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TAX DIRECTORY
2019 | 2020

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- FORENSIC INVESTIGATION
- VALUATIONS
- INTERNAL AUDIT

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BUDGET HIGHLIGHTS 2019 / 2020

INTRODUCTION

The contents of this publication incorporate the budget proposals tabled in Parliament on 20 February 2019, together with appropriate amending legislation to that date. Applicable laws, rules, proposals, practices and regulations often change and have varying implementation dates. Furthermore, the information provided is only intended to serve as a general guideline, and professional advice should be sought before making any decision.

The 2019 Budget was tabled during amongst others, a time of low economic growth, the threat of a further credit rating downgrade, mismanagement of State-Owned Enterprises, a high government wage bill and high unemployment rate.

REVENUE COLLECTIONS SHORTFALL

The revised estimated consolidated budget deficit for 2018/2019 as a percentage of gross domestic product (GDP) is 4.2%, which is projected to increase to 4.5% by 2019/2020.

The projected revenue collections shortfall for 2018/2019 as expected in the 2018/2019 Medium Term Budget Policy Statement (MTBS) was R 27.4 billion, which has been revised to R42.8 billion. The increase of the projected shortfall being R 15 billion is attributable to a decline in corporate and personal income tax collections resulting from economic weakness; and poor tax administration.

The 2019 tax proposals are estimated to raise tax revenue by R15 billion in the 2019/2020 tax year and is expected to be funded in the following manner:

- R12.8 billion resulting from unadjusted personal income tax brackets;
- R1 billion resulting from unadjusted medical tax credits;
- R1.3 billion resulting from an increase in fuel levies and carbon tax on fuel; and
- R1 billion resulting from an increase in 'sin taxes'.

THE MOST SIGNIFICANT TAX PROPOSALS

The following were the most significant proposals:

- The tax-free threshold for personal income tax will be increased from R78 150 to R79 000. No changes will be made to the respective personal income tax brackets;
- The fuel levy will be increased by 29 cents per litre, consisting of a 15 cents per litre increase in the general fuel levy, a 5 cents per litre increase in the Road Accident Fund levy and the introduction of a carbon tax on fuel of 9 cents per litre;
- The excise duty on alcohol and tobacco products will increase by between 7.4% and 9%;
- The increase in eligible income bands relating to the employment tax incentive.

OTHER PROPOSALS

Following the 2018/2019 budget, the following tax proposals have been confirmed:

- The Carbon Tax Bill is to be implemented with the effective date being 1 June 2019;
- Headline corporate income tax rate remains unchanged at 28%; and
- The health promotion levy or sugary beverage tax will be increased to 2.21 cents per gram in excess of 4 grams of sugar per 100ml with effect from 1 April 2019.

TECHNICAL AMENDMENTS ANNOUNCED

Personal income tax rates

- The minimum tax threshold increases from R78 150 to R79 000 for persons under the age of 65. For persons aged from 65 to 74, the tax threshold increases from R121 000 to R122 300 and for persons aged 75 and older the tax threshold increases from R135 300 to R136 750.
- The primary rebate increases from R14 067 to R14 220. The secondary rebate for individuals aged 65 and older increases from R7 713 to R7 794. The tertiary rebate for individuals aged 75 and older increases from R2 574 to R2 601.
- The maximum marginal tax rate remains constant at 45% for taxable income above R1 500 000. The personal income tax brackets remain unchanged.

Individuals

- Medical tax credits will remain unchanged.
- The domestic interest exemption remains constant at R23 800 per year of assessment for individuals aged under 65 and at R34 500 per year of assessment for individuals aged 65 and over.
- It was not proposed that the capital gains tax (CGT) inclusion rates would be increased and so these would remain at 40% for individuals, special trusts and insurers' policyholder funds and 80% for all other taxpayers.

Corporates

- Corporate tax rates remain unchanged at 28%.
- CGT inclusion rate remains unchanged.

PROPOSED AMENDMENTS FROM THE 2019/2020 BUDGET

The following amendments have been proposed for the 2019 legislative cycle:

Individuals, employment and savings

- The foreign employment income tax exemption for South African residents are to be refined by allowing South African employers to reduce their monthly local pay-as-you-earn (PAYE) withholding obligation related to such foreign employment, by the amount of foreign taxes withheld in respect of such employment income.
- The scope of amounts constituting variable remuneration in terms of section 7B will be extended to include certain qualifying payments.
- Certain retirement reforms are proposed which includes:
  - Exemption relating to annuities from a provident fund or provident preservation fund;
  - The tax treatment of bulk payments to former members of closed funds;
  - Reviewing the tax treatment of surviving spouse pensions; and
  - Reviewing the non-resident employer registration requirement.
- The Employment Tax Incentive Act will be updated to align with the National Minimum Wage Act.

Business (general)

- Abusive arrangements aimed at avoiding the anti-dividend stripping provisions are to be addressed by amending the rules governing share buy-backs and dividend stripping, with effect from 20 February 2019.
- Current anomalies arising from applying value-shifting rules will be addressed, which include:
  - Clarifying the effect of a deferred tax liability raised on the market value of issued shares; and
  - Clarifying the effect of a capital gain arising from the operation of the anti-avoidance rules on the base cost of shares acquired in exchange for assets.
- Provisions relating to interest deductions for debt-funded share acquisitions is to be refined.
- The interaction between corporate reorganisation rules and other provisions of the Income Tax Act is to be clarified.
- Certain reorganisation rules will be amended to allow for company deregistration by operation of law.

Financial sector and business incentives

- Study on the tax treatment of amounts received by portfolios of collective incentive schemes.
- Reviewing the Real Estate Investment Trust (REIT) tax regime relating to tax treatment of unlisted REITs and clarifying inconsistencies in the current REIT regime.
- Refining taxation of risk policy funds.
- Aligning income tax provisions with the Insurance Act.
- Refining the special economic zone regime by reviewing anomalies provisions, reviewing the anti-avoidance measures relating to transactions between a company and connected persons and, reviewing the venture capital company tax regime.

International Tax

- Reviewing controlled foreign company rules by:
  - Reviewing the comparable tax exemption;
  - Addressing circumvention of anti-diversionary rules; and
  - Reviewing the definition of permanent establishment.
- Revising tax relief for blocked foreign funds.
- Amendments to the definition of "domestic treasury management company".
- Revising the Income Tax Act criteria for recognised exchanges.
- Reviewing the "affected transaction" definition in the arm's length transfer pricing rules.
- Clarifying the interaction of capital gains tax and foreign exchange transaction rules.

Value Added Tax (VAT)

- Reviewing the definition of "group of companies" for electronic services regulations.
- Clarifying financial services to include the transfer of long-term reinsurance policy.
- Aligning provisions of the VAT Act with the Insurance Act.
- Refining the VAT corporate reorganisation rules.
- VAT treatment of rental stock paid in terms of the National Housing Programme.
- Reviewing section 72 of the VAT Act.
- Refining the VAT treatment of foreign donor-funded projects.

Customs and Excise

- SARS publication of the excise rewrite discussion document.
- Reviewing the tax treatment of duty-free shops.
- Excluding bulk wine movements from the compulsory tariff determination requirement.
- Extending the fiscal marking, tracking and tracing intervention to include excise and levy goods.
- Progress with the review of the diesel refund administration.
- Sharing client-specific information with relevant departments for carbon tax purposes.
- *Ad valorem* proposals to consistently apply and extend current items such as the computer and the gaming categories.
- *Ad valorem* proposals to consistently apply and extend current items.
- Curbing smuggling and illicit financial flow.

Tax Administration

- Model mandatory disclosure rules and non-compliance penalties.
- The legislative provisions relating to tax compliance certificates will be updated to include recent system requirements.

THE CALCULATION OF TAX PAYABLE – INDIVIDUALS

2020 YEAR OF ASSESSMENT

Gross income		....
Less: exempt income	(*see pages 13 – 14*)	....
Income		....
Less: deductions	(*see pages 15 – 17*)	--------
Add: 40% of capital gain	(*see pages 41 – 47*)	....
Less: 18A donation deduction	(*see page 15*)	
Taxable income		
Tax per tables	(*see page 8*)	....
Less: rebates	(*see page 8*)	....
Less: medical scheme fees tax credit	(*see page 14 –15*)	
Provisional tax paid	(*see pages 27 – 28*)	
Foreign tax credits	(*see page 11*)	
PAYE paid	(*see page 28 – 29*)	
Tax due		

TAX RATES: INDIVIDUALS AND TRUSTS

YEAR ENDED 28/29 FEBRUARY

Individuals

Rebates	**2020**	**2019**	**2018**
Primary Rebate	R14 220	R14 067	R13 635
Age Rebate* – 65 and over	R7 794	R7 713	R7 479
Third Rebate* – 75 and over	R2 601	R2 574	R2 493

** Additional to primary rebate*

Tax Threshold			
Under 65	R79 000	R78 150	R75 750
65 and over	R122 300	R121 000	R117 300
75 and over	R136 750	R135 300	R131 150

Individuals and Special Trusts

Taxable Income 2020	**Tax Liability**	
R	**R**	**R**
0 – 195 850	18% of taxable income	
195 851 – 305 850	35 253 + 26% of the amount >	195 850
305 851 – 423 300	63 853 + 31% of the amount >	305 850
423 301 – 555 600	100 263 + 36% of the amount >	423 300
555 601 – 708 310	147 891 + 39% of the amount >	555 600
708 311 – 1 500 000	207 448 + 41% of the amount >	708 310
1 500 001 and above	532 041 + 45% of the amount >	1 500 000

Trusts (other than Special Trusts)

Taxable Income	**Rate of Tax**	**Effective Capital Gains Tax Rate**
2020	45%	36.00%
2019	45%	36.00%
2018	45%	36.00%

TAX RATES: CORPORATES

YEAR OF ASSESSMENT ENDING BETWEEN 1 APRIL 2019 – 31 MARCH 2020

Companies and Close Corporations

Taxable Income (R)	Rate of Tax (%)
SMALL BUSINESS CORPORATIONS	
0 – R79 000	0%
R79 001 – R365 000	7% of the amount above R79 000
R365 001 – R550 000	R20 020 + 21% of the amount above R365 000
R550 001 and above	R58 870 + 28% of the amount above R550 000

MICRO BUSINESSES
Qualifying businesses with a turnover of up to R1 million may elect to be taxed upon qualifying turnover. See page 32 for table of rates.

COMPANIES AND CLOSE CORPORATIONS Other than certain gold mining companies and special entities referred to on page 32	28%
DIVIDENDS TAX	20%
PUBLIC BENEFIT ORGANISATIONS AND RECREATIONAL CLUBS (On non-exempt income)	28%
LOCAL BRANCH OF FOREIGN COMPANY Normal tax rate	28%
LONG-TERM INSURERS	
Individual policyholder fund	30%
Company policyholder, Corporate fund and Risk policy fund	28%
Untaxed policyholder fund	0%

RESIDENCE AND SOURCE OF INCOME

South African residents are taxed on their worldwide income, whilst non-residents are subject to tax on their South African sourced income (subject to specific exclusions, exemptions or deductions, as well as the provisions of applicable double taxation treaties).

DEFINITION OF RESIDENT

Individuals

A natural person is a resident if he or she:

- is ordinarily resident in South Africa; or
- is not ordinarily resident in South Africa, but:
  - is physically present in South Africa for a period, or periods, exceeding 91 days in aggregate during the current year of assessment and for a period, or periods, exceeding 91 days in aggregate during each of the preceding 5 years of assessment; and
  - was physically present in South Africa for a period exceeding 915 days in aggregate during the preceding 5 years of assessment.

If a person is deemed to be a resident in terms of the physical presence test above, he or she is deemed to be a resident from the first day of the relevant year of assessment.

Where a person is a resident in terms of the physical presence test, but has been outside of South Africa for a continuous period of at least 330 full days after ceasing to be physically present in South Africa, he or she will be deemed to be non-resident from the date of departure.

Furthermore, a person will not be regarded as a resident if such person is deemed to be exclusively a resident of another country for purposes of the application of a double taxation treaty.

Companies or entities other than natural persons

A company or juristic entity will be considered to be resident in South Africa if it is incorporated, established, formed or has its place of effective management in South Africa.

Foreign branches of South African residents

The taxable income of a foreign branch belonging to a local resident, person or entity will also be subject to South African income tax.

Losses in foreign branches cannot be offset against income from a South African source and must be carried forward for offset against foreign sourced income in the following years.

Controlled foreign companies (CFCs)

A controlled foreign company (CFC) generally means any foreign company where more than 50% of the total participation rights in that foreign company are directly or indirectly held or more than 50% of the voting rights in that foreign company are directly or indirectly exercisable by one or more residents.

A CFC further includes any foreign company where the financial results of that foreign company are reflected in the consolidated financial statements per IFRS10 of a resident company.

A CFC's net income is imputed to South African residents who, either alone or together with any other resident(s), hold more than 50% of the participation or voting rights in the CFC. This is subject to a number of exclusions.

The most important of these are an exclusion for net income subject to a high rate of foreign tax and non-diversionary net income attributable to a foreign business establishment of the CFC.

The imputation is generally done on the basis of the ratio of the participation rights of each resident in such CFC on the last day of the foreign tax year of the CFC.

The taxable income of a CFC is determined as if the CFC were a South African taxpayer and a South African resident, subject to a number of exceptions.

Foreign tax credits / deduction

A resident may deduct the foreign taxes paid in respect of foreign sourced income from the South African tax attributable to that income, subject to certain limitations.

Any excess credits may be carried forward for up to 7 years.

Alternatively, relief may be claimed if a Double Taxation Agreement applies.

Where a resident is subject to foreign tax in respect of South African sourced income, a deduction of the foreign tax paid from taxable income may be claimed, subject to certain limitations.

Non-residents

As stated above, non-residents are taxed on South African sourced income subject to a number of exceptions and the provisions of various double taxation treaties.

There are currently more than 90 comprehensive treaties in force, and other prospective treaties are in various stages of finalisation.

Some of the more important principles relating to South African sourced income earned by non-residents are as follows:

- The profits of local branches of foreign companies are taxed at a rate of 28%, and no dividends tax or similar tax is payable on the repatriation of branch profits.
- There are comprehensive transfer pricing rules (including thin capitalisation) applicable to transactions between local entities and non-resident related parties.
- Interest earned by non-residents is exempt from income tax unless the non-resident has a permanent establishment in South Africa to which the underlying debt is attributable, or if the non-resident is an individual who was present in South Africa for more than 183 days in aggregate during the 12-month period preceding the date on which the interest was received by or accrued to him or her. However, a withholding tax at 15% on certain interest paid to non-residents applies from 1 March 2015. For more detail on this withholding tax, see 'Withholding tax on interest paid to non-residents' in this guide.
- Royalty payments to non-residents are subject to a withholding tax of 15% (increased from 12% with effect from 1 January 2015).
- Dividends paid to non-residents are subject to a 20% dividend withholding tax in respect of dividends paid on or after 22 February 2017. Prior to this date the rate was 15%.
- The above withholding taxes are subject to various exclusions and are also subject to relief in terms of double taxation treaties.
- The disposal of South African immovable property by a non-resident is subject to withholding tax, unless certain exceptions apply.

TAXATION OF INDIVIDUALS

Subject to the provisions of a particular double taxation treaty, South African resident individuals are taxed on their worldwide income, whilst non-resident individuals are subject to tax on income earned from a South African source.

There is one set of income tax tables for all individuals, regardless of marital status or the number of dependants. Tax payable is reduced by a primary rebate applicable to all individuals and secondary and tertiary (age-related) rebates.

MARRIED PERSONS

Married persons are generally taxed as separate taxpayers and each spouse is taxed on his or her own income. Exceptions to this rule include:

- Any income which is received by or accrued to a spouse in consequence of a donation, settlement or other disposition by the other spouse is deemed to be income of the spouse who made such donation/settlement/disposition if done solely or mainly to avoid tax.
- Any income derived by one spouse from the other spouse, or from a partnership or private company of the other spouse, or derived from a trade which is connected to a trade carried on by the other spouse, is taxed in the hands of the other spouse to the extent that the amount of income is excessive in the circumstances.
- If a couple is married in community of property, the net property rentals and/or interest income received by them is deemed to accrue in equal shares to each spouse, provided that the underlying property forms part of the joint estate. Any income which does not fall into the joint estate is taxed in the hands of the spouse entitled thereto. Similar principles apply in respect of capital gains and losses made by persons married in community of property.

MINOR CHILDREN

Minor children (under the age of 18 years) may be taxpayers in their own right and are taxed on income received by or accrued to them. Where the income arises as a result of the child's parent having made a donation, settlement or other disposition, the resultant income will be taxed in the parent's hands.

