

In your interest 2009/2010



Horwath

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## **BUDGET PROPOSALS**

Tabled by the Minister of Finance on 11 February 2009:

### **INDIVIDUAL TAX**

#### **Tax brackets**

The tax brackets have been restructured to increase the tax threshold at which the maximum rate is reached at R525 000 (2009 – R490 000). Tax thresholds have been increased for persons under 65 to R54 200 (2009 – R46 000) and for persons 65 and over to R84 200 (2009 – R74 000).

#### **Interest**

Interest earned by natural persons under 65 is exempt up to R21 000 (2009 – R19 000) and persons 65 and over to R30 000 (2009 – R27 500).

Foreign interest and dividends are exempt up to R3 500 (2009 – R3 200).

#### **Medical scheme contributions**

Monthly tax deductible contributions for a member and first beneficiary have increased to R625 (2009 – R570) and for each beneficiary thereafter to R380 (2009 – R345).

#### **Annual exclusion of capital gains**

The annual exclusion has been increased to R17 500 (2009 – R16 000).

### **SITE**

It was proposed that the SITE system be discontinued by 2010/2011 as a result of the pre-populated returns and the waiver of the annual filing requirement for taxpayers with single employment.

#### **Travel allowances**

The deemed business kilometre procedure will be scrapped from 2010/2011 thus requiring all taxpayers to keep a logbook to justify travel expenses for business purposes.

#### **Provisional tax**

For persons 65 and over, the threshold for provisional tax purposes is increased to R120 000 (2009 – R80 000).

#### **Capital gains on primary residence**

An automatic capital gains exclusion will apply to primary residences disposed of up to a gross value of R2 million. For primary residences above this threshold, the normal rules (R1,5 million capital gains exclusion) apply.

#### **Estate Duty**

It is proposed that spouses be given flexibility to use their combined estate duty deductions by allowing the surviving spouse to utilise the unused portion of the deduction of the deceased spouse.

#### **Value Added Tax**

The threshold for compulsory registration will be increased to R1 million (previously R300 000). It was proposed that the minimum threshold for voluntary registration be increased to R50 000 (previously R20 000) with effect from 1 March 2010.

#### **Dividend Tax**

It is proposed that the final stage of the conversion to dividend withholding tax be introduced in the second half of 2010.

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## **COMPANIES AND CLOSE CORPORATIONS**

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### **Normal tax rate for years of assessment after 31 March 2009**

Companies and close corporations	28%
Small business corporations	
On first R54 200	0%
From R54 201 to R300 000	10%
Thereafter	28%
Employment companies	33%
Foreign companies with South African activities	33%
South African branches of foreign companies	33%

### **Secondary tax on companies**

On dividends declared on or after 1 October 2007	10%
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### **Normal tax rate for years of assessment after 31 March 2008**

Companies and close corporations	28%
Small business corporations	
On first R46 000	0%
From R46 001 to R300 000	10%
Thereafter	28%
Employment companies	33%
Foreign companies with South African activities	33%
South African branches of foreign companies	33%

### **Secondary tax on companies**

On dividends declared on or after 1 October 2007	10%
Distributions after 14 March 1996 to 30 September 2007	12,5%

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## **TRUSTS OTHER THAN SPECIAL TRUSTS**

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### **Normal tax rate**

For years ended 28 February 2003 to 2010	40%
No primary rebate or interest exemption	

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## **SPECIAL TRUSTS**

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Same rate as individuals.

No primary rebate or interest exemption.

Defined as one created solely for the benefit of a person suffering from a severe mental illness or physical disability, or a testamentary trust established solely for the benefit of minor children related to the deceased.

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## **MICRO BUSINESSES**

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### **Normal tax rate for years of assessment after 31 March 2009**

R	R	
0 – 100 000		0%
100 001 – 300 000		1% of each R1 above 100 000
300 001 – 500 000	2 000 + 3%	of the amount above 300 000
500 001 – 750 000	8 000 + 5%	of the amount above 500 000
750 001 – 1 000 000	20 500 + 7%	of the amount above 750 000

## **INDIVIDUALS**

### **TAX TABLES**

**For the year ended 28 February 2010**

R	R	
0 – 132 000		18% of each R1
132 001 – 210 000	23 760	+ 25% of the amount above 132 000
210 001 – 290 000	43 260	+ 30% of the amount above 210 000
290 001 – 410 000	67 260	+ 35% of the amount above 290 000
410 001 – 525 000	109 260	+ 38% of the amount above 410 000
525 001 and above	152 960	+ 40% of the amount above 525 000

**For the year ended 28 February 2009**

R	R	
0 – 122 000		18% of each R1
122 001 – 195 000	21 960	+ 25% of the amount above 122 000
195 001 – 270 000	40 210	+ 30% of the amount above 195 000
270 001 – 380 000	62 710	+ 35% of the amount above 270 000
380 001 – 490 000	101 210	+ 38% of the amount above 380 000
490 001 and above	143 010	+ 40% of the amount above 490 000

