxed at a maximum effective rate of 15%.
- 4.2 Certain foreign dividends received by or accrued to a shareholder are exempt from tax. Exemptions include the participation and CFC exemptions.

## 5 TURNOVER TAX – MICRO BUSINESSES

- 5.1 A natural person or company conducting a micro business may elect to be taxed under the turnover tax regime.
- 5.2 A micro business is a business with a turnover not exceeding R1million in a year of assessment.
- 5.3 If the taxpayer elects to be taxed under the turnover tax regime, the turnover tax may replace both VAT and normal tax obligations – the taxpayer may, with effect from years of assessment commencing on or after 1 March 2012, elect to be registered for both turnover tax and VAT.
- 5.4 There are numerous restrictions with regard to a taxpayer's eligibility to be taxed under the turnover tax regime. By way of example, a personal service provider, a labour broker, or a provider of professional services may not be taxed on a turnover tax basis.
- 5.5 Taxpayers must ordinarily apply for registration prior to the commencement of the year in which registration is to take effect.
- 5.6 A micro business may submit a single combined bi-annual return for turnover, VAT and employees' tax.
- 5.7 The rates of turnover tax applicable to micro businesses have been increased as follows:

TURNOVER (R)	2014/15 RATES OF TAX	TURNOVER (R)	2015/16 RATES OF TAX
R0 - R150 000	0% of taxable turnover	R0 - R335 000	0% of taxable turnover
R150 001 - R300 000	1% of the amount above R150 000	R335 001 - R500 000	1% of the amount above R335 000
R300 001 - R500 000	R1 500 + 2% of the amount above R300 000	R500 001 - R750 000	R1 650 + 2% of the amount above R500 000
R500 001 - R750 000	R5 500 + 4% of the amount above R500 000	R750 001 - R1 000 000	R6 650 + 3% of the amount above R750 000
R750 001 - R1 000 000	R15 500 + 6% of the amount above R750 000		

## 6 PERSONAL SERVICE PROVIDER COMPANIES AND TRUSTS

- 6.1 Employees sometimes offer their services to their employers through a company, close corporation or trust (personal service provider) in an attempt to effect savings on tax.
- 6.2 In order to discourage the use of such a personal service provider:
- payments by the client to the personal service provider will be remuneration and will be subject to employees' tax; and
  - the remuneration of the personal service provider is taxed at the rate of 28% and any dividend declared is subject to dividend withholding tax. In the case of a trust the remuneration is taxed at the rate of 40%.
- The provisions discouraging the use of a personal service provider (in the case of a company) discussed above will apply to any company or trust where any service is rendered by a person who is a connected person in relation to the company or trust; and
- the person rendering the service would be regarded as an employee of the client, had such service been performed directly for the client;
  - the duties must be performed mainly at the premises of the client and the person rendering the service is subject to the control and supervision of the client as to the manner in which the duties are performed; or
  - where more than 80% of the income of the company or trust, derived during the year of assessment from services rendered, consists of income received directly or indirectly from one client, or associated person in relation to the client.
- 6.3 A company, close corporation or trust will not, however, be regarded as a personal service provider where it employs at least three full-time employees (other than a shareholder, member or beneficiary) during the year of assessment who, on a full-time basis, are engaged in the rendering of the service, none of whom are connected persons in relation to the shareholders, members or beneficiaries.
- 6.4 The allowable deductions of a personal service provider are limited to remuneration for services rendered by the shareholders, members, beneficiaries or other employees, as well as related salary payments (such as pensions) and operating expenditure in relation to 'business' premises or assets used for purposes of trade (such as repairs, insurance, fuel and maintenance).

## UNEMPLOYMENT INSURANCE FUND (UIF)

- The purpose of the Unemployment Insurance Fund (UIF) contribution is to provide funds in certain circumstances to workers who are unemployed.
- The employer and worker each pay 1% of the worker's remuneration per month. The total contribution of 2% is payable by the employer to SARS or UIF. The earnings ceiling for contributions is R14 872 per month (R12 478 per month prior to 1 October 2012).
- UIF contributions are compulsory for all workers, subject to the following exceptions:
  - workers working less than 24 hours a month for an employer;
  - learners under a contract of employment contemplated in terms of the Skills Development Act;

- public servants;
- foreigners working on contract who upon termination are required to be repatriated;
- members of a municipal council, a traditional leader, a member of a provincial house of traditional leaders and a member of the Council of Traditional Leaders; and
- President, deputy President, a Minister, deputy Minister, a member of the National Assembly, a permanent delegate of the National Council of provinces, a Premier, a member of an Executive Council or a member of a Provincial Legislature.

## SKILLS DEVELOPMENT LEVY

- 1 The Skills Development Levy Act imposes a levy on employers, calculated at the rate of 1% per month of the 'leviable amount'.
- 2 In essence, the leviable amount constitutes remuneration paid or payable to employees (including directors and members of close corporations). Remuneration is defined in the Fourth Schedule to the Income Tax Act.
- 3 Employers whose total wage bill is less than R500 000 per annum, irrespective of whether the employer is liable for employees' tax, are exempt from payment of the levy.
- 4 Certain public benefit organisations may also be exempt from the payment of the levy.
- 5 The levy is payable monthly to SARS and is deductible for income tax purposes.

## TAX ADMINISTRATION ACT

### 1 INTRODUCTION

- 1.1 The Tax Administration Act, (TAA), took effect on 1 October 2012. The TAA was enacted to regulate the administrative provisions of all acts administered by SARS (apart from the Customs and Excise Act, the Customs Control Act and the Customs Duty Act).
- 1.2 The TAA refined and modified a number of provisions, such as those dealing with objections to assessments and the regulation of the manner in which tax clearance certificates may be applied for and issued by SARS. The TAA also regulates the protection of taxpayers' rights, such as a taxpayer's rights during a SARS review, audit or investigation.

### 2 PENALTY REGIME

The TAA contains penalty provisions that are at SARS's disposal in respect of taxpayers who do not comply with administrative requirements, understate taxable amounts (understatements), or commit a criminal offence by not complying with statutory obligations or evading tax.

#### 2.1 ADMINISTRATIVE NON-COMPLIANCE PENALTIES

- 2.1.1 There are essentially two types of administrative non-compliance penalties, namely fixed amount penalties and percentage based penalties.
- 2.1.2 Fixed amount penalties apply to non-compliance with obligations imposed by any tax legislation, such as registration as taxpayer, filing of returns, submission of supporting documents etc. The fixed amount penalty is determined with reference to the taxpayer's taxable income for the previous tax year.
- 2.1.3 Percentage based penalties are penalties that may be levied in addition to other penalties such as the fixed amount penalties. These penalties relate to defaults such as late payment of tax, late submission of certain returns, etc.

#### 2.2 UNDERSTATEMENT PENALTIES

- 2.2.1 An understatement penalty may be imposed if there is a shortfall. A shortfall is the difference between the correct amount of the tax that should have been reported and the tax that was reported by the taxpayer. For purposes of the penalty, a notional amount of tax is calculated where the taxpayer is in an assessed loss position. The amount of the penalty is based on a prescribed percentage table which takes into account the taxpayer's behaviour and conduct. The highest penalty under the understatement regime will be 200% and is reserved for intentional tax evasion and where the taxpayer is obstructive or a repeat offender. Depending on the behaviour of the taxpayer it could be reduced to as little as 0% if the taxpayer disclosed any non-compliance before being subjected to an audit by SARS.
- 2.2.2 An understatement penalty will not be imposed if the understatement results from a *bona fide* inadvertent error.
- 2.3 Any decision by SARS to impose an understatement penalty or not to remit an administrative penalty is subject to objection or appeal.

### 3 VOLUNTARY DISCLOSURE PROGRAMME

The TAA also contains a permanent voluntary disclosure programme whereby taxpayers can approach SARS to rectify a previous default under any fiscal legislation, other than customs and excise. If taxpayers have failed to comply with their obligations they are entitled to rectify those defaults under the framework contained in the TAA. Under the TAA, taxpayers will remain liable for interest and administrative penalties and, depending on their particular circumstances, may remain liable to an understatement penalty ranging from 5% to 75%.

### 4 APPOINTMENT OF TAX OMBUD

The Tax Ombud's office is mandated to review and address any taxpayer complaints regarding service, procedural or administrative matters arising from the application of the provisions of a tax Act by SARS. However, the powers of the Tax Ombud are limited to the extent that he cannot review, *inter alia*, legislation, tax policy or a SARS policy which does not pertain to a service, procedural or administrative matter.

Before a request may be reviewed by the Tax Ombud, the requester is required to exhaust the available complaints mechanisms within SARS.

# CAPITAL AND OTHER ALLOWANCES

(non-exhaustive)

## 1 ACQUISITION AND IMPROVEMENT OF MACHINERY, PLANT, IMPLEMENTS, UTENSILS AND ARTICLES (CAPITAL GOODS)

### 1.1 MANUFACTURER

1.1.1 New or unused plant and machinery, or improvements thereto, used by a taxpayer directly in a process of manufacture or a similar process, acquired and brought into use from 1 March 2002:

- 1<sup>st</sup> year
- 2<sup>nd</sup> to 4<sup>th</sup> years

40%

20%

1.1.2 New or unused plant and machinery used by the taxpayer's lessee directly in a process of manufacture or a similar process

20% straight line

1.1.3 Used plant and machinery used by the taxpayer or his lessee directly in a process of manufacture or a similar process and brought into use for the first time by the taxpayer or lessee in their trade

20% straight line

### 1.2 RESEARCH AND DEVELOPMENT

1.2.1 New or used plant and machinery brought into use by the taxpayer for the purpose of research and development (as defined) after 1 April 2012:

- 1<sup>st</sup> year
- 2<sup>nd</sup> year
- 3<sup>rd</sup> year

50%

30%

20%

### 1.3 FARMERS AND PRODUCERS OF BIO-DIESEL, BIO-ETHANOL AND ENVIRONMENTALLY FRIENDLY ENERGY

1.3.1 New or used machinery, implements, utensils, articles (excluding office equipment, private vehicles, livestock) brought into use for the first time by the taxpayer and used for the purpose of carrying on a trade of farming and production of bio-diesel, bio-ethanol or environmentally friendly energy:

- 1<sup>st</sup> year
- 2<sup>nd</sup> year
- 3<sup>rd</sup> year

50%

30%

20%

### 1.4 AIRCRAFT AND SHIPS

1.4.1 New or used aircraft and ships used by the taxpayer for the purpose of carrying on a trade

20% straight line

### 1.5 SMALL BUSINESS CORPORATIONS

1.5.1 Manufacturing assets brought into use from 1 April 2001

100%

1.5.2 Non-manufacturing assets brought into use from 1 April 2005:

- 1<sup>st</sup> year
- 2<sup>nd</sup> year
- 3<sup>rd</sup> year

50%

30%

20%

### 1.6 HOTELKEEPERS

1.6.1 New or used machinery, utensils or articles (excluding vehicles or equipment for offices or employees' rooms) brought into use for the first time by the taxpayer and used by the taxpayer or his lessee

20% straight line

## 2 INDUSTRIAL BUILDINGS

### 2.1 MANUFACTURING

2.1.1 Annual allowance in respect of the cost of erection or improvements to qualifying buildings used wholly or mainly for the purpose of carrying on a process of manufacture or similar process, by the taxpayer or his lessee, and brought into use for the first time by the taxpayer or lessee for the purpose of trade:

- construction commenced during period 25 March 1959 to 31 December 1988
- construction commenced on or after 1 January 1989
- construction commenced during period 1 July 1996 to 30 September 1999, and brought into use on or before 31 March 2000

2% straight line

5% straight line

10% straight line

2.1.2 The allowance is also available in respect of purchased buildings where either the seller was entitled to the allowance (determined by reference to the date of erection and not the date of purchase) or the building was not previously used.