EXEMPT INCOME

The following are the more common types of income exempt from income tax in the hands of individuals:

- Qualifying pensions received by or accrued to a resident from a non-South African source provided the pension is also from a non-South African retirement fund;
- The capital portion of a purchased annuity;
- Remuneration received for services rendered outside South Africa for longer than 183 full days in any 12-month period, provided the 183-day period of absence includes a continuous period of more than 60 full days. This exemption is subject to certain exclusions, e.g. severance and termination payments do not qualify for the exemption. Note with effect from 1 March 2020, foreign remuneration derived for services rendered outside South Africa will be exempt up to an amount not exceeding R1 million during any year of assessment.
- War and certain disability pensions;
- Dividends received from South African resident companies, subject to certain exceptions;

- Certain dividends received from non-resident companies;
- South African sourced interest earned by individuals, up to a maximum of R23 800 per tax year (R34 500 for persons aged 65 years and over);
- Interest earned by non-residents unless the interest is attributable to a permanent establishment of the non-resident in South Africa;
- Interest earned by non-resident individuals who are absent from South Africa for at least 183 days in aggregate during the 12-month period preceding the date on which the interest was received by or accrued to the non-resident. Note, however, that from 1 March 2015, withholding tax on interest in general applies to interest payments to non-residents; and
- UIF and certain Workmens' Compensation benefits.

FOREIGN EMPLOYMENT

With effect from 1 March 2020, remuneration derived in excess of R1 million will not qualify for the foreign remuneration exemption. Remuneration above R1 million will therefore also be subject to tax in South Africa and will be eligible for the offset of a foreign tax credit to the extent tax was paid on the same income in the country in which the services are rendered.

REBATE FOR MEDICAL EXPENSES

MEDICAL AND DISABILITY EXPENSES

Medical expenditure includes:

- any contributions to a local or foreign medical scheme made in respect of the taxpayer and his/her spouse and dependants; and
- all amounts paid in respect of medical, dental and hospitalisation expenses, payments to pharmacists for medicines obtained on prescription, and payments to nursing homes or a registered nurse/midwife for services supplied to the taxpayer, his/her spouse, and his/her dependants.

Qualifying medical expenses do not include expenses that have been recovered from a medical scheme. Only the person who paid an expense may claim it.

Payments by an employer which are treated as taxable benefits are deemed to have been paid by the employee.

Credit-only (rebate) system

- The rebate effectively consists of two components which are aggregated:
  1. The Medical Scheme Fees Tax Credit; and
  2. The Additional Medical Expenses Tax Credit.

1 above is in respect of medical aid contributions paid by the person, but does not depend on the level of such contributions i.e. it is a fixed monthly amount as follows:

- R310 where the contributions are in respect of the taxpayer only;
- R620 in respect of the taxpayer and one dependant;
- R209 in the case of each additional dependant.

2 above is in respect of so-called 'excess' medical aid contributions and non-recoverable medical expenses.

Taxpayers aged 65 years and older and those with disabilities or disabled dependants convert all medical scheme contributions in excess of three times the allowable contributions credit (above) plus out-of-pocket expenses into an additional tax credit at a conversion rate of 33.3%. In respect of taxpayers under the age of 65 years, the conversion to credit will apply to medical scheme contributions in excess of four times the allowable contributions credit (above) plus out-of-pocket expenses less 7.5% of taxable income (excluding lump-sum benefits) at a conversion rate of 25%.

DEDUCTIONS

ENTERTAINMENT

Such expenditure may not be claimed against employment income (remuneration) where such remuneration is mainly fixed and is not in the form of commission on sales.

DONATIONS TO PUBLIC BENEFIT ORGANISATIONS

Donations to qualifying Public Benefit Organisations (PBOs) are deductible up to a maximum calculated at 10% of taxable income excluding retirement fund lump sums and severance benefits. A specific mechanism allows for payroll giving whereby an employee may enjoy a reduction of PAYE withheld as a consequence of making eligible donations. Donations in excess of the 10% limit are allowed to be rolled over to future tax years.

HOME STUDY EXPENSES

A deduction for home study costs will only be allowed if:

- a study is regularly and exclusively used for the purpose of the taxpayer's trade and is specifically equipped for such purpose; and
- in the case of an employee who derives income mainly from commission, his or her duties are mainly performed other than in an office provided by the employer; and
- in the case of other employees, his or her duties are mainly performed in the home study.

CONTRIBUTIONS TO PENSION, PROVIDENT AND RETIREMENT ANNUITY FUNDS

Treatment for 2017 year of retirement funds assessment and thereafter

From 1 March 2016, contributions to retirement funds by employers constitute a taxable benefit in the hands of the employee. Individual taxpayers are allowed to deduct up to 27.5% of the greater of their remuneration (excluding lump-sum benefits) and taxable income (excluding lump-sum benefits) with an overall cap of R350 000 in respect of contributions made by themselves or their employer to retirement funds. An excess may be carried forward to the following year of assessment.

11F replaced section 11(k) from 1 March 2016. In terms of this section, the deduction in respect of retirement funds will be limited to the lesser of

- (a) R350 000 per TLAA 23 of 2018 effective 1 March 2019
- (b) 27,5 % of the higher of the persons:
    - (i) remuneration as defined in paragraph (1) of the Fourth Schedule (other than in respect of any lump-sum benefit); or
    - (ii) taxable income (other than in respect of any lump-sum benefit) as determined before allowing any deduction under this section and per TLAA 23 of 2018 effective 1 March 2019 (sections 6quat(1C), and 18A donations; or
- (c) The taxable income of that person before:
    - (i) allowing any deduction under this section, and
    - (ii) the inclusion of any taxable capital gain per TLAA 23 of 2018 effective 1 March 2019 (sections 6quat(1C), and 18A donations.

Treatment for 2016 and prior years of assessment

Pension Funds

Any person could claim a deduction of his or her current contributions to a pension fund. The deduction was limited to the greater of:

- R1 750, or
- 7,5% of his remuneration derived from retirement funding employment.

Any excess could not be carried forward to the following year of assessment. A maximum deduction of R1 800 per annum was allowable for arrear contributions to a pension fund. Any excess over R1 800 could be carried forward to the following year of assessment.

Retirement Annuity funds

A taxpayer could claim his or her current contributions and, provided they were included in the taxpayer's gross income as a taxable benefit, the employer's contributions to a retirement annuity fund as a deduction, limited to the greatest of:

(i) 15% of income from non-retirement funding employment, excluding specified income (e.g. retirement lump-sums and severance benefits);

(ii) R3 500, less any deduction for current contributions to a pension fund; or

(iii) R1 750.

Any excess could be carried forward to the following year of assessment. The maximum deduction of arrear contributions to a retirement annuity fund was R1 800 per annum. Any excess could be carried forward to the following year of assessment.

Provident funds

Contributions to an approved provident were not allowable as a deduction from an individual's income.

TAX-FREE INVESTMENTS

With effect from 1 March 2015, individuals, regardless of age, are permitted to invest up to R30 000 per annum, with an overall lifetime limit of R500 000, into 'tax-free investments'. With effect from 1 March 2017, the R30 000 limit increased to R33 000 per annum. The eligible products include exposure to money market instruments, equities and property investments. The allowed composition of the tax-free investments as well as the entities that may administer such investments have been designated by notice by the Minister of Finance.

A withdrawal followed by a return to such an investment, as well as transfers between products, do not count towards the annual contribution limit.

Where a taxpayer contributes in excess of the annual or lifetime limit, 40% of the excess contribution is treated as normal tax payable.

SHARE INCENTIVE SCHEMES

Employees and directors are subject to tax on gains derived from rights that they obtain in terms of a share incentive scheme. Rights obtained prior to 26 October 2004 are governed by section 8A. Rights obtained on or after 26 October 2004 are governed by section 8C. Broad-based share incentive schemes are governed by section 8B (see page 49).

The more important features of section 8C are as follows:

- Employees are subject to tax on any share, share option, convertible instrument or member's interest in a close corporation that is acquired from an employer or by arrangement with the employer. The gain or loss will be determined on the vesting date (see below);

- The gain or loss is the difference between the amount paid by the employee to acquire the equity instrument and its market value on the vesting date;
- The definition of 'vesting date' differs depending on whether the instrument is restricted or unrestricted;
- Unrestricted instruments trigger a taxable event when acquired whereas restricted instruments usually trigger such an event once the restrictions causing the restricted equity instrument status are lifted;
- The amount of any gain determined on the vesting of an equity instrument is taxed as income and will be subject to employees' withholding tax.

THE TAXATION OF FRINGE BENEFITS

GENERAL PRINCIPLES

- The taxability of the fringe benefit in the hands of the employee is unaffected, whether the benefit is granted by the employer or by an 'associated institution' in relation to the employer. Where the benefit is granted to any person other than the taxpayer by virtue of the taxpayer's employment, it is deemed to be granted to the taxpayer;
- Tax effects described below apply to benefits granted to an employee or to the holder of an office (e.g. a director), hereinafter collectively referred to as 'employee';
- VAT output on certain fringe benefits is payable by the employer, generally calculated as the fringe benefit value determined using the rules below multiplied by the rate of 15/115.

RESIDENTIAL ACCOMMODATION FOR FOREIGNERS WORKING IN THE REPUBLIC

A taxable fringe benefit will arise if an employer provides residential accommodation to a foreign employee working in South Africa, subject to the following relief available to expatriates.

The foreign employee will be exempt from fringe benefits tax on residential accommodation for a maximum period of two years from the date of his arrival in the Republic. The residential accommodation must be provided for the purpose of performing the duties of employment. This concession is limited to R25 000 per month. Where the value of the benefit exceeds R25 000 per month, the fringe benefit is determined by taking the value of the benefit as determined below in terms of the item 'residential accommodation', less the R25 000 exemption. If an employee is in the Republic for less than 90 days, the cap will not apply.

This special tax-free concession does not apply if a foreign employee was present in the Republic for a period exceeding 90 days during the year of assessment immediately preceding the date of arrival, in order to commence his or her duties. In that case, the use of the accommodation is taxed as per the rules set out in 'residential accommodation'. See page 24.

BURSARIES

Bona fide bursaries or scholarships granted by an employer to an employee or to an employee's relative are generally exempt in the hands of the employee. However, this exemption will not apply:

- if the bursary or scholarship is granted to any employee and the employee does not agree to reimburse the employer if the employee fails to complete the studies for reasons other than death, ill-health or injury; or
- if the bursary or scholarship is granted to an employee or an employee's relative and the employee's remuneration exceeds R600 000 per annum (with effect from 1 March 2017); or
- if the bursary or scholarship is granted to an employee's relative, to so much of the bursary or scholarship as exceeds R20 000 per annum (in the case of basic education – grade R to grade twelve) or qualification to which an NQF level from 1 up to and including 4 as allocated in accordance with the National Qualifications Framework Act, 2008; or
- if the bursary or scholarship is granted to an employee or an employee's relative, to so much of the bursary or scholarship as exceeds R60 000 per annum (in the case of higher education – NQF level from 5 up to and including 10 as allocated in terms of the National Qualifications Framework Act, 2008).

With effect from 1 March 2018, *bona fide* bursaries or scholarships granted by an employer to an employee or an employee's relative, who is a person with a disability as defined in the legislation will be exempt in the hands of the employee. However, this exemption will not apply:

- if the bursary or scholarship is granted to an employee who is a person with a disability, and the employee does not agree to reimburse the employer for reasons other than death, ill-health or injury;
- if the bursary or scholarship is granted to an employee or an employee's relative with a disability and the employee's remuneration exceeds R600 000 per annum; or
- if the bursary or scholarship is granted to an employee's relative with a disability, to so much of the bursary or scholarship as exceeds R30 000 per annum (in the case of basic education – grade R to grade twelve) or qualification to which an NQF from 1 up to and including 4 as allocated in accordance with the National Qualifications Framework Act, 2008; or
- if the bursary or scholarship is granted to an employee or an employee's relative with a disability, to so much of the bursary or scholarship as exceeds R90 000 per annum (in the case of higher education – NQF level from 5 up to and including 10 as allocated in terms of the National Qualifications Framework Act, 2008).

ACQUISITION OF ASSET AT LESS THAN ACTUAL VALUE

A taxable benefit arises whenever an asset (other than money) has been acquired by an employee from:

- his or her employer; or
- an associated institution; or
- any other person by arrangement with his employer.

The taxable benefit is generally the difference between the market value of the asset and the consideration given by the employee.

Transfers of low-cost housing to certain qualifying employees are excluded from this treatment.

The fringe benefit value is reduced by R5 000 if the asset comprises:

- a bravery award; or
- a long service award (unbroken period of service of 15 years or any subsequent unbroken period of 10 years).

TRAVEL ALLOWANCES

Use of the employee's own vehicle

If an employee uses his or her own motor vehicle for business purposes and receives an allowance from the employer to defray expenditure, the allowance is tax-free to the extent that it is expended for business purposes.

Either actual or deemed costs relating to business travel may be claimed. Deemed costs are determined based on the value of the vehicle as per the table below. The value of the vehicle is essentially the purchase price including VAT but excluding finance charges. Private travelling includes travelling between the employee's place of residence and the place of employment.

With effect from 1 March 2018, a simplified method intended to calculate the taxable portion of the travel imbursement has been introduced. The reimbursement exceeding the rate of R3,61 per kilometre must be included as remuneration to calculate the amount of employees' tax to be withheld. Please note the 12 000 kilometre parameter has been removed for the purpose of calculating employees' tax but will be applicable upon assessment.

For PAYE purposes, 80% of the monthly travel allowance is regarded as remuneration and is subject to PAYE. However, if the employer is satisfied that at least 80% of the use of the motor vehicle will be for business purposes, only 20% of the monthly travel allowance may be subject to PAYE. If the employee has the use of a company-owned fuel, garage or maintenance card, the amount used on the card is added to the travel allowance and taxed as highlighted above for PAYE purposes.

The following methods may therefore be applied in determining business travel reduction against a travel allowance received:

- a taxpayer may furnish accurate data and deduct actual costs relating to business travel. A logbook is thus required for this method. Finance charges and wear and tear are, however, limited where a vehicle costs more than R595 000, and in this case, lease payments are limited to the deemed fixed cost applicable to a vehicle with a cost of R595 000 per the table below; or

- a taxpayer may use actual business kilometres which are applied to deemed costs. A logbook is also required for this method.

Deemed costs are determined according to the following table:

Value of the Vehicle (including VAT) (R)	Fixed Cost (R)	Fuel Cost (c)	Maintenance Cost (c)
0 – 85 000	28 352	95.7	34.4
85 001 – 170 000	50 631	106.8	43.1
170 001 – 255 000	72 983	116.0	47.5
255 001 – 340 000	92 683	124.8	51.9
340 001 – 425 000	112 443	133.5	60.9
425 001 – 510 000	133 147	153.2	71.6
510 001 – 595 000	153 850	158.4	88.9
> 595 000	153 850	158.4	88.9

The fixed cost is divided by the total kilometres travelled during the year of assessment. The fixed cost is prorated if the vehicle is not used for business purposes for the full year. The fixed cost per kilometre, fuel costs and maintenance costs are then added to arrive at a total rate per kilometre, which is applied to the actual business kilometres travelled. The fuel cost and maintenance cost components may only be claimed where the employee bears the full cost of fuel or of maintenance, respectively.

RIGHT OF USE OF AN EMPLOYER-PROVIDED MOTOR VEHICLE

A taxable benefit accrues where an employee is granted the right to use an employer-provided motor vehicle either free of charge or for a consideration that is less than the value of the private use of that vehicle.

The monthly taxable benefit for the use of an employer-owned vehicle granted to an employee is 3.5% of the determined value of the vehicle (3.25% where the vehicle is subject to a maintenance plan). The same percentages also apply to the taxable benefit for a second or subsequent vehicle granted by an employer to an employee where the vehicle in question is not used primarily for business purposes. Where the vehicle is held by the employer under an 'operating lease' concluded between non-connected parties in an arms-length transaction, the monthly taxable benefit is the sum of the costs incurred by the employer under the lease and the fuel costs.

The ‘determined value’ of a vehicle owned by the employer is the retail market value thereof, inclusive of VAT but excluding finance charges, as determined by the Minister by regulation, at the time when the employer first obtained the right of use of the vehicle. The ‘determined value’ does not decrease in subsequent years. However, should the taxpayer not be the first employee to have use of the motor vehicle, and the taxpayer first obtains the right of the use of the vehicle 12 months or more after the employer first obtained the use of the vehicle, the determined value comprises the original value as determined above depreciated by 15% per annum for each completed period of 12 months on the reducing balance method.

Where a logbook is maintained and the employee pays the full cost of licensing, insurance or maintenance, on assessment a pro-rata reduction is made based on actual costs. Where a logbook is maintained and the employee pays the full cost of fuel for private travel, on assessment a pro-rata reduction is made, based on the deemed fuel cost per the travel allowance table above.

In the following cases, the private use of a motor vehicle will not give rise to a taxable benefit:

- if the vehicle is available to, and is used by, employees of the employer in general, the private use is of a casual nature or merely incidental to the business use and the vehicle is not normally kept at or near the employee’s home when not in use outside business hours (i.e. a pool car); or
- if the nature of the employee’s duties is such that he or she is regularly required to use the vehicle outside his normal hours of work and he is not permitted to use such vehicle for private purposes other than travelling between his or her place of residence and work; or
- private use that is infrequent or merely incidental to its business use.