### **REBATES**

	<b>2010</b>	<b>2009</b>
Primary	R9 756	R8 280
65 and over	R5 400	R5 040

### **TAX THRESHOLDS**

Below 65	R54 200	R46 000
65 and over	R84 200	R74 000

### **EXEMPT INCOME**

	<b>2010</b>	<b>2009</b>
Limited to		
Total interest exemption including foreign interest		
Below 65	R21 000	R19 000
65 and over	R30 000	R27 500
Foreign interest and dividends	R3 500	R3 200

Interest earned by non-residents not carrying on business in South Africa.

War and certain disability pensions.

Pensions received from sources outside South Africa.

Unemployment and Workmen's Compensation benefits.

Lump sum gratuities	R30 000	R30 000
On retirement.		
On terminating employment as result of ill health.		
On redundancy in certain circumstances.		

## **DEDUCTIONS**

### **Pension fund contributions**

Greater of: R1 750, or

7,5% of income from retirement funding employment.

### **Retirement annuity fund contributions**

Greater of: R1 750, or

R3 500 less current pension fund contributions, or

15% of income from non-retirement funding income.

Reinstated fund contributions are limited to R1 800, whilst excess contributions may be carried forward to the following year.

### **Medical and physical disability expenses**

Over 65            All expenses

Under 65        Monthly medical aid contributions limited to R625 for taxpayer, R625 for first dependent and R380 for each additional dependent plus expenses in excess of 7,5% of taxable income.

Medical expenses include the balance of the medical aid payments, all expenditure incurred not refunded by the medical aid, including non-South African expenses.

Physical disability expenditure includes necessary expenditure incurred as a result of the disability. The definition of disability from 1 March 2009 has been broadened to cover a moderate to severe limitation of a person's ability to function normally as a result of physical, sensory, communication, intellectual or mental impairment if it has lasted or has a prognosis to last more than a year as diagnosed by a duly registered medical practitioner.

### **Donations to public benefit organisations**

Limited to 10% of taxable income before deducting medical expenses and donations, provided made to organisations which issue receipts in terms of S18A. A detailed schedule of the types of organisations which qualify as public benefit organisations has been issued by SARS.

### **Home study expenses**

A deduction will only be allowed if the study is used exclusively for trade, or where the income is derived mainly from commission and the duties are not carried out in an office provided by the employer, or where the employee carries on his duties mainly from the home study.

## **FRINGE BENEFITS**

### **Medical aid**

Medical aid contributions by employers are taxable to the extent that they exceed the following monthly capped amounts:

R625 for the employee plus R625 for the first dependent and R380 for each additional dependent.

There is no capping where an employee is 65 years or older.

## Subsistence allowance

The allowance relates to expenditure on meals and incidental costs incurred whilst being absent from home for at least one night. It is taxable to the extent that the employee has not spent the required nights away from home by the last day of the following month. No proof is required where allowance is R260 per day for meals or incidental costs or R80 per day for incidental costs in South Africa or \$215 per day outside South Africa.

## Right of use of motor vehicle

The monthly fringe benefit is computed at 2,5% of the determined value of the first vehicle and 4% of each additional vehicle. Should a travel allowance be granted, the right of use of a motor vehicle will be 4% of the determined value.

The determined value is the cash cost (excluding VAT) of the vehicle or the market value in the case of a lease or donation. The cost is reduced by 15% for each completed year from the date of acquisition by the employer to the date the employee was granted the use of the vehicle.

## Travelling allowance

The allowance may be paid at fixed monthly rate or per kilometre. PAYE on 60% of the allowance is deductible where allowance is not based on actual business travel costs.

The allowance can be based on actual figures, where detailed costs and travel records are kept; deemed costs per table and actual kilometres where a logbook is kept or deemed figures for both where only the total kilometres travelled during year are required. Where total kilometres are used, the first 18 000 km and those in excess of 32 000 km are deemed private.

## Scale for determining the costs of travelling

Value of the vehicle (including VAT)	Fixed Cost (R p.a.)	Fuel Cost (c/km)	Maintenance Cost (c/km)
0 – R40 000	14 672	58,6	21,7
R40 001 – R80 000	29 106	58,6	21,7
R80 001 – R120 000	39 928	62,5	24,2
R120 001 – R160 000	50 749	68,6	28,0
R160 001 – R200 000	63 424	68,8	41,1
R200 001 – R240 000	76 041	81,5	46,4
R240 001 – R280 000	86 211	81,5	46,4
R280 001 – R320 000	96 260	85,7	49,4
R320 001 – R360 000	106 367	94,6	56,2
R360 001 – R400 000	116 012	110,3	75,2
exceeding R400 000	116 012	110,3	75,2

The recipient may opt to be reimbursed at R2,92 per km where less than 8 000 km relate to business, provided no other travel allowance is received.