2.1.3 In the case of a building acquired and brought into use on or after 1 April 2000, the allowance is 5%, notwithstanding that the person from whom the building was acquired may have been entitled to 10%.

### 2.2 RESEARCH AND DEVELOPMENT BUILDINGS

Annual allowance in respect of the cost of erection to buildings used by the taxpayer for research and development purposes on or after 1 April 2012. The rate of allowance is dependent on the date of construction of the building – see point 2.1.1 above.

## 3 COMMERCIAL BUILDINGS

3.1 New and unused commercial buildings or improvements to existing buildings (other than the provision of residential accommodation) contracted for on or after 1 April 2007

5% straight line

## CAPITAL AND OTHER ALLOWANCES

3.2 With effect from 21 October 2008, to the extent that the taxpayer acquires an unused part of a building, representing a part of a building which the taxpayer did not construct, the cost upon which the allowances are based, is deemed to be:

- 55% of the acquisition price in the case of a building, or part of a building, being acquired
- 30% of the acquisition price in the case of an improvement acquired.

### 4 RESIDENTIAL BUILDINGS

4.1 Erection of a 'residential unit' in a housing project which commenced between 1 April 1982 and 20 October 2008:

- 1<sup>st</sup> year
- 2<sup>nd</sup> to 45<sup>th</sup> years

12%

2%

4.2 Erection of new and unused residential units or improvements commenced on or after 21 October 2008:

- new and unused residential units where the taxpayer owns at least five such units which are used for the purpose of trade
- low cost residential unit disposed of to an employee on loan account

5% straight line

10% straight line

4.3 With effect from 21 October 2008, to the extent that the taxpayer acquires a residential unit or improvements thereto, representing a part of a building which the taxpayer did not construct, the cost upon which the allowances are based is deemed to be:

- 55% of the acquisition price in the case of a unit acquired
- 30% of the acquisition price in the case of an improvement acquired.

### 5 BUILDINGS IN DESIGNATED URBAN DEVELOPMENT ZONES

#### 5.1 COMMERCIAL OR RESIDENTIAL BUILDINGS

Improvements commenced on or after publication date of relevant Government Gazette notice:

- low cost residential units
- other commercial or residential buildings

25% straight line

20% straight line

5.2 Construction of new buildings, extensions or additions (exceeding 1 000m<sup>2</sup>) commenced on or after publication date of relevant Government Gazette notice:

- brought into use before 21 October 2008 –

- 1<sup>st</sup> year
- 2<sup>nd</sup> to 17<sup>th</sup> years

20%

5%

- brought into use on or after 21 October 2008 –

- 1<sup>st</sup> year
- 2<sup>nd</sup> to 11<sup>th</sup> years

20%

8%

- brought into use on or after 21 October 2008 – low cost residential units –

- 1<sup>st</sup> year
- 2<sup>nd</sup> to 6<sup>th</sup> years
- 7<sup>th</sup> year

25%

13%

10%

5.3 The allowance is first granted in the year in which the building or improvement is brought into use.

5.4 With effect from 21 October 2008, to the extent that the taxpayer acquires an unused building or part of a building (not constructed by him), the cost upon which the allowances are based is deemed to be:

- 55% of the acquisition price in the case of a building or part of a building being acquired
- 30% of the acquisition price in the case of an improvement acquired.

5.5 The building or part of a building must be brought into use by 31 March 2020.

### 6 HOTELKEEPERS

6.1 An annual allowance on the cost of the portion of buildings or improvements used by the taxpayer, or his lessee, for the purpose of his trade as a hotel keeper is available, provided the taxpayer incurred the cost of erection or improvement:

- Erection commenced before 4 June 1988 –

- Investment allowance in year 1
- Annual allowance in years 2 to 45

10%

2%

- Erection commenced before 4 June 1988

5%

- Improvements that do not extend the exterior framework of the building and commenced on or after 17 March 1993

20%

## **7 LEASEHOLD IMPROVEMENTS TO GOVERNMENT OWNED LAND / OR PROPERTY IN RESPECT OF WHICH GOVERNMENT HOLDS A RIGHT OF USE OR OCCUPATION**

- 7.1 A taxpayer who holds a right of use or occupation of land or a building and effects an improvement thereto in terms of:
- a) A Public Private Partnership;
  - b) An agreement in terms of which the right of use or occupation is granted, if the land or building is owned by-
    - i) the government of the Republic in the national, provincial or local sphere; or
    - ii) any entity of which the receipts and accruals are exempt from tax in terms of section 10(1)(cA) or (t); or
  - c) the Independent Power Producer Procurement Programme administered by the Department of Energy,
- may qualify for certain capital allowances in respect of the cost of the improvement if the taxpayer occupies the land or building for the production of income or derives income from the land or building.
- 7.2 Where a taxpayer actually incurs expenditure to effect an improvement to land or a building in terms of an obligation under a Public Private Partnership and that land or building is leased by the government, then the taxpayer can claim a deduction of the expenditure over the lesser of:
- the lease period; or
  - 25 years.

## **8 INTELLECTUAL PROPERTY**

### **8.1 RESEARCH AND DEVELOPMENT**

- 8.1.1 The provisions in respect of research and development have undergone multiple, significant changes in the past few years. The provisions as they apply with effect from 1 January 2014 are set out below.
- 8.1.2 Scientific or technological research and development, as defined, undertaken on or after 1 January 2014, but before 1 October 2022:
- 150% of expenditure incurred directly and solely in respect of research and development, if –
    - incurred in the production of income;
    - incurred in the carrying on of any trade; and
    - the research and development has been approved via an application to the Minister of Science and Technology and the expenditure is incurred in respect of research and development carried on by the taxpayer on or after the date the application for approval has been submitted;
- 8.1.3 Capital assets owned or acquired and first brought into use for the purposes of research and development on or after 1 April 2012 – see notes 1.2 and 2.2 above.

### **8.2 ROYALTIES**

In certain circumstances restrictions apply to the deduction of payments for the right to use intellectual property.

## **9 LEARNERSHIPS**

- 9.1 Registered learnership agreements are learnership agreements entered into between a learner and employer before 1 October 2016 and registered in accordance with the Skills Development Act, 1998.
- 9.2 Employers party to a registered learnership agreement will qualify for the following deductions:
- a) R30 000 in each year during which they are party to the learnership, apportioned in accordance with the number of months during each year that such employer was party to the learnership;
  - b) On successful completion:
    - i) where the learnership is less than 24 full months in duration, R30 000; or
    - ii) where the learnership is equal to or exceeds 24 full months, R30 000 multiplied by the number of consecutive 12-month periods of the learnership.
- 9.3 The above amounts are increased to R50 000 for learners with disabilities at the time of entering into the learnership.

## **10 DEDUCTION IN RESPECT OF WEAR AND TEAR OR DEPRECIATION**

- 10.1 A taxpayer may claim a wear-and-tear allowance on qualifying assets which are owned by the taxpayer or acquired as purchaser under an "instalment credit agreement" as defined in the Value-Added Tax Act.
- 10.2 The allowance will only be deductible to the extent that the qualifying asset is used by a taxpayer for purposes of trade.
- 10.3 The allowance relating to a qualifying asset which has not been used for the purposes of trade for the whole year of assessment must be apportioned for the period used.
- 10.4 Any Value-Added Tax payable on the acquisition of an asset must be excluded from the cost for purposes of calculating the allowance if the taxpayer is a registered vendor and entitled to a deduction of 'input tax'.
- 10.5 Interest and finance charges are excluded from the cost of the qualifying asset.
- 10.6 A taxpayer who so elects can depreciate the cost of an asset on a straight-line basis.
- 10.7 From 1 March 2009 small items not forming part of a set and costing less than R7 000 per item may be written off in full in the year of acquisition.

## 11 WEAR AND TEAR WRITE-OFF PERIODS ACCEPTABLE TO SARS

The write-off periods acceptable to SARS (refer Annexure A to Interpretation Note 47) are set out in the following table:

ITEM	PERIOD OF WRITE-OFF (NUMBER OF YEARS)	ITEM	PERIOD OF WRITE-OFF (NUMBER OF YEARS)	ITEM	PERIOD OF WRITE-OFF (NUMBER OF YEARS)
Adding machines	6	Fire extinguishers (loose units)	5	Patterns, tooling and dies	3
Air conditioners:		Fishing vessels	12	Pellet mills	4
-Window type	6	Fitted carpets	6	Perforating equipment	6
-Mobile	5	Food bins	4	Photocopying equipment	5
-Room unit	10	Food conveying systems	4	Photographic equipment	6
Air conditioning assets (excluding pipes, ducting and vents):		Fork-lift trucks/front-end loaders	4	Planers	6
-Air handling units	20	Furniture and fittings	6	Pleasure craft, etc	12
-Cooling towers	15	Gantry cranes	6	Ploughs	6
-Condensing sets	15	Garden irrigation equipment (movable)	5	Portable safes	25
Chillers:		Gas cutting equipment, heaters and cookers	6	Power supply	5
-Absorption type	25	Gearboxes	4	Power tools (hand operated)	5
-Centrifugal	20	Gear shapers	6	Public address systems	5
Aircraft: Light passenger or commercial helicopters	4	Generators (portable)	6	Pumps	4
Arc-welding equipment	6	Generators (standby)	15	Race horses	4
Artefacts	25	Graders	4	Radar systems	5
Balers	6	Grinding machines	6	Radio communication equipment	5
Battery chargers	5	Guillotines	6	Refrigerated milk tankers	4
Bicycles	4	Gymnasium equipment	6	Refrigeration equipment / Refrigerators	6
Boilers	4	-Cardiovascular equipment	2	Runway lights	5
Bulldozers	3	-Health testing equipment	5	Sanders	6
Bumping flaking	4	-Spinning equipment	1	Scales	5
Carports	5	-Weights and strength equipment	4	Security systems (removable)	5
Cash registers	5	-Other	10	Seed separators	6
Cell phone antennae	6	Hairdressers equipment	5	Sewing machines	6
Cell phone masts	10	Harvesters	6	Shakers	4
Cellular telephones	2	Heat dryers	6	Shop fittings	6
Cheque writing machines	6	Heating equipment	6	Solar energy units	5
Cinema equipment	5	Hot water system	5	Special patterns and tooling	2
Cold drink dispensers	6	Incubators	6	Spin dyers	6
Communication systems	5	Ironing and pressing equipment	6	Spot welding equipment	6
Compressors	4	Kitchen equipment	6	Staff training equipment	5
Computers (main frame)/Servers	5	Knitting machines	6	Surge bins	4
Computers (personal computers)	3	Laboratory research equipment	5	Surveyors	5
Computer software (main frames):		Lathes	6	-Instruments	10
-Purchased	3	Laundromat equipment	5	-Field equipment	5
-Self-developed	1	Law reports: sets (legal practitioners)	5	Tape-recorders	5
Computer software (personal computers)	2	Lift installations (goods and passengers)	12	Telephone equipment	5
Concrete mixers (portable)	4	Medical theatre equipment	2	Television and advertising films	4
Concrete transit mixers	3	Milling machines	6	Television sets, video machines and decoders	6
Containers (large metal type used for transporting freight)	10	Mobile caravans	5	Textbooks	3
Crop sprayers	6	Mobile cranes	4	Tractors / Traxcavators	4
Curtains	5	Mobile refrigeration units	4	Trailers	5
Debarking equipment	4	Motorcycles	4	Trolleys	3
Delivery vehicles	4	Motorised chain saws	4	Trucks (heavy duty)	3
Demountable partitions	6	Motorised concrete mixers	3	Trucks (other)	4
Dental and doctors equipment	5	Motor mowers	5	Truck-mounted cranes	4
Dictaphones	3	Motors	4	Typewriters	6
Drilling equipment (water)	5	Musical instruments	5	Vending / Video game machines	6
Drills	6	Navigation systems	10	Video cassettes	2
Electric saws	6	Neon signs and advertising boards	10	Warehouse racking	10
Electrostatic copiers	6	Office equipment:	3	Washing machines	5
Engraving equipment	5	-Electronic	5	Water distillation and purification plant	12
Escalators	20	-Mechanical	5	Water tankers	4
Excavators	4	Ovens/Heating devices/Ovens for heating food	6	Water tanks	6
Fax machines	3	Oxygen concentrators	3	Weighbridges (movable parts)	10
Fertilizer spreaders	6	Packaging and related equipment	4	Wire line rods	1
Firearms	6	Paintings (valuable)	25	Workshop equipment	5
Fire detection systems	3	Pallets	4	X-ray equipment	5
		Passenger cars	5		

# PUBLIC BENEFIT ORGANISATIONS (PBOs)

## 1 OVERVIEW

An organisation must specifically register as a PBO with the Tax Exemption Unit in order to qualify for exemption from income tax. Tax-exempt status is not automatically granted to an organisation merely because that organisation is a 'not for profit' company or performs non-profit activities. In terms of the Income Tax Act the following types of entity may be eligible to qualify for exemption:

- a) a not for profit company incorporated in South Africa;
- b) a trust formed or established in South Africa;
- c) an association of persons formed or established in South Africa; or
- d) any branch within the Republic of any company, association or trust incorporated formed or established in any country other than South Africa that is exempt from tax on income in that other country.