For PAYE purposes, 80% of the fringe benefit, as determined above, (without any reduction for costs borne by the employee) is regarded as remuneration and is subject to PAYE. However, if the employer is satisfied that at least 80% of the use of the motor vehicle will be for business purposes, only 20% of the fringe benefit may be subject to PAYE.

INTEREST ON LOANS

The taxable benefit arising from interest-free or low-interest loans granted to employees will be valued at the difference between the official interest rate and the interest (if any) payable by the employee.

The official rate is determined with reference to the repurchase (‘repo’) rate. Where the loan is denominated in Rands, the official rate is 100 basis points above the repo rate. Where the loan is denominated in foreign currency, the official rate is 100 basis points above the equivalent rate to the repo rate for that currency. Where the repo rate changes during a month, the official rate changes from the beginning of the following month.

It is proposed that the current repurchase rate plus 100 basis points (currently 7,75%) be increased to a rate closer to the prime rate of interest. No benefit is placed on a casual loan to an employee up to R3 000 or a study loan to enable the employee to further his or her own studies.

Where an employee has utilised the loan to produce income, the interest taxed, as above, is deductible in terms of the general deduction formula.

Where a subsidised loan has been granted to an employee, the full amount of the subsidy will be taxable in the hands of the employee if the amount of the subsidy, together with the interest payable by the employee, exceeds the interest on the debt calculated at the official rate.

With effect from 1 March 2019, debt owed to the employer as a result of a loan granted by that employer to that employee which does not exceed R450 000 if:

- the debt was assumed for the purposes of acquiring immovable property by the employee;
- the market value of the immovable property acquired does not exceed R450 000 in relation to the year of assessment during which the property was acquired;
- the remuneration proxy of the employee does not exceed R250 000 in relation to the year of assessment during which the loan is granted; and
- the employee is not a connected person in relation to the employer.

SUBSISTENCE ALLOWANCE

Employees who are absent from their usual place of residence for the purpose of their duties for at least one night, are entitled to the following tax-free allowances:

- where the accommodation to which that allowance or advance relates is in South Africa, an amount equal to:
  - R134 per day if the allowance/advance is paid to defray the cost of incidental subsistence expenses; or
  - R435 per day if the allowance/advance is paid to defray the cost of meals and incidental subsistence expenses, i.e. beverages, room service, etc.; and
  - where the accommodation to which the allowance relates is outside of South Africa, a foreign subsistence allowance applies, which varies from country to country.

A comprehensive SARS list of foreign subsistence allowances may be viewed at **www.sars.gov.za**

RIGHT OF USE OF AN ASSET (OTHER THAN RESIDENTIAL ACCOMMODATION OR MOTOR VEHICLES)

A taxable benefit arises whenever an employee is granted the right to use an asset for his private or domestic purposes, either free of charge or for a consideration that is lower than the value of use.

Exclusions:

- Private use that is incidental to the use of the asset for purposes of the employer's business.
- Amenities enjoyed at work or qualifying recreational facilities.
- Equipment or machinery used by employees for private use for short periods of time where the value of the use is negligible.
- Assets consisting of books, literature, recordings or works of art.
- Private use of cellular phones, laptops and related hardware and software mainly used for business purposes.

RESIDENTIAL ACCOMMODATION

If an employer provides residential accommodation that is owned by such employer to an employee, the employee will be taxed on the difference between the rental value for the year, as determined by the following formula, and the amount paid by him or her for the accommodation, household goods, power and food supplied by the employer.

Where the employer or associated institution supplies accommodation in which the employee does not have an interest and which accommodation is leased from an unconnected person, the value of the supply of such accommodation is deemed to be lower of the value determined by the following formula and the expenditure incurred on the accommodation by the employer or associated institution:

$$(A-B) \times \frac{C}{100} \times \frac{D}{12}$$

A = the remuneration of the employee in the preceding year of assessment, including directors' fees, but excluding taxable benefits from residential accommodation. If the employee was employed by the current employer for only part of the preceding year, his salary is grossed up to that of a full year, but if he was not employed by the current employer in the previous year, 'A' will be his first month's salary divided by the number of days in that month and multiplied by 365.

B = R79 000, except for the following situations where it is nil:

(i) where the employer is a private company controlled by the employee or his spouse, even if the employee is only one of the persons controlling the company; or

(ii) where the employee or his spouse, or minor child, has an option or right of pre-emption granted by the employer or another person by arrangement with the employer whereby they may become the owner of the accommodation.

C = 17, or 18 if the accommodation consists of at least four rooms and is unfurnished and power or fuel is supplied by the employer; or furnished, but without the supply of power or fuel, and 19 if furnished and power or fuel is supplied.

D = the number of months during the current year in which the employee was entitled to occupation.

If the employee has an interest in the property and the property has been let to the employer or associated institution, the rental is deemed not to have been received by the employee or any connected person in relation to the employee.

HOLIDAY ACCOMMODATION

If the accommodation is hired by the employer, the employee will be taxed on all costs borne by the employer (including meals, refreshments and services). In any other case, the employee will be taxed on an amount equal to the prevailing rate per day at which the accommodation could normally be let to a person who is not an employee.

PAYMENT OF EMPLOYEE'S DEBTS

A taxable benefit arises where an employer has paid an amount owing by the employee to a third party without requiring reimbursement from the employee, or has released an employee from an obligation to pay an amount owing by the employee to the employer. The amount of the benefit is the amount of the debt settled. Professional subscriptions paid by the employer are, however, exempt if membership is a condition of employment, as are professional indemnity insurance premiums paid by the employer and study loans transferred under certain circumstances.

MEALS AND REFRESHMENTS

An employee is taxed on the cost to the employer of any meal or refreshment provided by the employer, subject to the following exclusions, which apply to meals or refreshments:

- supplied in a canteen or dining room operated for employees;
- supplied during business hours, extended working hours or a special occasion; or
- enjoyed by an employee providing entertainment on behalf of the employer.

FREE OR CHEAP SERVICES

Services provided to an employee by his employer (whether the services are rendered by the employer or some other person) at no cost or for an amount lower than the cost of such services to the employer, give rise to a taxable fringe benefit in the hands of the employee. The employee is taxed on the difference between the cost to the employer of the service and the amount paid by the employee.

The following exclusions apply:

- certain circumstances where the employer is engaged in the business of conveying passengers;
- transport services conveying employees between their home and place of work (a recent Ruling issued by SARS) directs that a nil value benefit is provided where employees are dropped off and picked up at specific drop off zones and designated collection points;

- telephone, cell phone or other communication services if used mainly for business purposes;
- services rendered by the employer at the place of work to assist with the better performance of employees' duties or recreational facilities provided at that place; and
- travel facilities granted to the spouse or minor children of an employee who is stationed more than 250km away from his usual place of residence for more than 6 months in a tax year.

MEDICAL AID CONTRIBUTIONS

Direct or indirect contributions by an employer to a medical aid or other benefit fund are fully taxable subject to the exceptions listed below.

No taxable fringe benefit arises if:

- the employee retired due to old age, ill health or other infirmity; or
- the benefit is accrued to a dependant following the death of an employee or a retired employee.

CONTRIBUTIONS TO RETIREMENT FUNDS

With effect from 1 March 2016, the amount of contributions by an employer for the benefit of any employee to any pension fund, provident fund or retirement annuity fund is a taxable fringe benefit.

INSURANCE POLICY PREMIUMS

With effect from 1 March 2012, the amount of premiums paid by an employer to an insurer under an insurance policy for the direct or indirect benefit of an employee, or his nominee, is a taxable fringe benefit in the hands of the employee. Insurance policies that relate to an event arising solely out of, and in the course of, employment of the employee (e.g. compensation for occupational injury), is not subject to fringe benefit tax.

Income continuation policy premiums taxed as above in the hands of the employee are, however, no longer deductible by the employee in respect of premiums paid on or after 1 March 2015.

OTHER EXEMPTIONS

The following benefits are exempt from tax:

- the value of a uniform, or an allowance paid for purposes of funding a uniform, which an employee is required to wear while he or she is on duty, provided that the uniform is clearly distinguishable from ordinary clothing; and
- the cost of the transfer of an employee to another place of employment arising out of the appointment or resignation of an employee. Included in this exemption are transportation costs, costs in respect of the sale of an employee's previous residence, settling-in costs and costs of renting temporary accommodation.

EMPLOYER'S OBLIGATIONS

The determination of the cash equivalent of any taxable benefit is to be made by the employer, although the Commissioner may adjust the cash equivalent if he is of the opinion that a determination is incorrect. An employer is obliged to deduct PAYE on the value of the taxable fringe benefits.

PROVISIONAL TAX

PROVISIONAL TAX – INDIVIDUALS

In the case of individuals, provisional payments are advance tax payments most often made in circumstances where the individual earns income that is not 'remuneration'. 'Remuneration' is a defined term and essentially covers employment and other income, such as annuities, which is subject to PAYE.

From the 2016 year of assessment onwards, individuals, regardless of age, whose taxable income is not derived from the carrying on of a business and does not exceed the tax threshold or whose taxable income from interest, dividends, foreign dividends and rental from the letting of fixed property does not exceed R30 000 are exempt from the payment of provisional tax.

From 1 March 2017, individuals who derive remuneration from employers who are not registered for employees' tax will have to register for provisional tax unless:

- their taxable income is not derived from the carrying on of a business and it does not exceed the tax threshold; or
- their taxable income is not derived from the carrying on of a business and if their taxable income from interest, dividends, foreign dividends, rental from the letting of fixed property and remuneration from an employer who is not registered for employees' tax does not exceed R30 000 for the tax year.

First provisional tax return

Due within the first 6 months of the tax year – 31 August.
The first payment represents 50% of the tax due on the 'basic amount' less rebates, PAYE and foreign credits. The 'basic amount' is the taxable income per the most recent assessment, reduced by lump sums and capital gains.

The 'basic amount' is escalated at 8% per annum when an assessment is more than 18 months, unless circumstances justify the lower estimate. SARS may call upon any individual to justify his or her estimate, and if dissatisfied with the individual's estimate, SARS may increase the amount as is considered reasonable.

Second provisional tax return

Due before the end of the tax year – 28/29 February.

Where taxable income is less than or equal to R1 million, the second provisional payment must be based upon an estimate of income that is not less than the lower of the 'basic amount' and 90% of actual taxable income, in order to avoid a 20% penalty.

The 20% penalty is calculated as 20% of the difference between the lesser of normal tax less rebates on the basic amount and normal tax less rebates on 90% of the actual taxable income, and the sum of the employees' tax and provisional tax paid by the end of the year of assessment.

Where taxable income exceeds R1 million, an 80% level of accuracy is required between actual and estimated income for the current year, in order to avoid a 20% penalty. There is no fall back on the historical 'basic amount' as above.

The 20% penalty is calculated as 20% of the difference between normal tax less rebates on 80% of the actual taxable income, and the sum of the employees' tax and provisional tax paid by the end of the year of assessment.

Third provisional tax return

Should there be any remaining tax liability following the first and second provisional payments, then interest is charged, commencing 7 months after the tax year end for individuals.

Therefore, in order to avoid interest, individuals may make a 3rd voluntary top-up payment by 30 September of each year.

Interest is not, however, charged on late payments of provisional taxes in respect of the third provisional payment where an individual's taxable income does not exceed R50 000.

General

Interest and penalties paid are not tax deductible, whereas interest earned on overpayments is taxable.

EMPLOYEES' TAX (PAYE)

Employers are required to deduct employees' tax according to tax deduction tables supplied by SARS on all remuneration paid to employees, unless otherwise instructed in terms of a tax deduction directive issued by SARS. For years of assessment commencing prior to 1 March 2017, directors of private companies, as well as members of close corporations, were subject to PAYE on the greater of their actual monthly remuneration or their deemed remuneration (calculated in terms of a formula), unless they received at least 75% of their remuneration in the previous tax year in the form of fixed monthly payments of remuneration. In that case, such directors were taxed only on their actual remuneration.

With effect from 1 March 2017, paragraph 11C of the Fourth Schedule has been repealed. The provisions of section 7B would apply to the variable remuneration received by the director in that it is deemed to accrue to the director on the date on which it is paid to the director. This is also the date on which the amount of the remuneration becomes claimable as expenditure by the private company.

TAXATION OF LUMP-SUM PAYMENTS

A lump-sum benefit that is received from an employer and constitutes a 'severance benefit', is taxed on an aggregated basis together with lump-sum benefits received from provident, pension and retirement annuity funds. A 'severance benefit' is an amount received or accrued from an employer or an associated institution in respect of the termination or variation of office or employment if:

- the employee or holder of office is at least 55 years old;
- the termination or variation is due to permanent incapacity of holding the office or employment on the part of the employee or holder of office; or
- the termination or variation is a result of retrenchment (except where the employee or holder of office at any time held more than 5% of the shares or members' interests in the employer).

Severance benefits are taxed in accordance with a table that contains the same rate bands as the 'retirement, death or retrenchment' table in respect of lump sums from pension, provident and retirement annuity funds set out below.

ON RETIREMENT, DEATH OR RETRENCHMENT

Pension Funds, Retirement Annuity Funds and Provident Funds

A maximum of one third of the taxpayer's entitlement from a pension or retirement annuity fund may be commuted to a lump sum. With effect from 1 October 2007, the taxable portion of a lump sum from a pension, provident or retirement annuity fund as a result of death, retirement or retrenchment is calculated according to a table, after deducting:

- previously disallowed contributions; and
- transfers to approved funds.

The table applies cumulatively and is currently as follows:

Lump Sum	Tax Liability
0 – R500 000	0% of each R1
R500 001 – R700 000	18% of the amount exceeding R500 000

R700 001 – R1 050 000	R36 000 + 27% of the amount exceeding R700 000
R1 050 001 and above	R130 500 + 36% of the amount exceeding R1 050 000

ON WITHDRAWAL FROM THE FUND

The taxable portion of a lump sum from a pension, provident or retirement annuity fund as a result of withdrawal or resignation from the fund or certain non-approved transfers to other funds of the member, or amounts assigned to a former spouse in terms of a divorce order granted on or after 13 September 2007, is calculated according to the following table, after deducting:

- previously disallowed contributions; and
- transfers to approved funds.

The taxable portion of a lump sum upon withdrawal from a fund is taxed separately from other taxable income. The rates are currently as follows:

Lump Sum	Tax Liability
R0 – R25 000	0% of each R1
R25 001 – R660 000	18% of the amount exceeding R25 000
R660 001 – R990 000	R114 300 + 27% of the amount exceeding R660 000
R990 001 and above	R203 400 + 36% of the amount exceeding R990 000

The tables must be viewed cumulatively, taking into account previous retirement, retrenchment, withdrawal or severance benefits.

TRUSTS

Trusts are separate fiscal entities and pay tax at a flat rate of 45% on income retained and not awarded to beneficiaries. Trusts do not qualify for the annual interest exemption nor the primary rebate. Trusts pay capital gains tax at an effective rate of 36% from the 2018 year of assessment (32.8% – 2017).

Various anti-avoidance provisions exist to combat the use of trusts for income splitting and tax avoidance structures. One such provision provides that any income earned by the trust as a result of a donation, settlement or disposition made by a person ('the donor'), which is not distributed, is deemed to be the income of that donor and taxed in his or her hands. Another provides that, if income is distributed to beneficiaries who are minor children of the donor, the income is taxed in the hands of the donor. Also, if income is distributed to a non-resident, it is taxed in the hands of the donor. Similar provisions exist in respect of capital gains accruing to a trust. The legislation allows for a 'special trust' to be taxed at the normal income tax rates applicable to individuals and not the 45% flat rate.

A 'special trust' is a trust that is created:

- solely for the benefit of a person with a physical disability, where that person is incapacitated from earning sufficient income for his or her maintenance or from managing his or her own financial affairs; or
- in terms of the will of a deceased person, where all the beneficiaries are surviving relatives of the deceased, the youngest of whom must be under the age of 18 as at the end of the relevant tax year.

With effect from 1 March 2017, if a natural person, or, at the instance of a natural person, a company in relation to which the natural person is a connected person, has made a loan or provided an advance or credit to a trust and either no interest, or interest at a rate less than the 'official rate of interest', is charged, the difference between interest at the official rate and the interest actually charged on the loan, advance or credit will be deemed to be a donation by the natural person for donations tax purposes on an annual basis. Such a deemed donation may also arise with effect from 19 July 2017 where a natural person or a company (at the instance of a natural person) provides a loan, advance or credit to a company in which a trust (either alone or together with a beneficiary of that trust, a spouse of such a beneficiary or a person related to such a beneficiary or spouse within the second degree of blood relation) holds at least 20% of the equity shares or voting rights. The trust must, however, be a connected person in relation to the natural person or company (or any of their connected persons) providing the loan, advance or credit in order to trigger the deemed donation.

There are several exclusions that apply.

These exclusions are:

- Trusts or companies that used the loan, advance or credit for purposes of funding the acquisition of a residence that was used as a primary residence by the lender or the lender's spouse throughout the period during the year of assessment during which that trust or company held that residence and if the amount owed relates to the part of the loan that funded the acquisition of the primary residence;
- Loans, advances or credit provided to offshore trusts or companies if the loan, advance or credit is subject to transfer pricing provisions;
- Loans, advances or credit provided to share incentive trusts if such loans are subject to dividends tax provisions;
- Loans, advances or credit provided by reason of or in return for a vested interest in a non-discretionary trust if various pre-conditions exist;
- Loans, advances or credit provided to approved public benefit organisations or small business funding entities;
- Loans, advances or credit provided to 'special trusts';
- Loans, advances or credit provided to a trust or company in terms of an arrangement that would have qualified as a sharia-compliant financing arrangement had the trust or company been a bank.
- Loans, advances or credit provided to employee incentive trusts if certain pre-conditions are met.

COMPANIES AND CLOSE CORPORATIONS

NORMAL TAXATION

Companies and close corporations, other than for certain gold mines and the special cases described below, are taxed at a rate of 28%. From 1 April 2012, STC was replaced with a dividends withholding tax (see page 34). Branches of foreign companies earning South African sourced income are taxed at 28%.

Small business corporations (see definition below) are taxed at the following rates for financial years ending 1 April 2019 – 31 March 2020:

Taxable Income	Tax Liability
0 – R79 000	0% of taxable income
R79 001 – R365 000	7% of taxable income above R79 000
R365 001 – R550 000	R20 020 + 21% of taxable income above R365 000
R550 001 and above	R58 870 + 28% of taxable income above R550 000

A **small business corporation** is a close corporation or private company (other than an employment company) of which:

- the entire shareholding or membership was held by natural persons throughout the year of assessment;
- the gross income did not exceed R20 million during the year of assessment;
- none of the shareholders or members at any time during the year of assessment held shares in any other company (other than listed companies, any portfolio in a collective investment scheme or qualifying body corporates, shareblock companies, certain associations of persons, venture capital companies, certain dormant entities and certain entities in liquidation or deregistration);
- not more than 20% of the gross income and capital gains consist of investment income and personal service income; and
- such company is not a personal service provider (PSP).

Micro businesses (see definition below) with a turnover of up to R1 million may elect to be taxed on a presumptive basis in respect of their taxable turnover. The rates of tax are as follows for financial years ending 1 April 2019 – 31 March 2020:

Taxable Income	Tax Liability
0 – R335 000	0% of taxable turnover
R335 001 – R500 000	1% of taxable turnover above R335 000
R500 001 – R750 000	R1 650 + 2% of taxable turnover above R500 000
R750 001 and above	R6 650 + 3% of taxable turnover above R750 000

A **micro business** is a company, close corporation or individual (including deceased and insolvent estates where the person was a registered micro business at the time of the death or insolvency) where qualifying turnover for the year of assessment does not exceed R1 million. This amount is reduced proportionately for periods of less than a full year. A person will not qualify as a micro business in certain circumstances, such as the following:

- it holds certain shares such as shares in unlisted companies;
- more than 20% of total receipts consist of, in the case of natural persons, income from professional services, and in the case of companies or close corporations, investment income and income from professional services;
- the person is a personal service provider or a labour broker without an exemption certificate for any portion of the year;
- the total receipts from capital disposals exceed R1.5 million over a 3-year period;
- in the case of a company, its tax year ends other than on the last day of February or any of its shareholders are persons other than individuals (or the deceased or insolvent estates of individuals); or
- in the case of partnerships any partner is not a natural person, or a partner is a partner in more than one partnership, or the turnover of the partnership exceeds R1 million.

Personal service providers (PSPs) that are incorporated are taxed at a rate of 28%. PSPs that are trusts are taxed at 45%. A personal service provider is any company or trust where any service rendered on behalf of the entity to a client of the entity is rendered personally by any person who is a connected person in relation to the entity and:

- such person would be regarded as an employee of the client if such service was rendered directly by such person to the client; or
- where those duties must be performed mainly at the premises of the client, such person is subject to the control or supervision of such client as to the manner in which the duties are performed; or
- where more than 80% of the income of such an entity (during the year of assessment) from services rendered consists of, or is likely to consist of, amounts received directly or indirectly from any one client, or any associated institution, as defined in the Seventh Schedule in relation to such client.

Any entity which throughout the year of assessment employs three or more full-time employees, who are engaged on a full-time basis in the business of such entity of rendering any service to a client, other than an employee who is a shareholder, member, settlor or beneficiary of the entity, or is a connected person in relation to such a shareholder, member, settlor or beneficiary, is excluded from the definition of a personal service provider.

Any amount that is paid to a personal service provider is subject to employees' tax at the rate of 28% (in the case of a company) or 45% (in the case of a trust). If the personal service provider is in possession of a directive from SARS for a lower percentage, then employees' tax must be deducted at the percentage per the directive. Section 23(k) prohibits deductions in respect of many types of expenses that may be incurred by a personal service provider.

DIVIDENDS TAX WITHHOLDING REGIME

The essential features of the DT are as follows:

- Although the tax is borne by the shareholder, it is the responsibility of the payer or appropriate intermediary to withhold the tax;
- It is levied at the rate of 20% on dividends paid on or after 22 February 2017 (15% prior to this date), subject to the relief available in terms of double taxation treaties;
- Dividends payable to, *inter alia*, the following shareholders as beneficial owners of the dividend are exempt from DT:
  - resident companies;
  - national, provincial and local government institutions;
  - approved Public Benefit Organisations;
  - certain environmental rehabilitation trusts;
  - non-profit entities approved in terms of section 10(1)(cA);
  - pension, provident, retirement annuity and benefit funds;
  - pension and provident preservation funds;
  - parastatals such as CSIR, SAIDC, SANRAL and water service providers;
  - a shareholder in a micro business paying the dividend to the extent that the micro business's total annual dividends do not exceed R200 000;
  - a non-resident where the dividend is paid by a non-resident company listed on the JSE;
  - any person to the extent that the dividend is not exempt from income tax;
  - any person to the extent that the dividend was subject to secondary tax on companies;
  - any fidelity or indemnity fund;
  - a small business funding entity.

A payer must not withhold tax if:

- the beneficial owner timeously provides a written declaration that the dividend is exempt from dividends tax, and a written undertaking to notify the payer if the beneficial ownership of the dividends should change; or
- the dividend is paid to a company forming part of the same SA resident group of companies; or
- the payment is to a regulated intermediary.

A regulated intermediary must not withhold tax if:

- the beneficial owner has timeously submitted a written declaration that the dividend is exempt from dividends tax, and an undertaking to notify the payer if the beneficial ownership of the dividends should change; or

- the payment is made to another regulated intermediary.

Withholding taxes could be reduced up to 31 March 2015 by STC credits available in the declaring company, subject to certain administrative requirements. Furthermore, rebates are granted in respect of foreign withholding taxes paid on certain dividends.

There are various anti-avoidance rules. These include measures to levy DT on the difference between interest charged at the 'official' rate and the interest actually charged in respect of loans to SA resident non-company shareholders or connected persons in relation to such shareholders, and measures to levy DT where dividends are diverted to exempt persons after announcement or declaration of the dividend.

PROVISIONAL TAX

Companies and close corporations are obliged to register for provisional tax purposes.

Provisional payments are advance tax payments in respect of normal tax payable for the year. Companies and close corporations are required to make their first provisional tax payment within 6 months of the beginning of their tax year and the second provisional payment before the end of the tax year.

The third provisional payment is voluntary and should be submitted 7 months after the end of the tax year if the year-end is February and 6 months after the end of the tax year if the year-end is on any other date, in order to avoid interest.

No interest is levied on companies with a taxable income of less than R20 000 in respect of late payment of the third provisional payment.

The same rules apply as for individuals relating to the estimation of provisional tax payments (see 'Provisional tax –individuals' on pages 27 –28).

SPECIAL CORPORATE RULES

The South African tax system does not allow for group assessment, and each legal entity is a separate taxpayer in its own right. This approach is softened somewhat by special corporate rules, which allow for some free flow without triggering the normal tax consequences.

These rules specifically cover:

- Asset-for-share transactions;
- Substitutive share-for-share transactions;
- Amalgamation transactions;
- Intra-group transactions;
- Unbundling transactions;
- Liquidations/winding-up and deregistrations.

CAPITAL ALLOWANCES

PLANT AND MACHINERY

Second-hand plant or machinery used directly in a process of manufacturing or a similar process, qualifies for a depreciation allowance over 5 years (20% per annum), subject to the accelerated depreciation allowance referred to below.

New or unused manufacturing assets used as above may be written off over a period of 4 years, 40% in year 1 and 20% in the remaining 3 years. This treatment also applies to new and unused plant or machinery used for purposes of research and development, if such plant or machinery was acquired in terms of an agreement concluded on or after 1 January 2012. Manufacturing assets acquired by small business corporations, as defined, may be deducted in full (100%) in the year the asset was acquired. Other depreciable assets acquired by small business corporations are eligible for a depreciation allowance at a 50:30:20 rate over a 3-year period. The normal S11(e) write-off periods (see below) may, however, be used at the option of the small business corporation.

Farmers are entitled to an allowance, over 3 years, of 50%, 30% and 20% respectively, calculated on the cost of machinery, implements and articles used for farming, excluding passenger motor vehicles and office furniture and equipment. Farmers are also entitled to a deduction of various capital expenses against farming income. Besides these general capital allowances, special rates apply to certain classes of assets, which do not necessarily reflect the economic life of these assets. These assets include:

- Pipelines and transmission lines;
- Rolling stock;
- Hotelkeeper's assets;
- Aircraft and ships;
- Airports and port assets;
- Approved strategic industrial projects;
- Assets used in the production of renewable energy.

In order to qualify for these allowances, the assets in question must be owned by the taxpayer. The allowances are subject to recoupment and the above allowances are not reduced where an asset was used for only part of the year.

WEAR AND TEAR ALLOWANCE

Assets owned by the taxpayer and used for trade (excluding buildings and assets qualifying for the above-mentioned allowances) qualify for a wear and tear allowance on the straight-line basis over the useful life of the asset.

Interpretation note 47, reissued on 2 November 2012, deals comprehensively with wear and tear allowances.

The write-off period for certain key assets is listed below:

Assets	Years
Personal computers	
• hardware	3
• software	2
• mainframe computers/servers	5
Passenger cars	5
Delivery vehicles	4
Motor cycles	4
Furniture and fittings	6
Cash registers	5
Telephone equipment	5
Workshop equipment	5
Air conditioners (window type)	6
Demountable partitions	6
Dental and doctors' equipment	5
Fax machines	3
Fitted carpets	6
Shop fittings	6
Photocopying equipment	5
Security systems (removable)	5
Cellular telephones	2
Containers	10
Fork-lift trucks	4
Front-end loaders	4
Neon signs and advertising boards	10
Television sets, video machines and decoders	6
Text books	3
Trucks (heavy duty)	3
Trucks (other)	4

A full transcript of the interpretation note, which includes a detailed list of rates acceptable to SARS, may be viewed at **www.sars.gov.za**

In order to qualify for these write-off periods, a taxpayer must maintain adequate records relating to the fixed assets. The allowance is reduced proportionately if the asset is used for only part of the tax year. A shorter write-off period may be applied for.

Small items may be written off in full during the year of their acquisition. The Commissioner regards a small item as an item costing less than R7 000, which normally functions in its own right and is not an individual item that is part of a set.

A taxpayer may change from a reducing balance method to a straight-line method in respect of existing assets. The remaining income tax value of assets will then be written off over the remaining lives of the assets, being the write-off period acceptable to SARS less the period elapsed to date.

Lessors are required to reduce the value of the asset for write-off purposes by any residual value.

BUILDINGS

An annual allowance of 5% is allowed in respect of the cost of certain industrial buildings and improvements thereto, if erection commenced on or after 1 January 1989. Where erection commenced before 1 January 1989, the annual allowance is limited to 2%.

For a limited period, the tax allowance of 10% was granted where the erection of any building commenced during the period 1 July 1996 to 30 September 1999 and the building was brought into use on or before 31 March 2000. The cost of such building would be written off at 10% per annum on the straight-line basis.

The annual allowance is also claimable in respect of purchased industrial buildings, provided that the seller was entitled to the allowance. The rate of the allowance will be the same as the rate to which the seller was entitled, with the exception of the accelerated 10% rate.

The 2% or 5% allowance is also claimable on buildings used wholly or mainly for purposes of research and development during the tax year, the rate being dependent on the date of commencement of the erection of the building.

The allowance is not apportioned where the building or improvement was not in use for the full tax year.

COMMERCIAL BUILDING ALLOWANCE

An allowance is available in respect of new commercial buildings or improvements to existing buildings. The allowance is equal to 5% of the cost to the taxpayer of any new and unused building owned by the taxpayer, if that building or improvement is wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer's trade.

The owner of the building qualifies for this allowance and not the occupant. If, for example, the occupant incurs the expenditure in respect of any improvements, the allowance is not available to the owner of such building (improvements by occupants to buildings may also result in other tax effects, for example, CGT or normal income tax in the hands of the owner of the building). This potential problem can simply be remedied if the occupant pays additional rental income (equal to the improvements) and the owner incurs the expenditure in respect of the improvements. This allowance is not available for buildings used for the provision of residential accommodation.

The allowance is only available in respect of any building or improvement that was contracted for on or after 1 April 2007 if the construction, erection or installation commenced on or after that date. To the extent that a taxpayer acquires part of a building without erecting or constructing that part, only a portion of the acquisition price may be claimed for allowance purposes. The allowance is not apportioned where the building or improvement is not in use for the full tax year.

If a taxpayer, other than one carrying on any banking, financial services or insurance business, incurs expenditure to improve land or buildings in terms of a Public Private Partnership but Government holds the right of use of occupation, the expenditure is deducted over the period for which the taxpayer will derive income in terms of the Public Private Partnership, or 25 years, whichever is the lesser.

RESIDENTIAL BUILDING ALLOWANCE

An allowance may be claimed equal to 5% of the cost of a new and unused residential unit owned by the taxpayer and used solely for the purposes of the taxpayer's trade, or of new and unused improvements to residential units, provided that erection commenced on or after 21 October 2008 or the unit or improvement was acquired on or after that date and the taxpayer owns at least 5 residential units in South Africa. Where the unit qualifies as a 'low-cost residential unit' the rate of the allowance is accelerated to 10%.

To the extent that a taxpayer acquires a residential unit representing part of a building without erecting or constructing that part or improvement, only a portion of the acquisition price may be claimed for allowance purposes.

URBAN DEVELOPMENT ZONE ALLOWANCE ('UDZ')

The UDZ allowance is an incentive, in the form of depreciation allowances, meant to promote the renewal of inner cities. The incentive is available in respect of buildings or parts of buildings brought into use on or before 31 March 2020.

SALE OF LOW-COST HOUSING ON LOAN ACCOUNT

Where an employer sells a low-cost residential unit (as defined) to an employee or an employee of an associated institution, the employer may claim a deduction equal to 10% of any amount owing by the employee to the employer as at the end of the employer's tax year, under certain circumstances.

Certain transfers of low-cost immovable property to low-earning employees are additionally not taxed as a fringe benefit in the hands of the employees.

FOREIGN EXCHANGE PROFITS AND LOSSES

Foreign exchange profits and losses realised by companies, trading trusts and individuals trading in exchange items are largely regulated by section 24I, which provides for the deduction/ inclusion of certain specified exchange losses/profits, whether realised or unrealised and whether or not of a capital nature. Section 25D deals specifically with the rates at which foreign receipts, accruals and expenditure are converted to Rands.

TRADING STOCK

Trading stock on hand at year end is required to be added back to income at the lower of cost or net realisable value. It should, however, be noted that with effect from the commencement of tax years commencing on or after 1 January 2011, no taxpayer may write down the value of trading stock that consists of 'financial instruments' (as defined) to below cost. The value of trading stock on hand at the end of the year becomes the opening trading stock for the following year and is deductible in that year. Trading stock held by farmers is dealt with in the First Schedule of the Income Tax Act. The key differences from the general rules are, in essence, that produce is only recognised as stock when picked, harvested or reaped, and livestock is valued at nominal standard values. The LIFO method of valuation is not permitted.

Consumable stores and spare parts acquired to be consumed in the course of trade are also included in trading stock. The cost price of contractors' work-in-progress relating to fixed property owned by another person must also be included in trading stock until the contract is complete. The cost price will be reduced by progress payments and retention monies.

A disposal of trading stock for no consideration or an inadequate consideration, or a disposal other than in the ordinary course of trade (for example, if trading stock ceases to be held for resale or if trading stock is distributed as a dividend) will result in an inclusion in income of an amount equal to either the market value or cost of the stock (depending on the specific circumstances), less the consideration, if any, received.

VENTURE CAPITAL COMPANIES

In terms of section 12J, any taxpayer that invests in a venture capital company (VCC), approved and registered in terms of section 12J with SARS, can claim income tax deductions in respect of the expenditure actually incurred to acquire shares issued to the taxpayer by such VCCs, subject to certain conditions. Section 12J VCCs are therefore intended to be a pooling vehicle for investment into SMEs or junior mining companies. The VCC's investee companies are generally referred to in this context as qualifying investee companies.