To qualify as a PBO, an organisation must carry on a public benefit activity as listed under Part I of the Ninth Schedule to the Income Tax Act. Qualifying public benefit activities encompass a wide variety of ventures, including welfare and humanitarian, health care, land and housing, et al. An applicant is required to meet the following two criteria in conjunction with carrying on a public benefit activity:

- a) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent; and
- b) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.

Not all income of a duly registered PBO will qualify for exemption. The tax-exempt income of PBOs must consist of revenue generated in order to promote, maintain and protect the sole or principal object of the organisation. It is further required that:

- substantially the whole of the revenue generated is directed towards the recovery of the costs incurred by the organisation; and
- the generating of revenue does not result in unfair competition in relation to taxable entities in the market.

Revenue generated outside the scope of the sole object of the organisation will be taxable as trading income, unless:

- the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
- the undertaking or activity has been approved by the Minister by notice in the Government Gazette; or
- the trading revenue generated does not exceed the greater of –
  - a) 5% of the total receipts and accruals of that PBO during the relevant year of assessment; or
  - b) R200 000.

## 2 DEDUCTIBILITY OF DONATIONS TO PBOs – SECTION 18A

If a PBO meets certain criteria in section 18A of the Income Tax Act, donors to the PBO may be issued with receipts authorising the claiming of deductions.

The deduction of donations actually paid or transferred during a year of assessment is limited to 10% of taxable income. With effect from years of assessment commencing on or after 1 March 2014 any excess may be carried forward to the succeeding year and will be deemed to have been actually paid or transferred in that year.

## 3 PBOs AND VALUE-ADDED TAX

Where a PBO generates revenue unrelated to the PBO's sole object, taxable supplies arising from such trading activities will be subject to VAT.

PBOs not satisfying the VAT registration threshold may register for VAT provided the PBO qualifies as a 'welfare organisation'.

To qualify as a welfare organisation, an organisation must:

- Be a PBO in terms of section 30 of the Income Tax Act.
- Carry on activities in one or more of the following categories:
  - a) welfare and humanitarian;
  - b) health care;
  - c) land and housing;
  - d) education and development; and
  - e) conservation, environment and animal welfare.

A welfare organisation is eligible for the following additional VAT benefits:

- Even where no charge is made for supplies, the organisation can register for VAT and obtain input tax relief on its purchases.
- A subsidy or grant received from the Government (or local authorities) related to welfare activities will, under certain circumstances, be zero-rated.

## OTHER TAX EXEMPT ORGANISATIONS

- 1 Recreational clubs may apply for exemption from income tax where the club's main aim is the provision of social or recreational facilities to its members.

Income which falls outside the ambit of the exemption will be subject to income tax but will be subject to a 'basic exemption' being equal to the greater of 5% of the total membership fees and subscriptions due and payable, or R120 000.

## OTHER TAX EXEMPT ORGANISATIONS

- 2 Other entities that may qualify for exemption from income tax include:
- entities established to promote the common interests of persons (being members of the company, society or association of persons) carrying on any particular kind of business, profession or occupation; and
  - small business funding entities.

## SOUTH AFRICAN TAX AS APPLICABLE TO NON-RESIDENTS

### 1 OVERVIEW

Non-residents are subject to tax in South Africa on their income and capital gains from a source within or deemed to be within South Africa. Certain categories of income are subject to withholding taxes.

### 2 WITHHOLDING TAXES

#### 2.1 WITHHOLDING TAX ON INTEREST

2.1.1 With effect from 1 March 2015 interest paid or due and payable to non-residents, to the extent that the amount is regarded as having been received or accrued from a source in the Republic, subject to certain exemptions (e.g. any bank, national, provincial or local government, headquarter companies; or in respect of listed debt), will be subject to a final withholding tax at a rate of 15%. Interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable.

2.1.2 A non-resident will be exempt from the withholding tax on interest if –

- a) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the interest is paid; or
- b) the debt claim in respect of which the interest is paid is effectively connected to a permanent establishment of the non-resident in the Republic which is a registered taxpayer in the Republic.

Such interest will be subject to normal tax in the Republic.

2.1.3 Any person that withholds any withholding tax on interest must submit the required return and pay the tax to SARS by the last day of the month following the month during which the interest is paid.

#### 2.2 WITHHOLDING TAX ON DIVIDENDS

2.2.1 With effect from 1 April 2012 local dividends received by non-residents are subject to a final withholding tax at a rate of 15%. (Refer note 4 on page 5 for a detailed discussion)

2.2.2 Any person that withholds any withholding tax on dividends must submit the required return and pay the tax to SARS by the end of the month following:

- the month in which the dividend was paid – where paid by a listed company; or
- the earlier of the month in which the dividend was paid or becomes due and payable – where paid by an unlisted company.

#### 2.3 WITHHOLDING TAX ON ROYALTIES

2.3.1 Royalties paid to non-residents, to the extent that the amount is regarded as having been received or accrued from a source in the Republic, are subject to a final withholding tax at a rate of 12% (15% with effect from 1 January 2015).

2.3.2 With effect from 1 July 2013 a non-resident is exempt from the withholding on royalties if –

- a) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the royalty is paid; or
- b) the intellectual property in respect of which the royalty is paid is connected with a permanent establishment of that foreign person, which is registered for tax in South Africa; or
- c) the royalty is paid by a headquarter company for the granting of the use of, right of use, or permission to use intellectual property.

Royalties contemplated in a) and b) above will be subject to normal tax in the Republic.

2.3.3 Any person that withholds any withholding tax on royalties must submit the required return and pay the tax to SARS by the last day of the month following the month during which the royalty is paid or becomes due and payable.

#### 2.4 WITHHOLDING TAX ON SALE OF IMMOVABLE PROPERTY

2.4.1 Any person who purchases immovable property in the Republic from a non-resident, must withhold from the amount that person must pay to the non-resident a withholding tax equal to:

- a) 5% if the non-resident is an individual;
- b) 7.5% if the non-resident is a company; and
- c) 10% if the non-resident is a trust.

2.4.2 The amount withheld from payment to the seller must be paid to the Commissioner within 14 days after the amount was withheld if the purchaser is a resident and within 28 days after the amount was withheld if the purchaser is a non-resident.

2.4.3 The amount withheld is not a final tax, but regarded as a provisional payment in respect of the normal tax payable by the seller in respect of the disposal of the immovable property.

2.4.4 The seller is entitled, under certain circumstances, to apply for a directive to reduce the withholding tax.

2.4.5 The withholding tax does not apply where the consideration payable by the purchaser to the non-resident seller or any other person on his behalf does not exceed R2million.

## 2.5 WITHHOLDING TAX ON VISITING ENTERTAINERS AND SPORTSPERSONS

- 2.5.1 Visiting entertainers and sportspersons are subject to a final withholding tax of 15% of the gross amount received or accrued to the extent that these entertainers and sportspersons are not employed by a South African resident employer and are not physically present in the Republic for a period exceeding 183 days in aggregate during any 12-month period beginning or ending during the year of assessment in which the activities are exercised.
- 2.5.2 The non-resident entertainer or sportsperson must pay the tax within 30 days after the receipt or accrual of the amount for the performance and the payment must be accompanied by the prescribed return.
- 2.5.3 Where a resident is liable to pay to the non-resident entertainer or sportsperson any amount in respect of any activity exercised by that non-resident in the Republic, that resident must deduct and withhold from such payment the amount of tax and pay it over to SARS before the end of the month following the month during which the tax was deducted or withheld.

## 2.6 WITHHOLDING TAX ON SERVICE FEES

- 2.6.1 With effect from 1 January 2016 service fees paid to or for the benefit of any non-resident will be subject to a final withholding tax at a rate of 15%, but only to the extent that the amount is regarded as having been received by or accrued to that non-resident from a source within the Republic.
- 2.6.2 'Service fees' means any amount that is received or accrued in respect of technical, managerial and consultancy services but does not include services incidental to the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information.
- 2.6.3 Any person who withholds any withholding tax on service fees must submit the required return and pay the tax to SARS by the last day of the month following the month during which the service fee is paid or becomes due and payable.

### Notes:

- i) For purposes of the withholding tax the amount of interest, dividends, royalties and service fees are deemed to be paid on the earlier of the date on which the interest, dividends, royalties and service fees are paid or become due and payable.
- ii) An amount may be exempt from withholding tax or subject to a reduced rate in terms of a double tax agreement (DTA). A non-resident is however required to make the relevant declaration to SARS where DTA benefits are claimed.

## 3 OTHER INCOME

Fees (other than service fees subject to withholding tax), salaries, rent, share of profits, pensions, etc. from a South African source or deemed to be from a South African source are subject to normal South African tax.

# ESTATE DUTY AND DONATIONS TAX

## 1 ESTATE DUTY

- 1.1 Estate duty is levied at a flat rate of 20%.
- 1.2 A basic deduction of R3.5million is allowed in the determination of a deceased estate's liability for estate duty, subject to:
- The unutilised portion of the basic deduction is portable to a surviving spouse where the surviving spouse dies on or after 1 January 2010. The surviving spouse is entitled to use the portable deduction of any one spouse.
  - Where a person and his or her spouse die simultaneously, the person of whom the net value of the estate is the smallest must be deemed to have died immediately prior to his or her spouse.
  - In the case of multiple concurrent surviving spouses the portable deduction will be divided equally among the surviving spouses.
- 1.3 In addition, specific deductions, *inter alia*, funeral and death-bed expenses, debts due, administration charges, bequests to any public benefit organisation which is exempt from tax and bequests and property left to a surviving spouse, are allowable.
- 1.4 Lump sum benefits from a retirement fund are exempt from estate duty.

## 2 DONATIONS TAX

- 2.1 Donations tax is levied at a flat rate of 20% on the value of property donated.
- 2.2 The first R100 000 of property donated in each year of assessment by a natural person is exempt from donations tax.
- 2.3 In the case of a taxpayer who is not a natural person, the exempt donations are limited to casual gifts not exceeding R10 000 in total per year of assessment.
- 2.4 Donations between spouses and donations to public benefit organisations, are exempt from donations tax.
- 2.5 The general rule is that donations tax is payable by the end of the month following the month in which the donation takes effect.

# LUMP SUM BENEFITS FROM RETIREMENT FUNDS AND EMPLOYERS

## 1 TAXATION OF LUMP SUM BENEFITS

A taxpayer must always distinguish between a lump sum received from a retirement fund (i.e. pension or pension preservation fund, provident or provident preservation fund and retirement annuity fund) and a lump sum received from an employer of the taxpayer.

## 2 LUMP SUMS FROM RETIREMENT FUNDS

### 2.1 RETIREMENT LUMP SUMS

Lump sums from retirement funds received in the following circumstances are commonly referred to as "retirement lump sums":

- a) The death of the taxpayer;
- b) The taxpayer electing to retire and, in terms of the rule of the fund, becoming entitled to an annuity or lump sum benefit on or subsequent to attaining normal retirement age.
- c) Termination of employment (subject to certain exclusions) due to:
  - i) employer having ceased or intending to cease carrying on a trade; or
  - ii) taxpayer becoming redundant in terms of a general reduction of personnel;
- d) Commutation of an annuity or portion of an annuity.

### 2.2 WITHDRAWAL LUMP SUMS

Lump sums from retirement funds received in the following circumstances are commonly referred to as "withdrawal lump sums":

- a) Assigned in terms of a divorce order granted on or after 13 September 2007 under the Divorce Act, 1979;
- b) The transfer for the benefit of that person, to any retirement fund (see note 1 above for meaning of retirement fund) from any retirement fund of which that person is or was previously a member; and
- c) The receipt or accrual of a lump sum other than a retirement lump sum (see note 2.1 above) or in terms of a) or b) listed immediately above.

### 2.3 TAXABLE PORTION OF RETIREMENT LUMP SUMS

- 2.3.1 The taxable portion of retirement lump sums will, *inter alia*, exclude the taxpayer's own contributions to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund that did not rank as a deduction against the taxpayer's income in terms of section 11(k) or 11(n) of the Income Tax Act.
- 2.3.2 Retirement lump sums will be taxed on a cumulative basis (i.e. subsequent lump sum benefits over time will be added and taxed at higher marginal rates).
- 2.3.3 The tax payable will be calculated separately from a taxpayer's other taxable income in terms of the retirement lump sums tax table as set out immediately below. The effect of this is that once the tax payable on retirement lump sums is calculated, the tax payable will not be reduced by any assessed loss of the taxpayer or the taxpayer's primary and/or secondary rebates.

### 2.4 CALCULATION OF TAX ON A RETIREMENT LUMP SUM

- 2.4.1 If a retirement lump sum accrues to a person on or after 1 March 2014, the tax to be levied on that person in respect of taxable income comprising the aggregate of:
  - a) That retirement lump sum;
  - b) Withdrawal lump sums received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement lump sum in point a);
  - c) Retirement lump sums received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement lump sum in point a); and
  - d) Severance benefits (see note 3 below) received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement lump sum in point a)

is set out in the following table:

TAXABLE INCOME FROM LUMP SUM BENEFITS	RATES OF TAX
Not exceeding R500 000	0% of taxable income
Exceeding R500 000 but not exceeding R700 000	R0 plus 18% of taxable income exceeding R500 000
Exceeding R700 000 but not exceeding R1 050 000	R36 000 plus 27% of taxable income exceeding R700 000
Exceeding R1 050 000	R130 500 plus 36% of taxable amount exceeding R1 050 000

- 2.4.2 The amount of tax levied on a retirement lump sum in terms of the abovementioned table must be reduced by an amount equal to the tax that would be leviable (hypothetical amount) on the person in terms of that retirement lump sum in respect of taxable income comprising the aggregate of:
  - i) Withdrawal lump sums received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the retirement lump sum in point a) above;
  - ii) Retirement lump sums received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the retirement lump sum in point a) above, and
  - iii) Severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the retirement lump sum contemplated in point a) above.

## 2.5 TAXABLE PORTION OF WITHDRAWAL LUMP SUMS

The taxable portion of a withdrawal lump sum will, *inter alia*, exclude:

- a) the taxpayer's own contributions to any fund that did not rank as a deduction against the taxpayer's income in terms of section 11(k) or 11(n) of the Income Tax Act; and
- b) any amount transferred for the benefit of the taxpayer to a qualifying fund as a result of an election made by the taxpayer. The amount transferred to a qualifying fund is only excluded from the taxable portion of the withdrawal lump sum if the amount is transferred in terms of the table set out immediately below:

FUND FROM WHICH WITHDRAWAL LUMP SUM IS RECEIVED	FUND TO WHICH SPECIFIC TRANSFER MUST BE MADE
Pension Fund	Pension Fund, Pension Preservation Fund, Retirement Annuity Fund
Pension Preservation Fund	Pension Fund, Pension Preservation Fund, Retirement Annuity Fund
Provident Fund	Pension Fund, Pension Preservation Fund, Provident Fund, Provident Preservation Fund, Retirement Annuity Fund
Provident Preservation Fund	Pension Preservation Fund, Provident Fund, Provident Preservation Fund, Retirement Annuity Fund
Retirement Annuity Fund	Retirement Annuity Fund

## 2.6 CALCULATION OF TAX ON A WITHDRAWAL LUMP SUM

2.6.1 If a withdrawal lump sum accrues to a person on or after 1 March 2014, the rate of tax to be levied on that person in respect of taxable income comprising the aggregate of:

- a) that withdrawal lump sum;
- b) withdrawal lump sums received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the withdrawal lump sum in point a);
- c) retirement lump sums received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the withdrawal lump sum in point a); and
- d) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the withdrawal lump sum in point a)

is set out in the following table:

TAXABLE INCOME FROM LUMP SUM BENEFITS	RATE OF TAX
Not exceeding R25 000	0% of taxable income
Exceeding R25 000 but not exceeding R660 000	18% of taxable income exceeding R25 000
Exceeding R660 000 but not exceeding R990 000	R114 300 plus 27% of taxable income exceeding R660 000
Exceeding R990 000	R203 400 plus 36% of taxable income exceeding R990 000

2.6.2 The amount of tax levied on a withdrawal lump sum in terms of the above table must be reduced by an amount equal to the tax that would be leviable on the person in terms of that withdrawal lump sum in respect of taxable income comprising the aggregate of:

- i) withdrawal lump sums received by or accrued to that person on or after 1 March 2009 and prior to the accrual of the withdrawal lump sum in point a) above;
- ii) retirement lump sums received by or accrued to that person on or after 1 October 2007 and prior to the accrual of the withdrawal lump sum in point a) above; and
- iii) severance benefits received by or accrued to that person on or after 1 March 2011 and prior to the accrual of the withdrawal lump sum in point a) above.

## 3 LUMP SUMS FROM EMPLOYERS

3.1 An employer lump sum includes any amount received or accrued by way of lump sum from or by arrangement with a person's employer in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of the person's office or employment.

3.2 As of 1 March 2011 an employee who:

- i) is 55 or older;
- ii) left work because of becoming permanently incapable of holding office or employment due to sickness, accident, injury or incapacity through infirmity of mind or body; or
- iii) is retrenched due to his employer ceasing to operate or because of a personnel reduction (limitation: person must not hold more than 5% of the shares or members interest in the company);

and receives an employer lump sum (to be referred to as a 'severance benefit') will have the lump sum taxed on a cumulative basis in terms of the retirement lump sums table (see table in note 2.4 above).

3.3 Employer lump sums that do not constitute severance benefits are taxed as ordinary income.

## RING FENCING OF ASSESSED LOSSES

- 1 Ring fencing provisions were introduced into the Income Tax Act due to on-going concerns about the erosion of the tax base owing to losses incurred from certain trades.
- 2 These provisions only apply to natural persons who, but for the loss, would pay tax at the maximum marginal rate.
- 3 Effectively the losses from certain trades may be ring fenced and may only be set off against taxable income from those trades.
- 4 Where a person has, in the circumstances described above, incurred an assessed loss in at least three years out of the five years ending with the year of assessment in question, or the trade in respect of which the loss was incurred falls within a list of 'suspect' trades, the loss will be ring fenced (subject to the 'reasonable prospect' provisions dealt with below in more detail).
- 5 The suspect trades include:
  - a) any sport practised by that person or any relative;
  - b) any dealing in collectibles by that person or any relative;
  - c) the rental of residential accommodation (unless at least 80% of the residential accommodation is used by persons who are not relatives of that person for at least half of the year of assessment);
  - d) the rental of vehicles, aircraft or boats as defined in the Eighth Schedule (unless at least 80% of the vehicles, aircraft or boats are used by persons who are not relatives of that person for at least half of the year of assessment);
  - e) animal showing by that person or any relative;
  - f) farming or animal breeding (unless that person carries on farming, animal breeding or activities of a similar nature on a full-time basis);
  - g) any form of performing or creative arts practised by that person or any relative; or
  - h) any form of gambling or betting practised by that person or any relative.
- 6 Where the trade constitutes a business in respect of which there is a reasonable prospect of deriving taxable income (other than taxable capital gain), within a reasonable time period, the ring fencing provisions will, subject to the following proviso, not apply:
  - a) Where the trade in question falls within the list of suspect trades (excluding farming), and losses have been incurred in six out of the ten years ending with the year of assessment in question, then the reasonable prospect rule cannot apply to the benefit of the taxpayer.
  - b) Should a taxpayer wish to invoke the reasonable prospect safety net, the taxpayer would need to have at their disposal significant information in order to motivate their case. Such information might include, but not be limited to: business plans, details of employees, unexpected events giving rise to losses, nature of the business, details of advertising, promotion and/or selling expenses.

## SECURITIES TRANSFER TAX AND TRANSFER DUTY

### 1 SECURITIES TRANSFER TAX (STT)

- 1.1 STT applies to the transfer, cancellation or redemption (including share buybacks) of all listed and unlisted securities. It is imposed at the rate of 0.25% of the value of the transaction.
- 1.2 No STT is payable on the creation or increase in authorised share capital or on the issue of shares.
- 1.3 There is a 10% penalty on the late payment of STT.
- 1.4 Exemptions from STT extend, *inter alia*, to the corporate reorganisation provisions.

### 2 TRANSFER DUTY

- 2.1 Transfer duty is imposed on the transfer of property which includes, *inter alia*, land and improvements, real rights in land and shares in a residential property company.
- 2.2 Transfer duty on acquisition of property by all persons:

PROPERTY VALUE			RATES OF TAX			
From R	To R		R			R
0	-	750 000	0			
750 001	-	1 250 000	0	+	3%	of the amount above 750 000
1 250 001	-	1 750 000	15 000	+	6%	of the amount above 1 250 000
1 750 001	-	2 250 000	45 000	+	8%	of the amount above 1 750 000
2 250 001		and above	85 000	+	11%	of the amount above 2 250 000

- 2.3 The transfer of shares in a REIT is exempt from transfer duty.

# EXPORT AND INDUSTRIAL INCENTIVES

## 1 INVESTMENT SUPPORT

### 1.1 BLACK BUSINESS SUPPLIER DEVELOPMENT PROGRAMME (BBSDP)

The BBSDP is a cost-sharing grant offering support to black-owned small enterprises in South Africa. It is designed to improve the sustainability of black-owned enterprises thereby increasing employment. The programme provides grants to a maximum of R800 000 for tools, machinery and equipment on a 50:50 cost sharing basis and R200 000 for business development and training on an 80:20 cost sharing basis. The amended BBSDP is effective from 1 September 2010 until 31 July 2017.

### 1.2 CRITICAL INFRASTRUCTURE PROGRAMME (CIP)

The CIP is a cash grant incentive for projects that are designed to improve critical infrastructure in South Africa. Examples of infrastructure include roads and bridges, electricity transmission lines, water pipelines, sewers, and telephone lines, as well as their associated generation, storage, purification and other facilities that supply, protect or in any way facilitate the networks and systems. The incentive covers 10% to 30% of such development costs. It is capped at R30million per project.

### 1.3 BUSINESS PROCESS SERVICES INCENTIVE (BPS)

The objective of the BPS, effective for the period 1 October 2014 to 31 March 2019, is to attract investment and create employment in South Africa through offshore activities. The "base" incentive offers a five-year operational expenditure (OPEX) grant. In addition to this grant a "graduated" bonus incentive is offered for greater job creation.