Significant income tax features of the VCC regime are as follows:

- tax deductions are permanent (i.e. no recoupment and only capital gains tax at disposal) if investments in the VCC are held for a 5-year minimum period; and;
- the total asset limit for qualifying investee companies is R50 million, and that of junior mining companies is R500 million.
- The following provisions aim to combat abusive schemes within the VCC regime:
  - A VCC shareholder is not allowed to hold more than 20% of the shares in any class of shares of the VCC. This test is applied 36 months after the VCC first issued shares of any class.

- A VCC shareholder (whether alone or together with any connected person) may not directly or indirectly hold more than 50% of the participation or voting rights in an investee company.
- A qualifying investee company may not acquire a venture, business or undertaking directly or indirectly from a VCC shareholder or a connected person of such a shareholder.
- Not more than 50% of a qualifying investee company's trade receipts and accruals may be derived directly or indirectly from a VCC shareholder or a connected person of such a shareholder. This test is applied 36 months after that company first issued shares to a VCC.

The aforementioned rules are subject to specific effective dates.

CAPITAL GAINS TAX (CGT)

DETERMINATION OF A CAPITAL GAIN OR LOSS

A capital gain or loss is the difference between the base cost of an asset and the proceeds received or deemed to have been received for that asset upon the disposal or the deemed disposal of the asset.

The calculation of CGT

Proceeds on disposal	……...
Less: Base Cost	……...
Capital Gain	______
Less: Annual exclusion (if applicable)	R40 000[1]
Less: Previous assessed capital loss	______
Net Capital Gain (Assessed Capital loss carried forward and may not be offset against revenue gains)	______
Net Capital Gain Multiplied by: Inclusion rate (40.0%/80.0%)	______
Amount of the capital gain to be included in income	______

***Note 1**: An annual exclusion of R40 000 against capital gains or capital losses applies to individuals and special trusts only. In the year of the death of an individual, the annual exclusion becomes R300 000.*

FOUR CORNERSTONES FOR DETERMINING A CAPITAL GAIN OR LOSS

A capital gain or loss is made up of the following key elements:

- an asset;
- a disposal or deemed disposal;
- proceeds or deemed proceeds; and
- a base cost.

It is, however, fundamental that before a capital gains tax calculation is performed relating to the disposal of an asset, it should be ascertained that the asset was indeed held on capital account rather than on revenue account. In other words, that the asset was held for investment purposes rather than for speculation.

ASSET

An 'asset' is property of whatever nature, whether movable or immovable, corporeal or incorporeal, including:

- coins mainly made from gold or platinum; and
- any right or interest of whatever nature to or in such property, but excluding currency.

DISPOSAL

A 'disposal' is any event, act, forbearance or operation of law and includes:

- any event that constitutes alienation or the transfer of ownership of an asset, e.g. sale, donation, cession, expropriation, grant or exchange;
- any event that results in expiry or abandonment of an asset, e.g. forfeiture, termination, redemption, cancellation, surrender, waiver, discharge, release, renunciation or relinquishment;
- scrapping, loss or destruction of an asset;
- vesting in a beneficiary of an interest in a trust asset;
- distribution of an asset by a company to a shareholder;
- granting, renewal, extension or exercise of an option; and
- a decrease in value of a person's interests in a company, trust or partnership through value shifting.

The following are the more important events that are not regarded as 'disposals':

- the transfer of an asset as security for debt;
- the issuing or cancellation of shares by a company (in the hands of the company);
- the granting of an option by a company to take up shares or debentures (in the hands of the company);
- the issuing of units by an equity unit trust or the granting of an option to take up units;
- the issuing of a bond, debenture, note or borrowing of money from a person;
- the correction at the deeds office of incorrect property registration; and
- the lending of marketable securities in terms of a lending arrangement.

DETERMINATION OF BASE COST

Assets acquired before 1 October 2001:

- The base cost will be the sum of the 'valuation date value' and qualifying costs incurred after the valuation date. The valuation date value, depending on the information and records available, can be determined by using any one of the following methods:
  - market value of the asset on 1 October 2001. It should be noted that proof of the market valuation of certain high value assets had to be furnished to the Commissioner within a prescribed period in order to be eligible to apply this method upon the disposal of the high value asset;
  - the time-apportionment base cost method; or
  - 20% of the proceeds from disposal of the asset.

In the case of assets acquired before 1 October 2001, special rules apply to prevent taxpayers from claiming phantom losses or from being taxed on gains that were made before that date.

Assets acquired on or after 1 October 2001:

The base cost is the price paid for the asset, plus certain other costs incurred that are directly related to buying, selling or improving it, e.g. transfer duties, attorney's fees, improvement costs, commissions, stamp duty, etc.

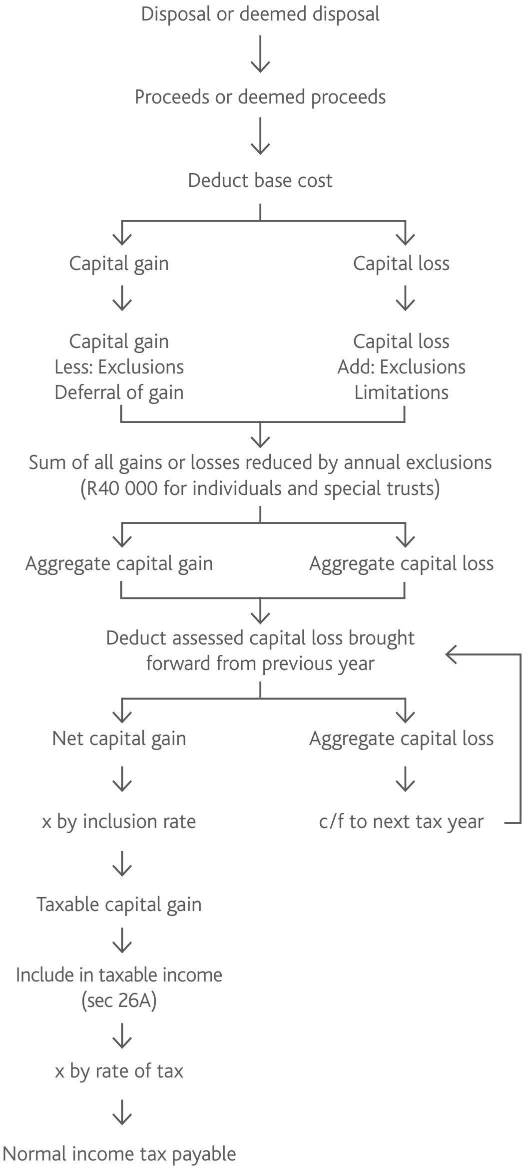
The following are examples of costs that are excluded from the base cost:

- costs of maintaining, repairing or protecting assets;
- borrowing costs;
- raising fees;
- rates and taxes; and
- insurance.

One third of borrowing costs relating to listed shares may, however, be claimed.

In the case of an asset that was subject to a deemed disposal (e.g. asset acquired through donation or inheritance), the base cost in the hands of the recipient will be equal to the deemed proceeds that were used to calculate the gain in the hands of the person who disposed of the asset plus subsequent qualifying costs.

CGT BASIC FRAMEWORK



INCLUSION RATES

Type of Taxpayer	Inclusion rate (%)	Statutory tax rate (%)	Effective tax rate (%)
Individuals	40	0 - 45	0 - 18
Standard companies	80	28	22.4
Trusts:			
• Unit	N/A	N/A	N/A
• Special	40	0 - 45	0 - 18
• Other	80	45	36
Retirement Funds	N/A	N/A	N/A
Life assurers:			
• Ind policyholder fund	40	30	12
• Co policyholder fund	80	28	22.4
• Corporate fund	80	28	22.4
• Untaxed policyholder fund	0	0	0
• Risk policy fund	80	28	22.4

DEATH

The annual exclusion available to individuals during the year of death is R300 000.

LIABILITY FOR CGT

South African residents are liable for CGT on their worldwide assets. Non-residents are liable for CGT on the following assets situated in South Africa:

- immovable property and any interest in or right to immovable property; and
- assets of a permanent establishment situated in South Africa.

WITHHOLDING TAX REGIME FOR NON-RESIDENTS

A capital gain made by a non-resident on the disposal of immovable property or any right or interest therein is subject to a withholding tax regime. The obligation to withhold the tax is placed upon the purchaser and withholding rates (which depend on the nature of the seller) are as follows:

• Individuals	7.5%
• Corporates	10.0%
• Trusts	15.0%

The withholding tax does not apply to property sales for proceeds of R2 million or less. Also, a directive may be obtained to withhold a lesser amount.

TRIGGERING OF CGT

Certain events are deemed to be disposals for CGT purposes, whilst certain other events will give rise to simultaneous disposals and acquisitions, e.g. when a person commences or ceases to be a resident for South African tax purposes; change in the nature of the holding of an asset from personal use to business or *vice versa*; death, etc.

EXCLUSIONS

Capital gains or losses arising from the disposal of, *inter alia*, the following items are disregarded for CGT purposes:

- the first R2 million of a gain or loss upon disposal of a primary residence;
- the disposal of personal use assets of individuals or special trusts;
- lump-sum benefits from pension, pension preservation, provident, provident preservation or retirement annuity funds;
- proceeds from long-term insurance policies (excluding second-hand policies);
- payments as compensation for personal injury, illness or defamation claims;
- gains from gambling, games or competitions authorised and conducted in terms of South Africa's laws;
- certain gains made by approved PBOs;
- qualifying gains and losses made by unit trust funds;
- gains of up to R1.8 million during an individual's lifetime from the disposal of a small business asset by reason of reaching the age of 55 or for reasons of ill health, other infirmity, superannuation or death, provided certain other requirements are met; and
- donations and bequests to approved PBOs.

ROLLOVER OR DEFERRALS

In the case of the following events, the gain on the disposal of an asset is deferred until a subsequent CGT event:

- involuntary disposals (e.g. theft, fire) provided the asset is replaced within a period of 12 months;
- re-investment in replacement assets that are brought into use within a period of 12 months;
- transfers between spouses, including as inheritances; and
- disposal of assets using the special corporate rules.

CAPITAL LOSSES NOT TAKEN INTO ACCOUNT

Losses suffered in respect of the following transactions or events cannot be claimed for CGT purposes:

- losses on disposal of intangible assets acquired before 1 October 2001;

- losses in respect of certain forfeited deposits;
- in most cases, losses suffered on transactions with connected persons. These losses are ring-fenced and can only be offset against capital gains resulting from dealing with that same connected person;
- losses on disposal of options in respect of certain assets; and
- losses on disposal of certain shares.

ASSETS HELD IN FOREIGN CURRENCY

Special rules apply in respect of assets held and disposed of in foreign currency.

FOREIGN CURRENCY ASSETS AND LIABILITIES

'Currency' is excluded from the definition of an 'asset' and is therefore not subject to the normal CGT rules. Complex rules that applied in determining capital gains and losses made by a resident due to exchange rate fluctuations in respect of the disposal or acquisition of 'foreign currency assets' or the settlement or part settlement of a 'foreign currency liability' were repealed with effect from 1 March 2011.

DISPOSAL OF SHARES

3-YEAR RULE

Amounts received or accrued (other than dividends or foreign dividends) in respect of an equity share (with certain exceptions) are deemed to automatically be capital in nature if the period of ownership is at least 3 years.

The application of section 9C, unlike its predecessor (section 9B), is not optional. The application of section 9C extends beyond listed shares; it also applies to shares in private companies, interests in close corporations and collective investment schemes (in securities and hedge fund collective investment schemes).

There are, however, various exclusions from section 9C, such as shares in non-resident companies (other than shares in non-resident SA listed companies), shares in share block companies and hybrid equity instruments.

It is important to note that amounts received or accrued in respect of equity shares that were not held for the required 3-year period may also be capital in nature, depending upon a taxpayer's intention. The onus of proof is on the taxpayer under these circumstances. Factors such as the holding period and the frequency of share disposals will be considered in establishing intention.

DIVIDEND STRIPPING

Specific anti-avoidance provisions exist which focus on dividend stripping schemes whereby a company ('the target') declares an exempt dividend to a shareholder company which disposes of its shares in the target to another person, provided that the shareholder company held a qualifying interest in the target at any time during the 18-month period preceding that disposal and the dividend constitutes an 'extraordinary dividend'.

Such value extraction from the target reduces the income tax exposure for the shareholder company on the subsequent disposal of its shares in the target.

However, if the dividend stripping provisions apply, the dividend that was received by or accrued from the target will be taxed as ordinary revenue or additional proceeds on disposal of the shares, depending on whether the shareholder company held the shares as trading stock or capital assets.

DEBT REDUCTION

In terms of the debt reduction provisions, certain adverse consequences could arise for a debtor where the concession or compromise in respect of a debt owing by such a person results in a debt benefit. A concession or compromise represents an arrangement whereby a debt is cancelled or waived or extinguished through the redemption of the debt claim by the debtor (or a connected person of such a debtor) or the acquisition of the debt claim by the debtor in terms of a merger.

Furthermore, a concession or compromise encompasses the direct or indirect settlement of a debt owed by a company through conversion or exchange for shares in that company or the application of proceeds from shares issued by that company.

This could trigger, amongst other things, a taxable recoupment for the debtor depending on the application of the underlying debt. Certain exclusions apply.

THE TAXATION OF FOREIGN DIVIDENDS

A new dispensation for the taxation of foreign dividends became effective for dividends received or accrued on or after 1 March 2012 for individuals, and on or after 1 April 2012 for companies. In terms of the new rules, residual foreign dividends that are not fully exempt from income tax by virtue of one of the exemptions listed here are subject to tax at a maximum effective rate of 15%. With effect for years of assessment commencing on or after 1 March 2017, the maximum effective rate of 20% will be applied.

The following foreign dividends are entirely exempt from income tax:

- A foreign dividend declared by a company that is listed on the JSE, provided that the foreign dividend is not a dividend *in specie*;
- A foreign dividend to the extent that the profits from which the foreign dividend is distributed have been, or will be, included in the resident's income in terms of the controlled foreign company rules (s 9D);
- A foreign dividend received by or accrued to a foreign company where the foreign dividend is paid or declared by another foreign company that is a resident in the same foreign country as the first company;
- A foreign dividend paid to a person who (whether alone or together with any other company in the same group of companies) owns 10% or more of the equity share capital and voting rights in the foreign company, provided that the foreign dividend is in respect of an equity share;
- The last two exemptions above do not apply in respect of foreign dividends from foreign collective investment schemes, to so-called 'funnel scheme' dividends, or to foreign dividends in circumstances where the foreign dividend is deductible for income tax purposes by the declaring company in the jurisdiction in which its place of effective management is located;
- A foreign dividend declared by a company that is listed on the JSE received by or accrued to a South African resident company where the dividend consists of the distribution of an asset *in specie*.
- All other foreign dividends not specifically exempt qualify for a partial exemption which differs depending on the juristic nature of the taxpayer. The foreign dividend exemptions are not applicable to foreign dividends paid in the form of an annuity or to any payments made from foreign dividends.

BROAD-BASED BLACK ECONOMIC EMPOWERMENT

The Broad-Based Black Economic Empowerment (BBBEE) Act aims to promote equality within the business sector. The Department of Trade and Industry has issued a general BEE scorecard to measure companies' BEE credentials. The components of the scorecard include ownership, management, employment equity, skills development, preferential procurement, enterprise development and a residual element. Increasing emphasis is being placed upon ownership credentials.

BROAD-BASED EMPLOYEE SHARE PLANS

Section 8B is designed to promote empowerment of employees through share ownership. These provisions, whilst applicable to employees in general, could assist taxpayers in meeting their black economic empowerment objectives.

In essence, employees may acquire over a period of 5 years, in aggregate up to R50 000 worth of shares from the employer or associated companies either free or for a nominal consideration. The employee will be subject to capital gains tax on any amounts received or accrued, if the shares are held by the employee for more than 5 years before disposal. If the shares are disposed of within 5 years, any gains made will be taxable as normal income and subject to normal income tax (this is despite the 3-year rule contained in section 9C which characterises the proceeds upon the disposal of a share after 3 years as capital).

Loans to employees to acquire qualifying equity shares are free of fringe benefits tax, as is the acquisition of the shares.

A company is entitled to a deduction of the market value of any qualifying equity shares granted to employees, limited to a maximum of R10 000 per employee per annum. Any excess may be carried forward and claimed in the following tax year.

In general, 'broad-based employee share plans' are subject to the following requirements:

- equity shares in the employer or an associated institution must be acquired by employees for a consideration that does not exceed the minimum consideration required by the Companies Act;
- employees who participate in any other share plan of the employer or associated institution must not be allowed to participate; at least 80% of the other permanent or full-time employees are entitled to participate (i.e. other than employees who participate in any other share plan of the employer);
- employees who acquire the shares are entitled to all the dividends and have full voting rights in respect of the shares acquired;
- no restrictions may be imposed on the disposal of the shares other than:
  - restrictions imposed by legislation or where an employee is guilty of poor performance or misconduct;
  - a right of any person to acquire those equity shares from the employees at market value; or
  - a restriction in terms of which that employee may not dispose of those equity shares for a period (which period may not extend beyond 5 years from the date of grant).