### 1.4 FILM INDUSTRY INCENTIVES

#### a) The South African Film and Television Production and Post-production Incentive

This incentive is aimed at assisting local film producers in the production of local content. The incentive is only available to qualifying South African productions and official treaty co-productions where the total production budget is a minimum of R2.5million or R500 000 for documentaries. To apply the applicant must have at least 25% of the total budget for the production fully committed at application stage. The assistance is in the form of a rebate of up to 35% on the first R6million of the Qualifying South African Production Expenditure (QSAPE) and 25% on the amounts in excess of R6million. No cap will apply.

#### b) The Foreign Film and Television Production and Post-production Incentive

This incentive is aimed at foreign-owned qualifying productions with QSAPE of R12million and above where at least 50% of the principal photography schedule must be filmed in South Africa for a minimum of four weeks and Qualifying South African Post-production Expenditure (QSAPPE) should be in excess of R1.5million. The financial assistance is in the form of a rebate of up to 20% of the QSAPE and up to 5% cumulative QSAPPE with a cap of R50million.

#### c) The South African Emerging Black Filmmakers Incentive

This incentive is available to South African black-owned qualifying productions. Its purpose is to nurture and capacitate emerging black filmmakers to take up big productions and contribute towards employment opportunities.

A rebate of up to 50% for the first R6million of the QSAPE and 25% thereafter. No cap is applicable.

These incentives apply for the period 1 September 2014 to 31 August 2017.

### 1.5 CO-OPERATIVE INCENTIVE SCHEME (CIS)

The CIS is an incentive for black owned co-operative enterprises in the emerging economy to acquire competitive business development services. The scheme contributing 100% of the approved cost. It is limited to a maximum of R350 000 per registered co-operative entity.

## 2 INNOVATION AND TECHNOLOGY

### 2.1 TECHNOLOGY AND HUMAN RESOURCES FOR INDUSTRY PROGRAMME (THRIP)

The THRIP is a partnership programme which challenges companies to match government funding for innovative research and development in South Africa.

### 2.2 SEDA TECHNOLOGY PROGRAMME (STP)

As part of the government's national strategy of consolidating small enterprise support interventions across different government departments and agencies, the DTI is streamlining its small enterprise support interventions.

## 3 EXPORT ASSISTANCE

### 3.1 EXPORT MARKETING AND INVESTMENT ASSISTANCE SCHEME (EMIA)

This scheme partially compensates exporters in respect of activities aimed at developing export markets and recruiting new foreign direct investment into South Africa. Assessment criteria include production, performance, capacity, types of exports, location, labour absorption, technology requirements etc.

### 3.2 THE SECTOR SPECIFIC ASSISTANCE SCHEME (SSAS)

SSAS targets non-profit business organisations in sectors and sub-sectors of industries prioritised by the DTI. The financial support takes the form of a reimbursable grant of 80% of the cost of the travel and accommodation, transport of samples and marketing materials, exhibition costs. A maximum allocation per project being R1.5million.

### 3.3 INDUSTRIAL DEVELOPMENT ZONES (IDZ)

An IDZ is a purpose-built industrial estate linked to an international airport or port, which contains a controlled Customs Secured Area (CSA). Businesses located within a CSA are exempt from duties and VAT on machinery and assets.

## EXPORT AND INDUSTRIAL INCENTIVES

### 3.4 AUTOMOTIVE INVESTMENT SCHEME (AIS)

The Automotive Investment Scheme (AIS) provides for a non-taxable cash grant of 20% of the value of qualifying investment in productive assets and 25% of the value of qualifying investment in productive assets by component manufacturers and tooling companies as approved by the Department of Trade and Industry.

An additional non-taxable cash grant of 5% may be made available for projects that maintain their base-year employment figure throughout the incentive period, and achieve at least two of the following economic requirements:

- Tooling
- Research and development in South Africa;
- Employment creation;
- Strengthening of the automotive value chain;
- Value addition; and
- Empowerment

To qualify for an additional grant of 5% (cumulative 10%), the project must demonstrate the following:

- In respect of light motor vehicle manufacturers - a specified increase in unit production per plant; and
- In respect of component manufacturers - a specified increase in turnover and manufacturing of components that are currently not being manufactured in South Africa.

## 4 CAPITAL PROJECTS FEASIBILITY PROGRAMME (CPFP)

Cost sharing programme providing a contribution to the cost of feasibility studies that are likely to lead to projects outside South Africa that will increase local exports and stimulate the market in South African capital goods and services. Maximum of 50% of total feasibility study costs of projects outside Africa. Maximum of 55% where projects carried on inside Africa. The grant approval is calculated as a percentage of the total cost of the feasibility study and is payable according to completed mile stones capped at a maximum of R8million (VAT exclusive).

## 5 CUSTOMS DUTY RELATED OFFERINGS THROUGH INTERNATIONAL TRADE ADMINISTRATION COMMISSION

- Reduction in the customs duty on imported products to reduce the cost of production
- Rebate of customs duty on products that are not available in the SACU for manufacturing purposes
- 470.03 Rebates of duty in respect of inputs used in exports
- 521.00 Refunds of duties paid on inputs used in exports
- Automotive Production and Development Programme (APDP)
- Duty credit certificate scheme for textile and clothing industries

## EXCHANGE CONTROL GUIDELINES

### 1 INTRODUCTION

Control is exercised through the Financial Surveillance Department (FinSurv) of the South African Reserve Bank (previously known as the Exchange Control Department) and through Authorised Dealers in foreign exchange at commercial and merchant banks.

No South African resident company, close corporation or trust may acquire foreign assets or incur foreign liabilities that result in recourse to South Africa without FinSurv approval.

Resident individuals may not acquire foreign assets or incur foreign liabilities without FinSurv approval, unless they qualify under the dispensation detailed in note 3.1 hereafter. Individuals are allowed to retain inheritances and income earned abroad offshore.

For purposes of the exchange control regulations a non-resident is a natural person or legal entity whose normal place of residence, domicile or registration is outside the Common Monetary Area (CMA) – South Africa, Namibia, Swaziland and Lesotho.

### 2 SOUTH AFRICAN RESIDENT INDIVIDUALS

#### 2.1 SINGLE DISCRETIONARY ALLOWANCE

The single discretionary allowance of R1million per calendar year is available to a resident who is 18 years and older. Any unutilised amount may not be carried forward to the following calendar year. The allowance may be used for any legal purposes abroad.

Residents under the age of 18 years may only be accorded a travel allowance of up to R200 000 per calendar year.

South African residents living temporarily abroad are excluded from utilising this allowance.

No tax clearance certificate is required.

#### 2.2 STUDENTS

Students attending full-time courses at universities, schools or similar educational institutions abroad may avail themselves of the discretionary allowance of R1million.

#### 2.3 KRUGERRAND COINS

Krugerrand coins up to the amount of R30 000 may be exported *in lieu* of monetary gifts or parcels as gifts by residents to non-residents only upon attestation of a form NEP by the Authorised Dealer.

#### 2.4 SUBSCRIPTIONS

- 2.4.1 Current membership and affiliation fees to recognised medical, engineering and other technical, learned, international societies may be transferred abroad against production of satisfactory documentary evidence.

2.4.2 Club subscriptions may be transferred abroad, if satisfactory evidence is produced that the amount is due.

## 2.5 MEDICAL AND DENTAL EXPENSES

Authorised Dealers may, against the production of documentary evidence confirming the amount involved, approve specialised medical and dental treatment abroad without the approval of FinSurv.

## 2.6 EXAMINATION FEES

Foreign exchange is available for advance payments of examination fees against production of documentary evidence.

## 2.7 ALIMONY AND CHILD SUPPORT

Alimony and child support may be transferred abroad, provided a South African Court Order is presented and the beneficiary is regarded as a non-resident for exchange control purposes. Supporting documentary evidence will be required to be submitted to FinSurv every 12 months.

## 2.8 CREDIT / DEBIT CARDS

All credit and/or debit cards, including co-branded cards, issued by Authorised Dealers, as licensed by American Express, Diners Club, Mastercard or Visa may be utilised by residents outside the CMA to avail of up to 100% of the available travel allowance applicable to the journey of such resident and to make permissible foreign exchange payments for small transactions, e.g. imports over the internet, up to a limit of R50 000 per transaction. With effect from 1 April 2015 this dispensation will also apply to corporates.

## 2.9 INCOME TRANSFERS

In general, a South African resident temporarily residing outside of the CMA is not permitted the transfer of income. Transfers from pensions and/or retirement annuities are excluded from this restriction.

# 3 INVESTING ABROAD

## 3.1 PRIVATE INDIVIDUALS (NATURAL PERSONS)

3.1.1 Registered South African resident taxpayers 18 years and older, upon obtaining a tax clearance certificate in respect of foreign investments from SARS, are allowed to invest up to R10million per calendar year offshore (R4million prior to 1 April 2015), i.e. outside the CMA. Such taxpayers may alternatively hold foreign currency deposits with Authorised Dealers should they not wish to invest abroad. In addition, individuals will also be allowed, after FinSurv approval, to invest in fixed property (e.g. holiday homes and farms) in member countries of the Southern African Development Community.

3.1.2 Special applications may be submitted to FinSurv where individuals wish to invest amounts greater than the allowance mentioned in note 3.1.1 above.

3.1.3 Individuals are permitted to retain foreign earned income abroad where the individual was physically outside the Republic at the time the services were rendered.

3.1.4 Where an individual remains in the Republic while being paid from an offshore source, such earnings will need to be introduced into South Africa within 30 days of accrual.

3.1.5 The proceeds of merchandise exports, must be transferred to South Africa within a maximum of six months from date of shipment. This period can be extended to 12 months if necessary on approval by the Authorised Dealer.

3.1.6 Income earned abroad and own foreign capital introduced into the Republic on or after 1 July 1997 may be retransferred abroad provided that documentary evidence confirming that the income and/or capital was received in South Africa and converted to Rand is viewed by an Authorised Dealer. Where a 5% levy was paid in terms of the amnesty dispensation, the foreign capital repatriated to South Africa may not be retransferred abroad.

## 3.2 COMPANIES

### 3.2.1 Foreign direct investment

3.2.1.1 South African companies are entitled to invest an amount of up to R1billion per calendar year (R500million prior to 1 April 2015) in a new foreign direct investment without having to obtain approval from FinSurv. The approval of such investments is subject to the adjudication of the Authorised Dealer. Passive real estate investments (i.e. residential as well as commercial) are excluded from this dispensation.

In order to qualify for the concession, the South African entity must hold at least 10% of the voting rights in the proposed investment. With effect from 25 October 2011 the proposed investment does not need to be in the same line of business as that of the applicant.

The information and documents required to be furnished include:

- a) Details of the applicant company and shareholders;
- b) Audited financial statements used to verify the nature of the business;
- c) Details of how the investment will be funded, the anticipated benefits of the investment and details of the proposed structure through which the foreign target entity will be held;
- d) Companies partaking in such foreign direct investment are required to report all future dividends declared by the approved offshore operation(s), the amounts repatriated to South Africa or alternatively, the dividend amount retained abroad together with an indication of how such funds were utilised offshore; and
- e) Only dividends declared out of foreign trading income will be allowed to remain offshore.

It is proposed that any unutilised portion of their annual foreign direct investment limit may be rolled over to the next calendar year without the need to submit a new application.

3.2.1.2 Applications for investments exceeding R1billion need to be referred to FinSurv.

3.2.1.3 When investing an amount in excess of R1billion South African companies are allowed, on application, to transfer funds out of South Africa for each new and approved foreign investment, provided a longer term benefit to South Africa can be demonstrated. FinSurv reserves the right to stagger capital outflows relating to very large foreign investments in order to manage any potential impact on the foreign exchange market.