HEADQUARTER COMPANY REGIME

The Headquarter Company regime is voluntary in South Africa and a company which is a resident of South Africa and who complies with the legislative requirements, may elect to be a Headquarter Company.

The requirements to elect to become a Headquarter Company are:

- Each holder of shares in the company (whether alone or together with any other company forming part of the same group of companies) held 10% or more of the equity shares and voting rights in that company: Provided that in determining whether a company complies with the requirements prescribed by this paragraph in relation to any year of assessment of that company during which the company commences the carrying on of trade, no regard must be had to any period during that year before which the company so commenced the carrying on of trade;
- At the end of that year of assessment and of all previous years of assessment of that company, 80% or more of the cost of the total assets of the company was attributable to one or more of the following:
  - Any interest in the equity shares in,
  - Any debt owed by, or
  - Any intellectual property that is licensed by the resident company to any foreign company in which that company (whether individually or jointly with any other company forming part of the same group of companies) held at least 10% of the equity shares and voting rights at the end of the current year of assessment and at the end of all previous years of assessment of the company (80% asset requirement) Companies that did not have assets with total market value exceeding R50 000 will not be taken into account.
- In each year of assessment, during which the gross income of the company exceeds R5 million (excluding exchange differences determined in terms of Section 24I), 50% or more of the "gross income" must consist of amounts in the form of one or both of the following:
  - Any rental, dividends, interest, royalties or service fees received from a foreign company in which the company holds at least 10% of the equity shares and voting rights; or
  - Any proceeds from the disposal of any interest in equity shares in the foreign company or the disposal of any intellectual property which was licensed by the company to a foreign company, both in respect of which the company holds at least 10% of the equity shares or voting rights (gross-income requirement).

If the requirements of a Headquarter Company are met and the required election is made, the tax relief provided includes the following:

- The exclusion from Controlled Foreign Company (CFC) legislation.
- Exemption from withholding tax in respect of dividends declared.
- Exemption by a Headquarter Company from withholding tax on royalties and interest paid to a foreign company.

- Exemption from transfer pricing provisions as they relate to financial assistance whereby a non-resident grants financial assistance to a Headquarter Company. The Headquarter Company directly applies the financial assistance to any foreign company in which the Headquarter Company holds at least 10% of the equity shares and voting rights (directly or indirectly, individually or jointly with group companies).
- Exemption from transfer pricing provisions as they relate to royalties where the non-resident grants the use of intellectual property (IP) to the Headquarter Company to the extent that the Headquarter Company gives the use of IP to a foreign company in which the Headquarter Company has at least 10% of the equity shares and voting rights (directly or indirectly, individually or jointly with group companies).

It is important to note that the classification as a Headquarter Company does not change the fact that the company is still a South African resident and will be taxed on its world-wide income. We reiterate that the South African resident company needs to make an election to become a Headquarter Company.

WITHHOLDING TAX ON INTEREST PAID TO NON-RESIDENTS

This withholding tax applies to interest that is paid, or that becomes due and payable, to or for the benefit of a non-resident on or after 1 March 2015.

The withholding tax is a final tax and is levied at the flat rate of 15% subject to relief in terms of Double Taxation Agreements. It applies to any interest received by or accrued to a non-resident that is from an SA source, that is not specifically exempted in terms of one of the exemptions contained in the provision.

The following are the most important exemptions:

- Interest in respect of Government or listed debt instruments;
- Interest in respect of bank or Reserve Bank debts. Note, however, that there is a specific anti-avoidance provision to the effect that this exemption does not apply in the case of back-to-back loans;
- Interest payable by a headquarter company if certain conditions are met;
- Interest payable in terms of the Financial Markets Act;
- Interest payable to a foreign person in respect of a debt owed by another foreign person, subject to certain exclusions[3].
- Interest included in the income of a resident in consequence of being attributable to a donation, settlement or other disposition by such resident.

[3]Section 50D(c) – page 332 of the Income Tax Act

COUNTRY-BY-COUNTRY REPORTING

South Africa is part of the international tax movement to eliminate Base Erosion and Profit Shifting (BEPS) through the OECD/G20 BEPS Action Plans finalised in October 2015.

The OECD/G20 BEPS Project developed 15 key reform actions in the international tax arena to ensure that profits are reported where economic activities are carried out and value created. BEPS Action Plan 13 contains Country-by-Country (CbC) reporting requirements for multinational enterprises (MNEs). Action 13 requires the reporting entity of the MNE Group to collect and file information in its residence country. The CbC report provides tax authorities with information on the global allocation of group income to assess whether it follows where functions are performed, assets used, and risks are assumed.

With the automatic exchange of information between tax authorities coming into force, tax authorities exchange CbC reports electronically which assists tax authorities in obtaining a complete understanding of the manner in which MNE Groups operate. South Africa signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports on 27 January 2016.

South African CbC reporting requires that an ultimate parent entity of an MNE Group that is a tax resident in South Africa (with consolidated group turnover of R10 billion) file a CbC report (containing the information set out in Government Gazette No. 40516) and a Master File. If a South African tax resident is part of an MNE Group (with consolidated group turnover of EUR 750 million) and is not the CbC reporting entity, the resident should notify SARS of this fact. The CbC report and Master File or notification must be filed within 12 months from the last day of the reporting fiscal year of the MNE Group. SARS will use the CbC Report to identify high-level transfer pricing risks and other BEPS related risks in South Africa.

These regulations apply with effect from the report fiscal years of MNE Groups starting on or after 1 January 2016.

Regardless of these thresholds, South African residents who have entered into potentially affected transactions (PAFs, transactions with connected foreign residents) that in aggregate exceed R100 million in a year, are required to submit a Local File to SARS.

Each PAF which exceeds R5 million, should be supported by an extensive transfer pricing analysis. If a South African resident's PAFs do not exceed the R100 million threshold or enters into a PAF below the R5 million threshold, SARS may still request proof that the company is transacting at arm's length. These regulations apply with effect from years of assessment commencing on or after 1 October 2016.

TAX-EXEMPT ENTITIES

While certain entities (for example Pension, Provident and Benefit Funds) qualify for tax exemption automatically, others, for example Public Benefit Organisations and Recreational Clubs, must apply for tax exemption, which exemption only applies to non-trading income.

PUBLIC BENEFIT ORGANISATIONS (PBOs)

Public Benefit Organisations seeking exemption from income tax must comply with the requirements for tax exemption set out in section 30. In addition to partial exemption from income tax, PBOs enjoy special tax treatment in other respects. Included in the special treatment is that there is no donations tax or estate duty on donations or bequests to approved PBOs, no transfer duty on purchase of fixed property in certain cases, no stamp duty or securities transfer tax in certain cases and no capital gains tax on assets disposed of to a PBO.

The income tax relief afforded to PBOs is only partial and is subject to the PBO being approved by SARS. PBOs are subject to tax on part of their trading income, although non-trading income is exempt.

PBOs are also exempt from capital gains tax in respect of disposals of non-trading assets. PBOs seeking approval for exemption must comply with certain provisions, the most important of which are:

- the sole object of the entity must be to carry on one or more public benefit activities in the following categories:
  - Welfare and humanitarian;
  - Healthcare;
  - Land and housing;
  - Education and development;
  - Religion, belief or philosophy;
  - Cultural;
  - Conservation, environment and animal welfare;
  - Research and consumer rights;
  - Sport (non-professional);
  - Provision of funds and resources to other PBOs;
  - Support services to other PBOs;
  - Hosting international events, subject to approval by the Minister;
  - The promotion, monitoring or reporting of development assistance for the poor and needy;
  - The provision of funds to foreign incorporated organisations that are exempt from income tax in the foreign country, having the sole object of carrying on one or more of the public benefit activities listed above.
- the management committee must comprise at least three persons who are not related to each other and no one person may control the entity;
- no funds may be distributed to any person other than in the course of a public benefit activity.

Foreign charities operating as an agency or branch within South Africa and that meet similar criteria to local organisations may also be granted exemption.

In terms of section 18A, donations to certain PBOs that carry on the public benefit activities contemplated in Part II of the Ninth Schedule are deductible up to a limit of 10% of the donor's taxable income. Any disallowed excess contribution is rolled forward to the succeeding tax years.

Employees may also enjoy PAYE reduction where donations are made by way of salary or wage reduction (payroll giving). PBOs also enjoy preferential VAT treatment in certain respects.

RECREATIONAL CLUBS

A recreational club is any company, society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for its members. Recreational clubs previously enjoyed complete exemption from income tax. Now, approved recreational clubs are subject to a system of partial taxation in terms of section 10(1)(cO), for years of assessment commencing on or after 1 April 2007.

All club income is subject to income tax, unless it is exempt in terms of 10(1)(cO). This includes an exemption for income from membership fees and certain business activities if integrally related to the provision of recreational activities. The Commissioner will approve a recreational club for these purposes if certain conditions are met, for example, the management committee must consist of at least three persons who are not related to each other and no one person may control the entity. The recreational club may also not distribute surplus funds other than on dissolution, to certain tax exempt bodies.

SMALL BUSINESS FUNDING ENTITIES

Prior to 1 March 2015, funding entities that supported small, medium and micro-sized entities (SMMEs) were afforded relief from taxation only through the Venture Capital Company regime and the Public Benefit Organisation regime (the latter could apply if the recipients were 'poor and needy'). In order to assist such entities, receipts and accruals of a 'small business funding entity' derived other than from business or trading activities are now exempt from income tax.

In terms of section 10(1)(cQ), certain types of trading income may be exempt in terms of criteria similar to those that apply to Public Benefit Organisations. In order to qualify for the exemption, the entity has to be approved by SARS in terms of certain prescribed criteria, which are similar to those that apply to Public Benefit Organisations. Dividends paid to approved small business funding entities are exempt from the dividends tax. Amounts accruing to an SMME from an approved funding entity are exempt from income tax in the hands of the SMME. However, the SMME is prohibited from claiming deductions or allowances in respect of expenditure incurred from such funding provided. The base cost of assets acquired using such exempt funding must also be reduced by the amount of the funding.

BODY CORPORATES

All levy income is exempt and other income up to R50 000 per annum is exempt from tax.

VALUE-ADDED TAX (VAT)

The VAT rate increased from 14% to 15%, effective from 1 April 2018. The provision of the VAT Act which relates to a change in the tax rate will apply to transactions where there is an overlap of applicable VAT rates. The main exceptions are as follows:

EXEMPT SUPPLIES, FOR EXAMPLE:

- non-fee-based financial services unless zero-rated, e.g. by export. This includes interest charged and the transfer of debt and equity securities;
- rental of residential accommodation in terms of an agreement for the letting and hiring of the accommodation. This exemption does not apply to 'commercial accommodation', e.g. accommodation provided in a hotel or guest house;
- educational services;
- local passenger transport by road or rail;
- trade union contributions;
- share block and body corporate levies;
- childcare in a crèche or after-school care;
- the sale or letting of land outside South Africa; and
- certain supplies by certain Public Benefit Organisations.

ZERO-RATED SUPPLIES, FOR EXAMPLE:

- the sale of a going concern between two registered vendors;
- petrol sales;
- certain basic foodstuffs;
- exported goods and services, subject to prescribed requirements;
- goods supplied to a customs-controlled area, subject to prescribed requirements;
- supply of gold to the South African Reserve Bank, Mint or any registered bank;
- certain services rendered outside South Africa;
- international transportation and related services;
- certain services rendered to non-residents, but subject to prescribed requirements;
- certain services rendered by welfare organisations; and
- certain services related to warranties.

ESSENTIAL FEATURES

- Effective from 1 April 2019, the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency is exempt from VAT in South Africa.
- Enterprises whose taxable supplies have exceeded R1 million in the previous period of 12 months are obliged to register for VAT;
- Additionally, enterprises where there is a contractual obligation in writing in terms of which the value of taxable supplies in the next 12-month period will exceed R1 million are obliged to register for VAT;
- Also, non-resident suppliers of 'electronic services' as prescribed by the Minister by regulation, must register for VAT where the total value of the taxable supplies exceeded R1 million in the previous period of 12 months;
- Enterprises making taxable supplies of less than R50 000 in any period of 12 months are not permitted to register for VAT;
- VAT returns are generally submitted on a 2-monthly basis unless taxable supplies in any period of 12 months has exceeded or is likely to exceed R30 million, in which case returns are submitted monthly. There are, however, also 4-monthly, 6-monthly and annual VAT periods;
- A vendor may claim the VAT portion incurred, provided the vendor is in possession of a valid tax invoice when making the claim, but for the following exceptions:
  - entertainment expenditure (which excludes, *inter alia* certain qualifying subsistence expenditure and expenditure of an entertainment business);
  - the supply of passenger vehicles (including hiring);
  - club subscriptions; and
  - goods or services acquired by a superannuation scheme;
- Input tax credits may not be claimed on expenditure relating to exempt supplies;
- The name, address and VAT registration number of the recipient must appear on tax invoices (together with other required information) where the VAT inclusive total exceeds R5 000;
- A notional input tax credit may be claimed on the purchase of second-hand goods, including immovable property, subject to prescribed requirements;
- All fee-based financial services (with the exception of certain premiums on life policies, contributions to retirement funds and the buying or selling of derivatives or the granting of options) are subject to VAT;
- Certain vendors, the value of whose taxable supplies made in a 12-month period has not exceeded, and is not likely to exceed, R2.5 million, may apply to account for VAT on a payments basis; and
- Non-residents may, subject to certain conditions, qualify for a VAT refund on goods purchased in South Africa. Such refunds do not apply to services.

GOVERNMENT INCENTIVES

At present there are a number of incentives available to South African businesses. Incentive categories include research and development, enterprise development, export development, industry-specific incentives and investment incentives. The incentive programmes are administered and managed by the Industrial Development Incentive Administration Division (IDIAD) within The Department of Trade and Industry (DTI).

The five main incentive clusterings used by the DTI are the Broadening Participation Cluster (BCP), Competitiveness Investment Cluster (CIC), Manufacturing Investment Cluster (MIC), Services Investment Cluster (SIC) and Infrastructure Support Cluster (ISC). For more information, see the IDIAD 2014-2015 Incentive Performance Report.

The Government has created Special Economic Zones. A few of the available incentives are set out below.

RESEARCH AND DEVELOPMENT

Support programmes provided by the DTI are aimed at encouraging research and development activities by large companies and SMEs.

The **Support Programme for Industrial Innovation (SPII)** serves to promote technology development in industries within South Africa for the innovation of competitive products and/or processes.

Three options are available:

- Product Process Development (PPD): a taxable non-repayable grant of 50%-85% of qualifying costs incurred in pre-competitive development activity associated with a specific development project up to a maximum grant of R2 million.
- SPII Matching Scheme: a taxable, non-repayable, grant of 50%-75% of qualifying costs incurred in pre-competitive development activity associated with a specific development project up to a maximum grant amount of R5 million.
- SPII Partnership Scheme: a taxable, conditionally repayable, grant of 50% of qualifying costs with a maximum grant amount of R10 million.

ENTERPRISE DEVELOPMENT

The **Black Business Supplier Development Programme (BBSDP)** supports the development of established black-owned enterprises. The BBSDP is a cost-sharing grant available to black-owned enterprises and provides grants to a maximum of R1 million for tools, machinery and equipment, and to improve corporate governance, management, marketing, productivity and use of modern technology.

The focus is on black-owned enterprises that are VAT-registered and have the potential ability to supply goods and services to public and private sector corporations, as well as government departments, on a sustainable basis. The administration of this programme falls under the Department of Small Business Development.

The **Black Industrialists Scheme (BIS)** is a cash grant available to majority black-owned and black-managed manufacturing projects (start-up or existing) that will subsidise between 30% and 50% of the cost of machinery and equipment, buildings, commercial vehicles and certain third-party service projects.

The minimum investment requirement is R30 million and applicants must obtain grant approval from the DTI before commencing with the project. The BIS grant is capped at R50 million.

The **Strategic Partnership Programme (SPP)** is aimed to encourage large private sector partnerships with government to support and develop small, micro and medium enterprises (SMMEs) and nurture them into sustainable enterprises that can provide employment and contribute to economic growth. Enterprises in the manufacturing sector with a turnover above R100 million cost sharing support of 50:50. Enterprises not in manufacturing sector with a turnover of R100 million cost sharing support of 70:30. Maximum grant of R15 million per annum, effective from 1 October 2016 to 31 March 2019.

EXPORT DEVELOPMENT

Various incentives to encourage exports are available.

These include:

- **Export Marketing and Investment Assistance scheme (EMIA):** The DTI may subsidise expenses relating to primary export market research, individual inward-bound trade missions, exhibits at international pavilions and individual exhibitions, outward selling trade and investment recruitment missions and inward buying and investment missions. The EMIA programme may also provide sector specific assistance to initiatives aimed at growing exports and is available to historically disadvantaged businesses, SMMEs and 'other businesses'.
- **Capital Projects Feasibility Programme (CPFP):** A cost-sharing scheme 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 for South African capital goods and services.

INDUSTRY-SPECIFIC INCENTIVES

Targeted support is available to selected industry sectors which include:

- **Film incentive** is a revised film and television production incentive intended to increase local content generation and improve location competitiveness for filming in South Africa.
- **Business Process Services (BPS)** aims to attract investment and create employment in South Africa through off-shoring activities by providing a tax-exempt grant for each offshore job created and maintained by an entity performing BPS activities.
- **Automotive Investment Scheme (AIS)** is a People-Carrier and Medium & Heavy Commercial Vehicles Automotive Investment Scheme.

INVESTMENT INCENTIVES

Incentives to encourage investment in certain targeted sectors of the economy include:

- **Critical Infrastructure Programme (CIP)**: a cost-sharing grant established to assist industrialists engaged in the development or upgrading of critical infrastructure, such as roads, rail links, water pipelines, telecommunication networks, etc. The grant of up to 30% (capped at R30 million) of development costs is available to approved enterprises on completion of the infrastructure project concerned.
- **The Manufacturing Competitiveness Enhancement Programme (MCEP)** was launched on 15 May 2012 and offers a cash grant to existing manufacturing and engineering businesses and Conformity Assessment Bodies that wish to increase competitiveness through capital investment and green technology projects, as well as through certain third-party service projects such as quality management system implementation and accreditation. The MCEP was suspended in October 2015 and is currently not accepting applications. The Aquaculture Development and Enhancement Programme (ADEP) was launched on 15 December 2012 and offers a cash grant to fish hatcheries and fish farms as well as operations involved in the production, processing and preserving of aquaculture fish that wish to spend money on one or more of the following:
  - Machinery and equipment (owned or leased)
  - Bulk infrastructure
  - Owned land and/or buildings
  - Leasehold improvements to rented buildings
  - Commercial vehicles and work boats (owned or leased – limited to 50% of total asset spend)
  - Aquaculture feed (limited to 5% of total asset investment)
  - Research and development
  - Competitiveness improvement activities (e.g. process improvement, accreditation, training).

Maximum grant payable per entity: R40 million.

- **The Clothing and Textile Production Incentive (PI)** offers a cash grant to existing manufacturing businesses (and design houses) in the clothing, textile and leather goods sector for qualifying investments in machinery and equipment (historical and future). The PI no longer offers an interest subsidy for working capital facility. This grant is calculated using the applicant's Manufacturing Value Addition (MVA), defined as:

Sales for the last financial year
Less material input costs
Less sales value of bought-in finished goods
Less sales value of imported goods
Less outsourced CMT costs
= MVA
The MVA is then multiplied by 7.5%

- **Tax allowance incentive for industrial projects (S12I):** The S12I incentive is designed to support Greenfield projects (i.e. new industrial projects that utilise only new and unused manufacturing assets), as well as Brownfield projects (i.e. expansions or upgrades of existing industrial projects). The projects have to be approved by the Minister of Trade and Industry. The manufacturing of certain products, for example, wine, spirits, beer, tobacco, arms and ammunition does not qualify for the allowance. The provision gives allowances for both capital investment and training. Certain minimum investment in manufacturing assets is required, for example, for Greenfield projects, the minimum is R50 million. The project must significantly contribute to the Industrial Policy Programme of South Africa having regard to:
  - Upgrading an industry within South Africa (via innovative process, cleaner production technology and improved energy efficiency);
  - Providing general business linkages within South Africa;
  - Acquiring goods and services from small, medium and micro enterprises;
  - Creating direct employment within South Africa;
  - Providing skills development in South Africa; and
  - In the case of a Greenfield project, its location within an Industrial Development Zone.

The provision gives additional tax allowances over and above the allowances already available in the Act. The capital investment allowances are 55% (or 35% if the project does not have preferred status) of the cost of new and unused manufacturing assets used in an industrial policy project. This additional tax allowance increases to 100% (or 75% if the project does not have preferred status) where the project is carried out in an Industrial Development Zone or a Special Economic Zone. The S12I allowances that may be claimed on any project have certain ceilings, for example, R900 million in the case of a Greenfield project with preferred status and R550 million in the case of a Brownfield project with preferred status. The additional training allowance is equal to the cost of training provided to employees in connection with the project, to a maximum of R36 000 per employee, limited to R30 million for a project with preferred status, or R20 million for a project without preferred status, in a 6-year period. In terms of the Special Economic Zones Act of 2013, certain companies operating in Special Economic Zones are granted special tax incentives:

- A 15% corporate income tax rate for 'qualifying companies';
- The Employment Tax Incentive, allowing for a rebate from Employees' Tax in respect of workers earning less than R60 000 per annum;
- An accelerated depreciation allowance for new and unused buildings or improvements to buildings in these areas; and
- VAT and customs duty relief.

EMPLOYMENT TAX INCENTIVE ACT

The Employment Tax Incentive Act was promulgated during December of 2013. The objective of the Act is to support employment growth by focusing on labour market activation, especially in relation to young work-seekers, i.e. those aged between the ages of 18 and 30 years. If the employment commenced on or after 1 October 2013, the workers are paid remuneration of less than R6 000 (R6 500 from 1 March 2019) and more than R2 000 (or a grossed up R2 000 where the workers work less than 160 hours in a month) per month, the employer may qualify to benefit from the incentive.

MAIN FEATURES

In a nutshell, the effect of the legislation is that employers that are registered for Employees' Tax may reduce the Employees' Tax payable to SARS without affecting the wage paid to the qualifying employees. The amount of the reduction in Employees' Tax depends on the remuneration (as defined for PAYE purposes) paid to the qualifying employees. The benefit reaches a maximum level of R1 000 per month per qualifying employee, for remuneration of between R2 001 and R4 000 (R4 500 from March 2019) per month, decreasing to zero, for remuneration of R6 000 (R6 500 from 1 March 2019) per month and above. The scale of benefits per month halves after the first 12 months of employment of a qualifying employee and decreases to zero after 24 months.

So, for example, if an employer employs a qualifying employee who earns remuneration of R4 000 per month, the employer would pay the R4 000 per month to the employee but would obtain a credit of R1 000 per month for the first 12 months of that qualifying employee's employment, assuming the remuneration was a constant R4 000 throughout this period, to offset against the total Employees' Tax liability (in respect of all of its employees). For the second 12 months of that qualifying employee's employment, the credit would halve to R500 per month, assuming the employee continued to earn remuneration of R4 000 per month during this period. Thereafter, no incentive would be available for that employee.

The incentive has been made exempt from income tax in the hands of the employer by virtue of a specific exemption provision.

QUALIFICATION REQUIREMENTS

The legislation came into effect on 1 January 2014, although it is retroactive in that it applies to new employment that commenced on or after 1 October 2013. However, benefits only apply for the first 24 months of a qualifying employee's employment.

In short, a 'qualifying employee' is an employee who is:

- Not younger than 18 years old and not older than 30 years old at the end of the relevant month in respect of which the incentive is claimed; or

- Employed by an employer operating within a Special Economic Zone (regardless of age); or
- Employed by an employer operating in an industry designated by the Minister of Finance by notice in the Government Gazette. No such industries have yet been designated.

In addition, the employee must:

- Not be a 'connected person' (as defined in the Income Tax Act) in relation to the employer;
- Not be a domestic worker;
- Either be in possession of a South African identity card or an asylum seeker's permit;
- Have been employed by the employer or an 'associated person' (as defined) on or after 1 October 2013 in respect of employment commencing on or after that date;
- Be paid at least the minimum wage applicable to the employer or the equivalent of R2 000 for a full month (where there is no minimum wage relevant to the employer); and
- Earn remuneration of less than R6 000 per month (R6 500 from 1 March 2019 for the month) in which the credit is claimed.

Employers are prohibited from claiming the incentive in circumstances where they have outstanding tax returns or tax debts (other than tax debts not exceeding R100 or tax debts in respect of which payment arrangements have been made with SARS).

EXCESS CREDITS

Where the incentive credit exceeds the Employees' Tax payable during a particular month, the excess is rolled over as a credit to the following month. If an employer does not claim the credits in any particular month (for example in ignorance of the legislation), then the amount of the unclaimed credits is rolled over as a credit to the next month. If the employer becomes disqualified from claiming credits by virtue of having an outstanding tax return or tax debt as discussed above, then credits continue to accumulate during the period of disqualification. SARS will pay out credits due at the IRP 501 reporting date in cash, provided that the employer is in good standing.

ANTI-DISPLACEMENT RULES

The Act contains so-called 'anti-displacement' rules, designed to prevent the dismissal of older, non-qualifying employees in circumstances that constitute an automatically unfair dismissal in terms of the Labour Relations Act and the replacement of such employees with qualifying employees.

In such circumstances, a cash penalty of R30 000 per displaced employee becomes payable and the employer may be disqualified from receiving the incentive, presumably on a prospective basis.

ESTATE DUTY

The general rule is that, if the deceased was ordinarily resident in South Africa at the time of death, all his or her assets, wherever situated, will be included in the gross value of his or her estate for the determination of estate duty payable thereon. However, it should be noted that assets owned by the deceased prior to his or her first becoming ordinarily resident in South Africa, or inherited from a non-resident, may be deducted in calculating the net value of the estate (see below):

Value of all property at date of death (including limited interests such as usufructs and off-shore assets)	R………………
Deemed property*	R………………
Gross value of property	R………………
Deductions**	R………………
Net value of estate	R………………
Abatement***	R (3 500 000)
Dutiable amount	R………………
Estate Duty thereon at the applicable rate	R………………

* *Deemed property includes certain insurance policies on the life of the deceased as well as any accrual claim the deceased's estate may have against a surviving spouse.*

** *The most important deductions are funeral expenses and administration costs; debts due at date of death, which includes the income tax and CGT liability of the deceased for the period prior to death; charitable bequests; assets owned by the deceased prior to his or her first becoming ordinarily resident in South Africa, or inherited from a non-resident; and property and deemed property passing to a surviving spouse (as defined).*

*** *If the deceased was the spouse of one or more previously deceased persons, this abatement will be calculated as follows: R3 500 000 x 2, less the section 4A abatement/s claimed in the estate/s of the previously deceased person/s. If the deceased was only one of the spouses of the previously deceased person, the abatement will be apportioned between the spouses of that person.*

To limit the practice of avoiding estate duty through retirement contributions, the Estate Duty Act was amended with effect from 1 January 2016 to include retirement contributions made on or after 1 March 2015 which were not allowed as a deduction or exemption in the hands of the deceased for income tax purposes, in the dutiable amount of the estate. There is relief from estate duty in the case of the same property being included in the estates of taxpayers dying within 10 years of each other. The deduction is calculated on a sliding scale decreasing from 100% where the taxpayers die within two years of each other to 20% where the deaths are within 8 to 10 years of each other. If the deceased was not ordinarily resident in South Africa at the date of his or her death, only those assets located in South Africa will be subject to estate duty. South Africa has entered into reciprocal agreements (double taxation agreements) with Botswana, Lesotho, Swaziland, Zimbabwe, the UK and the USA for the avoidance of double estate duty being payable in respect of the same property.

RATES

Estate duty is payable on the dutiable amount of the estate at a dual rate of 20% on the first R30 million and 25% on any excess over R30 million.

DONATIONS TAX

Donations tax is payable on the value of any gratuitous disposal of property, including the disposal of property for inadequate consideration, by any South African resident as defined. Public companies as defined for income tax purposes are exempt from donations tax.

A donation is also a disposal for capital gains tax (CGT) purposes except if the asset donated is cash, and generally triggers CGT based on the market value of the property less its CGT base cost.

RATE OF DONATIONS TAX

Donations tax is payable within one month of the date of donation at a dual rate of 20% on the first R30 million value in property donated and 25% of any excess over R30 million for years of assessment commencing on or after 1 March 2018.

PRINCIPAL EXEMPTIONS

- Donations between spouses (as defined);
- Donations to approved public benefit organisations;
- The donation of assets outside South Africa, subject to certain conditions;
- Casual donations up to R10 000 per year by donors other than individuals;
- Donations by individuals not exceeding R100 000 in aggregate per year of assessment that are not otherwise exempt; and
- *Bona fide* maintenance payments that are considered reasonable by the Commissioner for SARS.

SECURITIES TRANSFER TAX

In terms of the Securities Transfer Tax Act, which came into effect on 1 July 2008, Securities Transfer Tax ('STT') is payable on a change of beneficial ownership of securities at a rate of 0.25% of the 'taxable amount' of all listed or unlisted securities.

The 'taxable amount' means the purchase consideration on change of ownership (including cancellation or redemption). If there is no consideration, or if the consideration is less than fair value, STT is payable on the market value or the closing price of the securities on the date of the transaction.

‘Securities’ include a member’s interest in a close corporation. No STT is payable on the issue of shares.

The cancellation or redemption of a security (including share buy-backs and redemptions) is regarded as a change in beneficial ownership and is therefore subject to STT.

Transfer, redemption or cancellation of securities will be exempt from STT in certain circumstances, for example:

- transfer to an heir or legatee;
- cancellation on liquidation;
- transfer to a PBO;
- transfer of shares in a share block company;
- transfer of shares constituting a transaction subject to transfer duty; and
- restructuring transactions in terms of the corporate restructuring rules.

TRANSFER DUTY ON IMMOVABLE PROPERTY

Transfer duty is levied on the greater of the purchase price or market value on the transfer of immovable property in the Republic. The indirect acquisition of residential property by way of the acquisition of shares, a member’s interest in a close corporation or a contingent right in a discretionary trust is subject to transfer duty.

The following are the rates applicable to acquisitions of immovable property acquired under purchase agreements concluded on or after 1 March 2017, irrespective of the juristic nature of the acquiror:

Property value (R)	Rate of tax
0 – 900 000	0%
900 001 – 1 250 000	3% of the value in excess of R900 000
1 250 001 – 1 750 000	R10 500 plus 6% of the value in excess of R1 250 000
1 750 001 – 2 250 000	R40 500 plus 8% of the value in excess of R1 750 000
2 250 001 – 10 000 000	R80 500 plus 11% of the value in excess of R2 250 000
10 000 001 and above	R933 000 plus 13% of the value in excess of R10 000 000

Transfers between spouses on divorce and transfers to heirs (including trusts and companies) from a deceased estate are exempt from transfer duty.

CARBON TAX

As part of the 2013 Budget proposals, it was announced that a carbon tax will be introduced as part of South Africa's efforts to mitigate the effects of climate change. By pricing the external costs associated with carbon dioxide (CO_2) emissions, incentives will be created to change behaviour and encourage energy-efficiency measures. Government proposes to phase the tax in over time. On 20 November 2018, the Minister of Finance tabled the Carbon Tax Bill in Parliament. Carbon tax is expected to become effective from 1 June 2019, subject to the promulgation of the Carbon Tax Bill.

SKILLS DEVELOPMENT LEVY

The skills development levy (SDL) is a levy payable by an employer based on its 'leviable amount'. 'Leviable amount' is remuneration for employees' tax purposes less certain prescribed exemptions. The funds collected from this levy are used to finance a national skills development programme. All employers (subject to certain exemptions) are required to pay 1% of their leviable amount on a monthly basis to SARS. The actual remuneration paid or payable to directors must be included. No SDL is payable by employers with a payroll of less than R500 000 per annum or by any public service employer, approved public benefit organisations and certain national and provincial entities.

TAX ADMINISTRATION ACT

The Tax Administration Act (Act 28 of 2011) consolidates administrative provisions relating to taxing statutes into a separate Act. It came into effect on 1 October 2012 (except for certain provisions dealing with interest). The Act deals, *inter alia*, with the following matters:

- Powers and duties of SARS and SARS officials;
- The office of the tax ombud;
- Registration;
- Returns and records;
- Reportable arrangements;
- Information gathering, including search and seizure protocols;
- Confidentiality of information;
- Advance rulings;
- Assessments;
- Dispute resolution protocols;
- Tax liability and payment;
- Recovery of tax;
- Interest;
- Refunds;
- Write-off or compromise of tax debt;
- Administrative non-compliance penalties;

- Understatement penalties, including a permanent voluntary disclosure programme;
- Criminal offences; and
- Registration of tax practitioners and the reporting of unprofessional conduct.

The Act also contains transitional provisions.

EXCHANGE CONTROL

Exchange controls are monitored and administered by the Financial Surveillance Department (formerly the Exchange Control Department) of the South African Reserve Bank.

FACILITIES AVAILABLE TO SOUTH AFRICAN RESIDENTS

Discretionary allowance

Private individuals are entitled to a single discretionary allowance of R1 million per calendar year. The discretionary allowance is available to all individuals over the age of 18 years. It is in addition to the existing foreign investment allowance described below.

The discretionary allowance may be used for any legal purpose abroad and no supporting documentation has to be furnished to the authorised dealer attending to the transfer except in the case of the allowance being used for travel purposes.