- 3.2.1.4 Dividends repatriated from abroad by South African companies from 26 February 2003 to 26 October 2004 automatically form part of domestic funds and may be allowed to be retransferred abroad for the financing of approved foreign direct investments or approved expansions, but may not be transferred abroad for any other purpose.
- 3.2.1.5 In general, South African residents are not permitted to directly or indirectly invest in the CMA via a "loop structure". Recent relaxations now permit South African resident companies to acquire from 10 to 20% equity and/or voting rights whichever is the higher, in a foreign target entity, which may in turn hold investments and/or make loans into any CMA country. This dispensation does not apply to foreign direct investments where the South African company, or several South African companies collectively, hold an equity interest and/or voting rights in the foreign entity which exceeds 20% in total.
- 3.2.1.6 South African companies are allowed to participate in the Rand futures markets as well as purchase inwardly listed (foreign) investments.
- 3.2.1.7 Dividends earned by companies outside the CMA after 26 October 2004:
- 3.2.1.7.1 Such dividends may be retained abroad without the need for application without any recourse to South Africa Dividends earned abroad may be used for any purpose, i.e. they may be used offshore to grow or expand the business or to acquire portfolio assets (including minority interests in any listed or unlisted offshore entity). Such dividends may be remitted back into the CMA in terms of note 3.2.1.5 above.
- 3.2.1.7.2 Should the offshore dividends be repatriated, then they may be externalised at a future date without the need to apply to FinSurv. Balance of payments reporting requirements will have to be complied with when retransferring dividends abroad.
- 3.2.1.8 Interest payments on loans raised abroad to finance or partly finance new approved foreign investments must continue to be repaid from offshore resources.
- 3.2.1.9 Furthermore, companies investing abroad with approval are able to raise offshore financing based on the strength of their local balance sheets. This implies recourse to South Africa in the event of a default.
- 3.2.1.10 Prior approval needs to be obtained when South African owned intellectual property is to be transferred by way of sale and/or the waiver of rights are in favour of a non-resident.

### 3.2.2 South African institutional investors

- 3.2.2.1 South African institutional investors are allowed to invest, on approval, the following percentages of their total retail assets:
- 3.2.2.1.1 Foreign investment allowance:
- Retirement funds and the underwritten policy business of long-term insurers - 25%
  - Investment managers registered as institutional investors for exchange control purposes, collective investment scheme management companies and the investment - listed business of long-term insurers - 35%;
- 3.2.2.1.2 African allowance - an additional 5% in certain circumstances.
- Both of the above are regulated by prudential regulation and does not require pre-approval from FinSurv.
- 3.2.2.2 Authorised Dealers are able to acquire direct and indirect foreign exposure up to a macro-prudential limit of 25% of their total liabilities excluding shareholders equity.
- 3.2.2.3 South African private equity funds that are members of the South African Venture Capital Association (SAVCA), who are mandated to invest into Africa, may make an application to FinSurv in order to do so.
- Applications will be considered where private equity funds invest in companies in the rest of Africa and that company has a portion of their business which is managed in South Africa.

### 3.2.3 Headquarter Companies

- 3.2.3.1 Newly established headquarter companies (HQC) are required to register with the FinSurv and may invest offshore without restrictions where they meet the following criteria:
- No shareholder in a HQC whether alone or together with another company forming part of the same group of companies as a shareholder may hold less than 10% of the shares and voting rights;
  - No more than 20% of the HQC shares may be directly or indirectly held by residents; and
  - At the end of each financial year at least 80% of the assets in the holding company must consist of foreign assets.
- 3.2.3.2 HQC may freely be treated for exchange control purposes as non-resident companies other than their reporting obligations. HQC may freely borrow from abroad and such funds may be deployed locally or offshore. Lending from local banks will form part of prudential limits.

### 3.2.4 Foreign Bank Accounts

- 3.2.4.1 South African companies are permitted to open and operate bank accounts in foreign countries subject to the approval of an Authorised Dealer. Such approval is considered on merit but normally only approved to enable exporters to receive export proceeds abroad or to make it easier for importers to pay their suppliers.
- 3.2.4.2 An Authorised Dealer must take the following factors into account when granting approval for a foreign bank account to be opened:
- Only South African companies with *bona fide* sources of income abroad are permitted to open foreign bank accounts.
  - All foreign credits to this account need to be repatriated to South Africa in terms of exchange control regulations (foreign dividends being exempt from such repatriation regulations).
  - Funds that accrue in the foreign bank must be in respect of transactions permissible in terms of exchange control rulings or specific exchange control authority.
  - Applicants must give written undertakings to Authorised Dealers that no amounts shall be debited to the foreign account other than transfers to South Africa, or debits permissible in terms of specific exchange control authorities and bank charges will take place in the foreign bank account.
  - Authorised Dealers must furnish FinSurv with an annual report confirming that the account holder of the foreign bank account has conducted its transactions within the ambit of the aforementioned conditions.

3.2.4.3 FinSurv reserves the right to instruct applicants to close any existing foreign bank account and to repatriate any funds if the above conditions are not met.

### 3.2.5 Foreign currency accounts

South African companies are allowed to retain foreign currency earnings that have been repatriated to South Africa in a customer foreign currency account for an indefinite period of time (prior to 21 October 2009 such funds had to be converted into Rand within 180 days of being held on deposit).

## 4 BORROWING CONDITIONS AFFECTING A FOREIGN-CONTROLLED SOUTH AFRICAN COMPANY, FOUNDATION, TRUST OR PARTNERSHIP

- 4.1 A South African company, foundation, trust or partnership, where 75% or more of the capital, assets, earnings, voting securities, voting power or power of control vest in or are controlled directly or indirectly by non-residents is defined as an affected person and may not avail themselves of local financial assistance without Authorised Dealer's authority.
- 4.2 An Authorised Dealer may freely grant or authorise local financial assistance to an affected person where the transaction does not relate to the acquisition of residential property and financial transactions.
- 4.3 Where an affected person wishes to purchase residential property and/or enter into financial transactions such as portfolio investments, securities lending, hedging, repurchase agreements etc, the local borrowings are restricted to 100% of the Rand value of funds introduced from abroad and invested locally.
- 4.4 Where non-residents or emigrants wish to invest in a *bona fide* foreign direct investment in South Africa, they may do so without restriction unless the funds are required for financial transactions and or the acquisition of residential or commercial property in South Africa. In this case local borrowings are restricted to 100% of the Rand value of funds introduced from abroad and permission will need to be sought from their Authorised Dealer.
- 4.5 Financial assistance includes the lending of currency, the granting of credit, the taking-up of securities, the conclusion of a hire-purchase contract or a lease, the financing of sales or stocks, discounting, factoring, the guaranteeing of acceptance credits, the guaranteeing or acceptance of any obligation, a suretyship, a buy-back and a lease-back. It, however, does not include:
- 4.5.1 the granting of credit by a seller in respect of any commercial transaction directly involving the passing of ownership of the goods sold from seller to purchaser; and
- 4.5.2 the granting of credit solely in respect of payment for services rendered.
- 4.6 All dividends from realised/earned profits may be remitted to non-resident shareholders against production of a board resolution. The declaration of a dividend *in specie* or a special dividend requires prior approval of FinSurv.
- 4.7 Where affected persons avail themselves of local borrowing facilities, the Authorised Dealer may allow the remittance of dividends/profit distributions, provided the affected person is not in an over-borrowed position.
- 4.8 Where local financial assistance exceeds the percentage permissible, FinSurv consent must be obtained.

## 5 EMIGRANTS

### 5.1 ALLOWANCES

Persons emigrating will, at the time of emigration and after all their assets have been brought under the control of an Authorised Dealer, be accorded the following facilities:

#### 5.1.1 Foreign capital allowances

- R10million per individual per calendar year (R4million prior to 1 April 2015); or
- R20million per family unit per calendar year (R8million prior to 1 April 2015).

This allowance is available to all emigrants in the year of their emigration to the extent that it has not been utilised. The allowance is also available in subsequent years.

Emigrants with remaining blocked assets in South Africa who have not already utilised their full annual allowance for the year can export additional capital not exceeding the current limit.

Holders of blocked assets and new emigrants also wishing to transfer capital funds in excess of this allowance must obtain FinSurv approval before doing so.

Amounts in excess of the allowance may be remitted on application and these are not subject to an exit charge.

#### 5.1.2 Normal travel allowances

The normal travel allowances are granted to emigrants on the same terms and conditions as applicable to residents travelling abroad. The travel allowance may only be accorded once and not more than 60 days prior to departure.

#### 5.1.3 Motor vehicle, household and personal effects allowances

Motor vehicle, household and personal effects, which include jewellery, stamps and coins (excluding coins that are legal tender in South Africa) may be exported within the overall insured value of R2million per family unit or single person. The approval of FinSurv must be sought where the above limit is to be exceeded.

#### 5.1.4 Gifts, donations and capital distributions from an *inter vivos* trust

Donations or gifts in excess of R100 000 or capital distributions received from an *inter vivos* trust within three years prior to the date of emigration will be deducted from the amount to be accorded.

### 5.2 BLOCKED ASSETS

- 5.2.1 The balance of the emigrant's assets brought under the control of an Authorised Dealer is blocked and can only be released within the parameters provided to the Authorised Dealer by FinSurv or subject to FinSurv approval.
- 5.2.2 All remaining cash balances must be credited to a blocked account held with the Authorised Dealer. These funds may be utilised locally for any purpose. Where funds are utilised for investment purposes under the Collective Investment Schemes Control Act 2002, Authorised Dealers must at all times be able to demonstrate that such investments are being held to the order of that Authorised Dealer.

## EXCHANGE CONTROL GUIDELINES

- 5.2.3 Proceeds of mortgage bonds or mortgage participations forming part of the emigrant's blocked assets may be reinvested in further bonds and/or participations.
- 5.2.4 All securities owned by emigrants at the time of departure (both quoted and unquoted) must be deposited with an Authorised Dealer and may not be released (except for switching purposes) without specific authority of FinSurv. Unquoted securities may only be switched into quoted securities. Listed securities and financial instruments must be demonstrated at all times to be held to the order of the Authorised Dealer.
- 5.2.5 Securities must be restrictively endorsed.
- 5.2.6 Any assets accruing to emigrants at the time of or after departure must be brought under the physical control of an Authorised Dealer.
- 5.2.7 FinSurv will on application consider the remittance of liquid assets or the export of quoted securities in lieu of cash exceeding the foreign capital allowance.

### 5.3 INCOME FROM BLOCKED ASSETS

- 5.3.1 Net income earned by South African emigrants after the date of their formal departure, on their remaining South African assets under the control of an Authorised Dealer, may be transferred subject to the following limitations:
  - a) The funds represent income earned (excluding future income) from normal trading activities and do not include an element of a capital nature (e.g. revaluation of assets);
  - b) No third party has an interest in such income or asset from which it is earned; and
  - c) The emigrant has taken up permanent residence abroad.
- 5.3.2 Income is defined as follows:
  - a) Interest and profit;
  - b) Dividends (the distribution of a dividend *in specie* or special dividend requires approval of FinSurv. Dividends from unquoted entities must be accompanied by an Auditor's Report and representation letter in specified format);
  - c) Income distributions from close corporations;
  - d) Director's or member's fees;
  - e) Monthly pension payments paid by registered pension funds only;
  - f) Cash bonuses on insurance policies;
  - g) Income from a testamentary trust;
  - h) Income received from an *inter vivos* trust;
  - i) Rental from fixed property subject to production of the rental agreement and the Authorised Dealer being satisfied that the amount is reasonable in relation to the property;
  - j) The difference between purchase consideration and maturity value of quoted gilts;
  - k) Annuity payments where the annuity has been in existence for a period of five years prior to date of emigration;
  - l) Annuity payments where the annuity has been funded from a pension payout from a previous employer; and
  - m) Refunds of income tax on income earned subsequent to departure.
- 5.3.3 Applications for transfer of any other form of income, e.g. royalties, partnership profits, licence or patent fees etc., must be referred to FinSurv.
- 5.3.4 Transfer of income from donations or gifts received by emigrants within three years, or as capital distributions from inter-vivos trusts within three years, prior to the date of emigrations, must be referred to FinSurv.

## 6 INHERITANCES

Cash bequests and the cash proceeds of legacies and distributions due to non-resident beneficiaries, including emigrants, may be remitted abroad without reference to FinSurv provided the liquidation and distribution account approved by the Master of the High Court has been viewed by the Authorised Dealer.

## 7 TRUSTS

### 7.1 TESTAMENTARY TRUSTS

- 7.1.1 Transfer of income to the emigrant or non-resident beneficiaries of a trust created in terms of a deceased person's last will and testament is not restricted. Transfer of income prior to emigration can be transferred in terms of note 3.1 above.
- 7.1.2 Transfer of capital is treated in the same way as inheritances. (Refer note 6 above).

### 7.2 INTER VIVOS TRUSTS

- 7.2.1 The remittance of income from *inter vivos* trusts to non-resident beneficiaries, including emigrants, is restricted and all initial requests for transfer of income to an emigrant beneficiary must be referred to FinSurv.
- 7.2.2 Generally, where a trust was formed from assets which a beneficiary owned prior to emigration from South Africa, FinSurv will allow income to be remitted to a non-resident beneficiary if such income was earned after date of emigration; contains no elements of capital; and no excessive borrowings are availed of by the trust or entities in which the trust has an interest.
- 7.2.3 Where a trust was formed from assets of a third party the general rule is that income may be remitted to a non-resident beneficiary if the trust was funded at least three years prior to emigration.

**8 NON-RESIDENTS**

- 8.1 Income earned as a result of a local sale or redemption proceeds of non-resident owned quoted and unquoted South African securities, real estate and other equity investments will be regarded as freely remittable if share certificates endorsed as non-resident.
- 8.2 Investments in listed securities may be made if purchased through a stockbroker. If private transactions not utilising a stockbroker are made, FinSurv approval must be obtained.
- 8.3 Investments in unlisted securities may be made, but if loans are involved together with shares, FinSurv approval must be obtained for the introduction of the loan.
- 8.4 Income on non-residents' investments is freely transferable abroad, subject to the provisos set out in notes 8.1 to 8.3 above.
- 8.5 Where a non-resident is a director/member of a South African company/close corporation, fees payable are remittable without limitation, but subject to documentary proof that the director/member is a non-resident who is entitled to the income.
- 8.6 Income from rental of fixed property owned by a non-resident may be remitted abroad against production of a copy of the rental agreement.
- 8.7 Where a non-resident purchases Krugerrand coins using funds from his non-resident account or with offshore funds, up to 15 Krugerrand coins or the equivalent in fractional Krugerrand coins may be exported.

**PRIME BANK OVERDRAFT RATES**

(Based on The Standard Bank of South Africa Limited)

DATE OF CHANGE	RATE	DATE OF CHANGE	RATE	DATE OF CHANGE	RATE
<b>2014:</b> 30 January	9.0% p.a.	<b>2009:</b> 6 February	14.0% p.a.	<b>2007:</b> 8 June	13.0% p.a.
18 July	9.25% p.a.	25 March	13.0% p.a.	17 August	13.5% p.a.
<b>2012:</b> 20 July	8.5% p.a.	4 May	12.0% p.a.	12 October	14.0% p.a.
<b>2010:</b> 26 March	10.0% p.a.	29 May	11.0% p.a.	7 December	14.5% p.a.
10 September	9.5% p.a.	14 August	10.5% p.a.	<b>2006:</b> 14 June	11.0% p.a.
19 November	9.0% p.a.	<b>2008:</b> 11 April	15.0% p.a.	7 August	11.5% p.a.
		13 June	15.5% p.a.	16 October	12.0% p.a.
		12 December	15.0% p.a.	11 December	12.5% p.a.
				<b>2005:</b> 18 April	10.5% p.a.
				<b>2004:</b> 16 August	11.0% p.a.

**OFFICIAL AND PRESCRIBED RATES OF INTEREST**

	Fringe benefits/ deemed dividends - interest free or low interest loans	Late payment of tax and under- payment of provisional tax	Overpayment of tax and provisional tax	Refund of VAT after prescribed period	Late payment of VAT	Late payment of skills development levy
<b>Date of Change</b>	1 Aug 2014	1 Nov 2014	1 Nov 2014	1 Nov 2014	1 Nov 2014	1 Nov 2014
<b>Rate</b>	6.75% p.a.	9.25% p.a.	5.25% p.a.	9.25% p.a.	9.25% p.a.	9.25% p.a.
<b>Date of Change</b>	1 Feb 2014	1 May 2014	1 May 2014	1 May 2014	1 May 2014	1 May 2014
<b>Rate</b>	6.5% p.a.	9.0% p.a.	5.0% p.a.	9.0% p.a.	9.0% p.a.	9.0% p.a.
<b>Date of Change</b>	1 Aug 2012	1 Mar 2011	1 Mar 2011	1 Mar 2011	1 Mar 2011	1 Mar 2011
<b>Rate</b>	6.0% p.a.	8.5% p.a.	4.5% p.a.	8.5% p.a.	8.5% p.a.	8.5% p.a.
<b>Date of Change</b>	1 Mar 2011	1 Jul 2010	1 Jul 2010	1 Jul 2010	1 Jul 2010	1 Jul 2010
<b>Rate</b>	6.5% p.a.	9.5% p.a.	5.5% p.a.	9.5% p.a.	9.5% p.a.	9.5% p.a.
<b>Date of Change</b>	1 Oct 2010	1 Sep 2009	1 Sep 2009	1 Sep 2009	1 Sep 2009	1 Sep 2009
<b>Rate</b>	7.0% p.a.	10.5% p.a.	6.5% p.a.	10.5% p.a.	10.5% p.a.	10.5% p.a.
<b>Date of Change</b>	1 Sep 2009	1 Aug 2009	1 Aug 2009	1 Aug 2009	1 Aug 2009	1 Aug 2009
<b>Rate</b>	8.0% p.a.	11.5% p.a.	7.5% p.a.	11.5% p.a.	11.5% p.a.	11.5% p.a.
<b>Date of Change</b>	1 Jul 2009	1 Jul 2009	1 Jul 2009	1 Jul 2009	1 Jul 2009	1 Jul 2009
<b>Rate</b>	8.5% p.a.	12.5% p.a.	8.5% p.a.	12.5% p.a.	12.5% p.a.	12.5% p.a.
<b>Date of Change</b>	1 Jun 2009	1 May 2009	1 May 2009	1 May 2009	1 May 2009	1 May 2009
<b>Rate</b>	9.5% p.a.	13.5% p.a.	9.5% p.a.	13.5% p.a.	13.5% p.a.	13.5% p.a.
<b>Date of Change</b>	1 Mar 2009	1 Sep 2008	1 Sep 2008	1 Sep 2008	1 Sep 2008	1 Sep 2008
<b>Rate</b>	11.5% p.a.	15.0% p.a.	11.0% p.a.	15.0% p.a.	15.0% p.a.	15.0% p.a.
<b>Date of Change</b>	1 Sep 2008	1 Mar 2008	1 Mar 2008	1 Mar 2008	1 Mar 2008	1 Mar 2008
<b>Rate</b>	13.0% p.a.	14.0% p.a.	10.0% p.a.	14.0% p.a.	14.0% p.a.	14.0% p.a.
<b>Date of Change</b>	1 Mar 2008	1 Nov 2007	1 Nov 2007	1 Nov 2007	1 Nov 2007	1 Nov 2007
<b>Rate</b>	12.0% p.a.	13.0% p.a.	9.0% p.a.	13.0% p.a.	13.0% p.a.	13.0% p.a.
<b>Date of Change</b>	1 Sep 2007	1 Mar 2007	1 Mar 2007	1 Mar 2007	1 Mar 2007	1 Mar 2007
<b>Rate</b>	11.0% p.a.	12.0% p.a.	8.0% p.a.	12.0% p.a.	12.0% p.a.	12.0% p.a.
<b>Date of Change</b>	1 Mar 2007	1 Nov 2006	1 Nov 2006	1 Nov 2006	1 Nov 2006	1 Nov 2006
<b>Rate</b>	10.0% p.a.	11.0% p.a.	7.0% p.a.	11.0% p.a.	11.0% p.a.	11.0% p.a.

## EXCHANGE RATES

Set out below are The Standard Bank of South Africa Limited's Telegraphic Transfer buying and selling rates at close of business on the dates and in the currencies as specified. Rates at 1 October 2001 are included for capital gains tax purposes.

### ONE FOREIGN CURRENCY UNIT IS EQUAL TO THE RAND AMOUNT LISTED BELOW:

		2014			2013			2001
		31/12	30/06	28/02	31/12	28/06	28/02	01/10
UNITED STATES DOLLAR	Buy	11.3800	10.4213	10.5085	10.3565	9.8121	8.7785	8.9655
	Sell	11.6975	10.7388	10.8260	10.6740	10.1296	9.0960	9.1655
UNITED KINGDOM STERLING	Buy	17.7202	17.7796	17.5688	17.1268	14.9116	13.3058	13.2042
	Sell	18.2332	18.3048	18.0917	17.6468	15.4183	13.8137	13.5540
EURO	Buy	13.7973	14.2414	14.5146	14.2764	12.7937	11.5134	8.1558
	Sell	14.2375	14.6977	14.9702	14.7339	13.2436	11.9629	8.4560

### ONE RAND IS EQUAL TO THE AMOUNT OF FOREIGN CURRENCY LISTED BELOW:

		2014			2013			2001
		31/12	30/06	28/02	31/12	28/06	28/02	01/10
JAPANESE YEN	Buy	10.7351	9.9539	9.9224	10.3507	10.2997	10.7133	13.7600
	Sell	9.9940	9.2129	9.1805	9.6025	9.5497	9.9450	12.7500
SWISS FRANC	Buy	0.0890	0.0873	0.0857	0.0879	0.0978	0.1074	0.1838
	Sell	0.0823	0.0804	0.0789	0.0811	0.0909	0.1002	0.1736
AUSTRALIAN DOLLAR	Buy	0.1098	0.1045	0.1085	0.1103	0.1132	0.1131	0.2289
	Sell	0.1014	0.0961	0.1001	0.1019	0.1047	0.1045	0.2182

### ONE US DOLLAR IS EQUAL TO THE AMOUNT OF FOREIGN CURRENCY LISTED BELOW:

		2014			2013			2001
		31/12	30/06	28/02	31/12	28/06	28/02	01/10
EURO	Buy	0.8248	0.7318	0.7240	0.7254	0.7669	0.7625	1.0975
	Sell	0.8216	0.7306	0.7232	0.7245	0.7649	0.7604	1.0820
UNITED KINGDOM STERLING	Buy	0.6422	0.5861	0.5981	0.6047	0.6580	0.6597	0.6786
	Sell	0.6415	0.5867	0.5984	0.6049	0.6570	0.6585	0.6743

The average exchange rates as published on the SARS website, for the 12-month periods ending as indicated.

### ONE FOREIGN CURRENCY UNIT IS EQUAL TO THE RAND AMOUNT LISTED BELOW:

		2014			2013		
		November *	June	February	November	June	February
UNITED STATES DOLLAR		10.7532	10.3904	9.9993	9.5061	8.8517	8.3768
UNITED KINGDOM STERLING		17.7806	16.9203	15.7974	14.8517	13.8719	13.2856
EURO		14.4093	14.1028	13.3464	12.5838	11.4618	10.8087
JAPANESE YEN		0.1030	0.1028	0.1003	0.0991	0.1014	0.1023
SWISS FRANC		11.8433	11.4989	10.8470	10.2313	9.4057	8.9392
AUSTRALIAN DOLLAR		9.7700	9.5380	9.4031	9.2899	9.0739	8.6544

\* Rates for November 2014 have been provided as the rates for December 2014 were not available at date of publication.