The single discretionary allowance may be transferred abroad in rand, however transfers for investment purposes (of a capital nature) must be converted to foreign currency through an authorised dealer.

Travel allowances for visits outside the Common Monetary Area (CMA)

Adults – the travel allowance forms part of the discretionary allowance referred to above.

Persons under the age of 18 – R200 000 per calendar year.

Travel facilities may be provided in any authorised form. If transferred to a bank account, the allowance may only be transferred to the traveller's account and/or spouse accounts and not to the account of a third party. Travel facilities not availed of during one calendar year may not be carried forward to the following year. Travellers proceeding on visits outside the CMA are permitted to export up to R25 000 per person in South African Reserve Bank notes. This is not regarded as being part of the travel allowance.

SOUTH AFRICAN RESIDENTS TEMPORARILY LIVING ABROAD

Such persons may:

- if over the age of 18, avail of the R1 million single discretionary allowance and the R10 million foreign capital allowance per calendar year without returning to South Africa;
- if under the age of 18, avail of a subsistence allowance not exceeding R200 000 per calendar year;
- export of household goods and personal effects and motor vehicles with a maximum insured value of R1 million.

STUDY FACILITIES

Foreign exchange study facilities are restricted to permanent residents of South Africa who are taking full-time courses at recognised educational institutions abroad.

The facilities comprise:

- full amount of tuition and academic fees for the academic year, transferred directly to the institution concerned;
- discretionary allowance as referred to above to cover travelling and related costs; and
- exportation of household goods and personal effects up to the value of R200 000 per student.

BUSINESS TRAVEL FACILITIES

Authorised dealers may approve applications by businesses for omnibus travel facilities for up to R20 million per calendar year for allocation at the discretion of the business. Representatives of the business using this facility also qualify for the travel allowances referred to above.

FOREIGN INVESTMENT BY SOUTH AFRICAN RESIDENTS

Individuals

Private individuals over the age of 18 years are permitted to invest an amount of R10 million per calendar year outside the CMA. A tax clearance certificate must be obtained from SARS prior to the transfer of funds. These funds may not be utilised to invest directly or indirectly back into the CMA. The Reserve Bank will also consider applications by private individuals to invest in fixed property in the SADC member countries against submission of a tax clearance certificate.

An exception to the above unintentional 'loop structures' created when the Foreign Capital Allowance and/or Single Discretionary Allowance is invested with non-resident asset or fund managers who invest in foreign companies which have CMA assets and/or offshore global investment funds that directly or indirectly hold CMA investments over which the South African investor has no control, is permitted.

The Financial Surveillance Department will consider applications by private individuals who wish to invest in different asset classes offshore in excess of the Foreign Capital Allowance. Individuals wishing to avail of this dispensation must first approach SARS to obtain a Tax Clearance Certificate in the prescribed format which must accompany their application to the Financial Surveillance Department for consideration.

SOUTH AFRICAN RESIDENT COMPANIES

Requests to invest overseas are considered on merit. The investor will be required to motivate that the investment will result in a long-term benefit to the South African economy. Similarly, major corporates may apply to establish primary listings offshore. Authorised dealers can currently approve new outward foreign direct investments provided that the total cost does not exceed R1 billion per company per calendar year. Applications for investments exceeding R1 billion have to be submitted to the Financial Surveillance Department of the South African Reserve Bank for approval.

Dividends declared and paid by foreign subsidiaries may be retained offshore and utilised for any purposes, except for loans into the CMA. Where a new investment is made without funds being transferred from South Africa, the proposed investment must still be approved by an authorised dealer. Dividend proceeds may also be used to acquire 10% to 20% equity and/or voting rights, whichever is the greater, in a foreign target entity which may hold investments and/or make loans to any CMA country.

In terms of the 2013 Budget proposals, it was announced that each JSE-listed entity will be entitled to establish one subsidiary to hold African and offshore operations (HoldCo), which will not be subject to foreign exchange restrictions. This dispensation has now been extended to also include unlisted entities. This will incentivise companies to manage their African and offshore operations from South Africa, maximising the benefits to South Africa's economy. Following a pilot, this dispensation may be extended to other entities. The HoldCos will be subject to the following conditions:

- They must operate as South African tax residents, and be incorporated and effectively managed and controlled in South Africa;
- Transfers from the parent company to HoldCo will be allowed up to R2 billion per calendar year for listed entities and R1 billion per calendar year in the case of unlisted entities. Additional amounts may be considered on application to the Reserve Bank;
- HoldCos will be allowed to freely raise and deploy capital offshore, provided these funds are without South African guarantees. Additional domestic capital and guarantees will be allowed on funding genuine foreign direct investment (FDI) in the same manner as the current FDI allowance;

- HoldCos will be allowed to operate as cash management centres for South African multinationals. Cash pooling will be allowed without any restrictions. Local income generated from cash management will be freely transferable;
- HoldCos may choose their functional currency or currencies, and operate foreign currency accounts and a rand-denominated account for operational expenses;
- Only one wholly owned HoldCo per JSE-listed entity or unlisted entity will be allowed. In future, conditions for jointly owned HoldCos, multiple HoldCos and subsidiaries of non-listed entities may be prescribed; and
- Appropriate governance and transparency arrangements will be required.

A complementary tax incentive will be considered to allow HoldCos to use foreign functional currency for tax accounting. This would ensure that a HoldCo is not taxable on currency gains and losses arising in the course of foreign functional currency treasury operations.

INSTITUTIONAL INVESTORS

Long-term insurers, pension funds and fund managers may invest 25% of total assets offshore. Collective investment schemes and investment managers may invest 35% of the total retail assets under management offshore.

ROYALTIES AND LICENCE FEES

Agreements by South African companies to pay royalties, licence and patent fees to non-residents (both related and unrelated parties) in respect of the local manufacturing of a product are subject to approval from the Department of Trade and Industry (on behalf of the Exchange Control authorities). Agreements by South African companies to pay royalties, licences and patent fees to unrelated non-residents where no local manufacturing is involved are subject to the approval of an authorised dealer.

Requests by South African residents to make royalty and fee payments to related parties abroad should be submitted to the Financial Surveillance Department via an authorised dealer for consideration.

A related party is defined by the Financial Surveillance Department as a party to a transaction that has a direct or indirect interest in the other party and has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions. The payment of royalties to non-residents is generally not approved where the royalties stem from intellectual property initially devised in South Africa.

NON-RESIDENTS

Non-residents may freely invest in the Republic, provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arm's length, at fair market-related prices, and are financed in an approved manner. Such financing would require prior exchange control approval.

CAPITAL TRANSACTIONS

Proceeds from the sale of assets in South Africa, owned by non-residents (excluding blocked assets of emigrants), may be remitted abroad.

DIVIDENDS

Dividends declared by listed companies are remittable to non-resident shareholders. An emigrant shareholder will be entitled to dividends declared out of income earned after the date of emigration. Dividends declared by unlisted companies are remittable in proportion to percentage shareholdings. Dividends in favour of emigrant shareholders may be remitted, subject to additional requirements.

DIRECTORS' FEES

Authorised dealers may transfer directors' fees to non-resident directors permanently domiciled outside South Africa, provided the application is accompanied by a copy of the resolution of the board of the remitting company, confirming the amount to be paid to the beneficiary.

MANAGEMENT AND ADMINISTRATION FEES

Authorised dealers may approve payment of management and administration fees payable to unrelated non-resident parties (neither of the parties having any direct/indirect interest or shareholding in one another), taking into account the reason for the fees, nature of the services and the basis of calculation. Fees calculated on the basis of a percentage of turnover, income, sales or purchases are generally not approved. Payment of percentage-based fees is permissible provided it is normal in the trade concerned.

EMIGRANTS FROM SOUTH AFRICA

Emigrants qualify for:

- a travel allowance;
- an annual foreign capital allowance; and
- exportation of certain items.

Travel allowance

Emigrants qualify for a travel allowance equal to the annual discretionary allowance available to South African residents. This allowance may only be granted once and not more than 60 days prior to departure. Children who are under the age of 18 years may be accorded a travel allowance not exceeding an amount of R200 000.

Foreign capital allowance

- up to R10 million per calendar year per single person; or
- up to R20 million per calendar year per family unit, less any amount invested in terms of the foreign investment allowance.

Individuals who have emigrated and who have not fully utilised the authorised foreign capital allowance, may be afforded additional capital transfers within the overall limits. Application may also be made for the export of both listed and unlisted securities based on their market value at the time of utilising the foreign capital allowance. The relevant securities must be restrictively endorsed.

EXPORTATION OF GOODS

Emigrants may export household and personal effects and motor vehicles within the overall insured value of R2 million.

FURTHER REGULATIONS

- Foreign assets held by an emigrant are not deducted from the facilities mentioned above; and
- Emigrants must declare whether any assets were received as donations or gifts in excess of R100 000 within the last 3 years or as capital distributions from inter-vivos trusts within the last 3 years, prior to the date of emigration.

REMAINING FUNDS

Assets of an emigrant in excess of the above allowances remain blocked in South Africa. They must be brought under the control of an authorised dealer and may be released for payment of specified investments and/or expenses. Emigrants can, on application, request to transfer their remaining liquid assets in excess of the foreign capital allowance limits, subject to an exit schedule approved at the discretion of the Financial Surveillance Department. A Tax Clearance Certificate issued by SARS must accompany such applicants. Currently the Manual only refers in the case of investment switches of remaining assets in the form of unquoted shares being invested in quoted shares.

DISTRIBUTIONS FROM ESTATES

Bequests and the cash proceeds of and inheritances due to heirs permanently resident outside South Africa may be remitted abroad, subject to the adherence to prescribed procedures where the legatee is an emigrant.

RETENTION OF RECORDS

	Retention Period Originals (years)
Close corporations	
• Accounting records, including supporting schedules to accounting records and ancillary accounting records.	15
• Annual financial statements, including annual accounts and the report of the accounting officer.	15
• Amended founding statement (forms CK 2 and CK 2A).	Indefinite
• Founding statement (form CK 1)	Indefinite
• Minute books as well as resolutions passed at meetings.	Indefinite
• Microfilm image of any original record reproduced directly by the camera – the 'camera master'.	Indefinite
Companies	
• General rule: Any documents, accounts, books, writing, records or other information required to be kept in terms of the Companies Act (Act 71 of 2008) ("the Act') and other public regulation.	7 or longer (as specified in other public regulation)
• Memorandum of Incorporation and alterations or amendments, Rules and Registration Certificate.	
• Record of directors and past directors, after the director has retired from the company.	Indefinite
• Copies of accounting records as required by the Act.	7
• Copies of annual financial statements required by the Act.	7
• Notice and minutes of all shareholder meetings including resolutions adopted and documents made available to holders of securities.	7
• Copies of reports presented at the annual general meeting of the company.	
• Written communication to holders of securities	7
• Securities register and uncertificated securities register.	7
• Members register in case of a non-profit company.	Indefinite
• Register of company secretary and auditors – a change in the record's location must be notified to the Commission. If security register and accounting records are kept electronically, certain extra requirements apply such as to keep adequate precautions etc.	Indefinite
Other documents	
Customs and Excise Act	
• All customs and excise documentation to be kept by importer / exporter.	5
Compensation for Occupational Injuries and Diseases Act	
• Records of wages paid, time and piece work and overtime records, accident records, etc.	7

Insolvency Act	
• The insolvent's records of his transactions.	3
Occupational Health and Safety Act	
• A copy of the Act, an incident register, factory register, certificate of compliance (electrical) etc.	Permanently
• Record of employees exposed to asbestos fibres.	Minimum of 40
Value-Added Tax Act	
• Books of account; accounting instruction manuals, system and programme documentation describing the accounting system; records of the supply of goods to or by the vendor; invoices; tax invoices; credit and debit notes; bank statements; deposit slips; stock lists and paid cheques and any documentory proof prescribed by the Commissioner.	5
• Information in book form – 5 years from last entry. A record of all importations of goods and documents relating thereto.	
• Computerised records must be kept in printout form, not just on disk or tape.	
• Lists of amounts owing by debtors and owing to creditors where a vendor basis of accounting for VAT has changed.	
• Documentary proof substantiating a vendor's entitlement to apply zero rating.	
Capital Gains Tax	
All records relating to capital transactions	
• If a person is not required to render tax returns - from the end of the relevant year of assessment.	5
• For taxpayers - from the date of submission of the relevant tax return.	5
Income Tax Act	
• Accounting records from date of submission of the return incorporating the information.	5

PRIME BANK OVERDRAFT RATES

Effective Date	Rate (%)
23.11.2018	10.25
29.03.2018	10.00
21.07.2017	10.25
18.03.2016	10.50
29.01.2016	10.25

20.11.2015	9.75
24.07.2015	9.50
18.07.2014	9.25
29.01.2014	9.00
19.07.2012	8.50
19.11.2010	9.00
10.09.2010	9.50
26.03.2010	10.00
14.08.2009	10.50
29.05.2009	11.00
04.05.2009	12.00
25.03.2009	13.00
06.02.2009	14.00
12.12.2008	15.00
13.06.2008	15.50
11.04.2008	15.00
07.12.2007	14.50
12.10.2007	14.00
17.08.2007	13.50
08.06.2007	13.00
08.12.2006	12.50
13.10.2006	12.00
03.08.2006	11.50
08.06.2006	11.00
15.04.2005	10.50
16.08.2004	11.00
18.12.2003	11.50
20.10.2003	12.00
16.09.2003	13.50
14.08.2003	14.50
12.06.2003	15.50
13.09.2002	17.00
14.06.2002	16.00
14.03.2002	15.00
15.01.2002	14.00
25.09.2001	13.00
16.07.2001	13.50
18.06.2001	13.75
14.01.2000	14.50
04.10.1999	15.50
02.08.1999	16.50
19.07.1999	17.00
14.07.1999	17.50

COMPARATIVE RATES

COMPANIES INCOME TAX

Years of assessment ending on or after	Rate
1 April 1993	40%
1 April 1994	35%
1 April 1998	30%
1 April 2005	29%
1 April 2008	28%

BRANCHES OF FOREIGN COMPANIES

Years of assessment ending on or after	Rate
1 April 1999	35%
1 April 2005	34%
1 April 2008	33%
1 April 2012	28%

STC / DIVIDENDS TAX

	Rate
Dividends declared on or after 17 March 1993	15%
Dividends declared on or after 22 June 1994	25%
Dividends declared on or after 14 March 1996	12.5%
Dividends declared on or after 1 October 2007	10%
Replaced by dividends tax with effect from 1 April 2012	15%
Dividends paid on or after 22 February 2017	20%

SARS INTEREST RATES (PRESCRIBED RATES)

Date from	Interest payable on outstanding taxes	Interest receivable on overpayment of provisional tax
1 September 2003	14.00%	10.00%
1 October 2003	13.00%	9.00%
1 December 2003	11.50%	7.50%
1 November 2004	10.50%	6.50%
1 November 2006	11.00%	7.00%
1 March 2007	12.00%	8.00%
1 November 2007	13.00%	9.00%
1 March 2008	14.00%	10.00%
1 September 2008	15.00%	11.00%
1 May 2009	13.50%	9.50%
1 July 2009	12.50%	8.50%
1 August 2009	11.50%	7.50%
1 September 2009	10.50%	6.50%
1 July 2010	9.50%	5.50%
1 March 2011	8.50%	4.50%
1 May 2014	9.00%	5.00%
1 November 2014	9.25%	5.25%
1 November 2015	9.50%	5.50%

1 March 2016	9.75%	5.75%
1 May 2016	10.25%	6.25%
1 July 2016	10.50%	6.50%
1 November 2017	10.25%	6.25%
1 July 2018	10.00%	6.00%
1 March 2019	10.25%	6.25%

ACCEPTABLE RATES ON EMPLOYEE LOANS FOR FRINGE BENEFIT PURPOSES (OFFICIAL RATES)

Date	Rate
1 December 2003	9.50%
1 March 2004	9.00%
1 September 2004	8.50%
1 September 2005	8.00%
1 September 2006	9.00%
1 March 2007	10.00%
1 September 2007	11.00%
1 March 2008	12.00%
1 September 2008	13.00%
1 March 2009	11.50%
1 June 2009	9.50%
1 July 2009	8.50%
1 September 2009	8.00%
1 October 2010	7.00%
1 March 2011	6.50%
1 August 2012	6.00%
1 February 2014	6.50%
1 August 2014	6.75%
1 August 2015	7.00%
1 December 2015	7.25%
1 February 2016	7.75%
1 April 2016	8.00%
1 August 2017	7.75%
1 April 2018	7.50%
1 Dec 2018	7.75%

With effect from 1 March 2011, the official rate is determined with reference to the repurchase ('repo') rate. Where the loan is denominated in rands, the official rate is 100 basis points above the repo rate. Where the loan is denominated in foreign currency, the official rate is 100 basis points above the equivalent rate to the repo rate for that currency. Where the repo rate changes during a month, the official rate changes from the beginning of the following month.

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