## PROMOTION OF ACCESS TO INFORMATION ACT

- The objective of the Promotion of Access to Information Act (the PAIA) is to give effect to the constitutional right of access to any information held by the State and any information that is held by another person and is required for the exercise or protection of any rights.
- Manuals of information must be published by both public and private bodies. Both are broadly defined. A public body is any entity that exercises a public power in terms of any legislation, such as state departments and municipalities. Private bodies include a natural person who carries on or has carried on any trade, business or profession, a partnership, which carries on or has carried on any trade, business or profession, or any former or existing juristic person, e.g. trusts, companies, corporations, pension funds, medical aids.
- Each entity must appoint a 'Head of Body', who must publish the manual, deal with requests for information and report to the South African Human Rights Commission (SAHRC). A copy of the manual must be sent to the SAHRC. A template is available on [www.sahrc.org.za](http://www.sahrc.org.za) which illustrates the information to be published in the manual.
- The Department of Justice and Constitutional Development has extended the exemption which was to have lapsed on 31 December 2011. Private companies within certain sectors are now exempted from compiling and submitting information manuals in terms of section 51 of the PAIA to the SAHRC until 31 December 2015.

# THE NATIONAL CREDIT ACT

## 1 OVERVIEW

The National Credit Act (the NCA) aims to protect consumers. It makes provision for the control and regulation of all credit transactions, including mortgages, credit cards, overdrafts, micro-loans and pawnbroking transactions.

The NCA contains an extensive definition of a credit agreement, but most agreements involving deferral of payment, and a charge for such a deferral, would fall within the Act.

The NCA limits interest rates, as well as the amount and type of other fees a credit provider may charge.

The limits for interest and other fees may be found in the regulations to the NCA. For the sake of convenience the interest rate limits are listed below:

Sub-sector	Maximum prescribed interest rate
Mortgage agreements	[(RR x 2.2) + 5%] per annum
Credit facilities	[(RR x 2.2) + 10%] per annum
Unsecured credit transactions	[(RR x 2.2) + 20%] per annum
Developmental credit agreements:	
- for the development of a small business	[(RR x 2.2) + 20%] per annum
- for low income housing (unsecured)	[(RR x 2.2) + 20%] per annum
Short term credit transactions	5% per month
Other credit agreements	[(RR x 2.2) + 10%] per annum
Incidental credit agreements	2% per month

### Notes:

- i) RR indicates the reference rate, being the ruling SA Reserve Bank repurchase rate.
- ii) The interest rate on short term credit transactions must be disclosed as a monthly interest rate.

## 2 INCIDENTAL CREDIT AGREEMENTS

An incidental credit agreement is an agreement irrespective of its form in terms whereof an account was tendered for goods or services and:

- a fee, charge or interest became payable because payment was not made on or before a predetermined date; or
- a discount was extended because the amount was paid on or before a predetermined date.

The NCA only has a limited application to incidental credit agreements. While the interest and other fee limits set out in the NCA will apply to such agreements, the providers of such agreements will not be required to register as credit providers.

# AIR PASSENGER TAXES AND CHARGES

## 1 AIR PASSENGER DEPARTURE TAX

With effect 1 October 2011:

- 1.1 Passengers departing to Botswana, Lesotho, Namibia and Swaziland – R100 (previously R80)
- 1.2 Passengers departing to other international destinations – R190 (previously R150)

## 2 AIRPORTS COMPANY ACT

With effect 1 April 2014 (charges inclusive of VAT at 14%)

- 2.1 Passengers departing for a destination within South Africa – R127 (previously R116)
- 2.2 Passengers departing to Botswana, Lesotho, Namibia or Swaziland – R263 (previously R242)
- 2.3 Passengers departing to other international destinations – R346 (previously R320)

# GUIDELINES FOR THE RETENTION OF DOCUMENTS AND RECORDS

Following the implementation of the Companies Act, 2008, changes have been made to record retention requirements.

A comprehensive document setting out the various retention periods appears on our website [www.mazars.co.za](http://www.mazars.co.za).

# MONEY LAUNDERING

- 1 Money laundering control legislation – the Prevention of Organised Crime Act (POCA) and the Financial Intelligence Centre Act (FICA) – criminalises attempts to disguise the true nature of unlawfully obtained gains. An alliance is forged between the business community and law enforcement by requiring businesses most prone to abuse to implement certain procedures. These include identifying clients and monitoring their transactions.
- 2 POCA establishes the main offences relating to money laundering, while FICA imposes administrative controls upon businesses and accountable institutions.

## MONEY LAUNDERING

- 3 Under POCA persons will be held liable, amongst other things, for negligently failing to recognise that assets were derived from unlawful activities where they have entered into any agreement or engaged in any arrangement or transaction with anyone in connection with such assets. Penalties include substantial fines and in some cases imprisonment.
- 4 Under FICA the various control obligations are determined by reference to the classifications of businesses or business persons in the Act:
  - 4.1 Any person who carries on a business, or is in charge of or manages a business, or who is employed by a business, has a general duty to report unusual and suspicious transactions to the Financial Intelligence Centre (FIC).
  - 4.2 An accountable institution, listed in Schedule 1 of FICA has, in addition to the above general reporting requirement, specific compliance obligations which include reporting transactions over a certain monetary threshold (not yet gazetted), obtaining prescribed information from all new clients (e.g. identity documents, proof of address, etc.) and keeping details of clients' transactions. Accountable institutions include attorneys, estate agents, banks, insurance companies, investment advisors and brokers, public accountants, casinos and trustees.
  - 4.3 Any person or business that is listed as an Accountable Institution in Schedule 1 or as a Reporting Institution in Schedule 3 (motor dealers and dealers in Krugerrands) has, in addition to the general reporting obligation, the duty to report cash transactions over the specified threshold of R24 999 (or the foreign currency equivalent if translated on the date of the transaction).
- 5 FICA regulations stipulate that a transaction must be reported to the FIC as soon as possible but within specific time limits. Suspicious Transactions must be reported within 15 days after the reporter has become aware of the transaction. Cash transactions exceeding the threshold are to be reported as soon as possible but no later than two days after the reporter becomes aware of the transaction. Reports must be filed using the FIC portal at [www.fic.gov.za](http://www.fic.gov.za).

## LOAN REDEMPTION TABLE

Monthly payments to redeem a loan of R1 000, interest calculated in arrears:

YEARS	5.0%	6.0%	7.0%	7.5%	8.0%	8.5%	9.0%	9.25%	9.5%	10.0%	10.5%	11.0%	12.0%	13.0%
1	85.61	86.07	86.53	86.76	86.99	87.22	87.45	87.57	87.68	87.92	88.15	88.38	88.85	89.32
2	43.87	44.32	44.77	45.00	45.23	45.46	45.68	45.80	45.91	46.14	46.38	46.61	47.07	47.54
3	29.97	30.42	30.88	31.11	31.34	31.57	31.80	31.92	32.03	32.27	32.50	32.74	33.21	33.69
4	23.03	23.49	23.95	24.18	24.41	24.65	24.89	25.00	25.12	25.36	25.60	25.85	26.33	26.83
5	18.87	19.33	19.80	20.04	20.28	20.52	20.76	20.88	21.00	21.25	21.49	21.74	22.24	22.75
6	16.10	16.57	17.05	17.29	17.53	17.78	18.03	18.15	18.27	18.53	18.78	19.03	19.55	20.07
7	14.13	14.61	15.09	15.34	15.59	15.84	16.09	16.22	16.34	16.60	16.86	17.12	17.65	18.19
8	12.66	13.14	13.63	13.88	14.14	14.39	14.65	14.78	14.91	15.17	15.44	15.71	16.25	16.81
9	11.52	12.01	12.51	12.76	13.02	13.28	13.54	13.68	13.81	14.08	14.35	14.63	15.18	15.75
10	10.61	11.10	11.61	11.87	12.13	12.40	12.67	12.80	12.94	13.22	13.49	13.78	14.35	14.93
11	9.86	10.37	10.88	11.15	11.42	11.69	11.96	12.10	12.24	12.52	12.80	13.09	13.68	14.28
12	9.25	9.76	10.28	10.55	10.82	11.10	11.38	11.52	11.66	11.95	12.24	12.54	13.13	13.75
13	8.73	9.25	9.78	10.05	10.33	10.61	10.90	11.04	11.19	11.48	11.78	12.08	12.69	13.31
14	8.29	8.81	9.35	9.63	9.91	10.20	10.49	10.64	10.78	11.08	11.38	11.69	12.31	12.95
15	7.91	8.44	8.99	9.27	9.56	9.85	10.14	10.29	10.44	10.75	11.05	11.37	12.00	12.65
16	7.58	8.11	8.67	8.96	9.25	9.54	9.85	10.00	10.15	10.46	10.77	11.09	11.74	12.40
17	7.29	7.83	8.40	8.69	8.98	9.28	9.59	9.74	9.90	10.21	10.53	10.85	11.51	12.19
18	7.03	7.58	8.16	8.45	8.75	9.05	9.36	9.52	9.68	10.00	10.32	10.65	11.32	12.00
19	6.80	7.36	7.94	8.24	8.55	8.85	9.17	9.33	9.49	9.81	10.14	10.47	11.15	11.85
20	6.60	7.16	7.75	8.06	8.36	8.68	9.00	9.16	9.32	9.65	9.98	10.32	11.01	11.72
25	5.85	6.44	7.07	7.39	7.72	8.05	8.39	8.56	8.74	9.09	9.44	9.80	10.53	11.28
30	5.37	6.00	6.65	6.99	7.34	7.69	8.05	8.23	8.41	8.78	9.15	9.52	10.29	11.06

## Mazars Taxation Specialists

### **Mike Dingley**

National Head: Taxation services

Tel. +27 11 547 4000

mike.dingley@mazars.co.za

### **Marc Goudge**

Director

Tel. +27 31 818 9000

marc.goudge@mazars.co.za

### **Jacques du Plessis**

Director

Tel. +27 44 874 5022

jacques.duplessis@mazars.co.za

### **Hannes Grobler**

Director

Tel. +27 12 347 3820

hannes.grobler@mazars.co.za

### **Andre Kretzschmar**

Director

Tel. +27 12 346 3820

andre.kretzschmar@mazars.co.za

### **Bernard Sacks**

Director

Tel. +27 21 818 5000

bernard.sacks@mazars.co.za

### **Kathy Dixon**

Senior Tax Manager

Tel. +27 43 726 9898

kathy.dixon@mazars.co.za

### **Patrick Emmett**

Senior Tax Consultant

Tel. +27 41 501 9700

patrick.emmett@mazars.co.za

### **Marius van Zyl**

Senior Tax Consultant

Tel. +27 51 400 0500

marius.vanzyl@mazars.co.za

## CONTACTS

### **Bloemfontein**

Tel. +27 51 400 0500  
bfm@mazars.co.za

### **Cape Town**

Tel. +27 21 818 5000  
cpt@mazars.co.za

### **Durban**

Tel. +27 31 818 9000  
dbn@mazars.co.za

### **East London**

Tel. +27 43 726 9898  
els@mazars.co.za

### **George**

Tel. +27 44 874 5022  
grg@mazars.co.za

### **Johannesburg**

Tel. +27 11 547 4000  
jhb@mazars.co.za

### **Kathu**

Tel. +27 53 723 1772  
kathu@mazars.co.za

### **Kimberley**

Tel. +27 53 831 5490  
kim@mazars.co.za

### **Paarl**

Tel. +27 21 871 1474  
prl@mazars.co.za

### **Plettenberg Bay**

Tel. +27 44 533 0510  
plt@mazars.co.za

### **Port Elizabeth**

Tel. +27 41 501 9700  
plz@mazars.co.za

### **Pretoria**

Tel. +27 12 347 3820  
pta@mazars.co.za

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