## Low interest loans

The benefit arises on the difference in the official rate of interest and that charged to the employee on loans greater than R3 000. Study loans are excluded.

The official interest rate of interest is:

1 September 2006 – 28 February 2007	9%
1 March 2007 – 31 August 2007	10%
1 September 2007 – 29 February 2008	11%
1 March 2008 – 31 August 2008	12%
1 September 2008 – to date	13%

### **Cellphones and computers**

From 1 March 2008 no fringe benefit accrues through the private use of cellphones and computers provided by the employer used mainly for business purposes.

### **Other benefits**

All benefits derived from employment are taxed in full or according to a formula and include: acquisition of assets at lower than market value, residential and hotel accommodation, home ownership schemes and right of use of assets.

## **SHARE INCENTIVES**

### **Broad-based employee share plan**

This plan is defined as one in terms of which:

- equity shares are acquired at the minimum required by the Companies Act
- in which employees who participate in any other share equity plan cannot participate
- at least 80% of non-excluded employees are entitled to participate
- the shares have full voting rights
- no restrictions are placed on the disposal of the shares except at full market value or in terms of the rules of the plan for at least five years from date of the grant
- the market value of the shares acquired during a 5 year period in terms of this plan cannot exceed R50 000.

The gain made on the sale of the qualifying shares within 5 years from the date of the grant is taxable as income. Thereafter the gain is subject to CGT.

The employer may deduct R10 000 per year.

### **Equity instruments issued to directors and employees**

Regulations are applicable to equity instruments acquired after 26 October 2004 by virtue of employment or office.

Gains or losses are taken into account on the vesting of the equity instrument. Vesting occurs on the acquisition of an unrestricted equity instrument:

in the case of a restricted equity instrument, the earliest of:

- when all restrictions cease to exist
- immediately before the disposal of the instrument
- immediately after an option terminates or a convertible instrument is converted
- immediately before the taxpayer dies if all restrictions are lifted on death.

The gain on the vesting of the instrument constitutes remuneration and is subject to employees' tax.

## **EMPLOYEES TAX**

### **Standard income tax on employees (SITE)**

SITE is a final deduction of normal tax from net remuneration up to R60 000. SITE only taxpayers are not required to lodge a tax return. Where the employee works for less than a full year the SITE payments may be refundable. SITE does not apply to directors, or remuneration which may be set off against an assessed loss, or from which expenses may be claimed or travel allowances.

### **Pay as you earn (PAYE)**

Employers are required to deduct PAYE on all remuneration paid to employees, including directors and members of close corporations, unless a tax deduction directive is issued by SARS.

## **MARRIED PERSONS**

Married persons are taxed separately on his/her income. Donations between spouses are not subject to donations tax, though should the donation be made purely to avoid tax, the income earned will attribute to the donating spouse.

Persons married in community of property will be taxed on half of the property rentals and interest. Income from independent trade or from assets which are not part of the joint estate or from purchased annuities will be taxed in the hands of the spouse entitled thereto.

## **MINOR CHILDREN**

Minor children are taxed on income received by them, unless such income is derived from assets or income donated by a parent. In this case the parent is taxed on such income.

## **ESTATE DUTY**

Estate duty is levied at 20% on the dutiable amount of the estate after taking into account an abatement of R3,5 million.

The deemed property of the estate includes all assets and liabilities of the deceased, insurance policies on the life of the deceased as well as any accrued claim against the surviving spouse. Benefits arising from pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds are not included in the estate of persons dying on or after 1 January 2009.

Certain deductions are allowed, which include funeral, tombstone and deathbed expenses; costs of administering and liquidating the estate, CGT, bequests to approved PBO, all assets bequeathed to the surviving spouse.

## **RING FENCING OF ASSESSED LOSSES**

Ring fencing can only be applied to natural persons subject to the maximum marginal tax rate who have incurred a trading loss in 3 out of 5 years in a trade listed in the Income Tax Act.

The affected trades relate to sport practices, dealing in collectibles, animal showing, performing or creative arts, betting or gambling carried on by the taxpayer or a relative; or the rental of residential accommodation, vehicles or aircraft unless 80% used by persons not related to the taxpayer for at least 6 months; farming or animal breeding unless on a fulltime basis.

The ring fencing can be prevented where the trade constitutes a business and “facts and circumstances” are presented for consideration unless the losses were incurred in 6 out of 10 years commencing on 1 March 2004.

**LUMP SUM BENEFITS FROM FUNDS**

**On retirement**

Lump sum benefits from pension and retirement funds are limited to one third of the value of the fund, unless the remaining two thirds is equal to or less than R50 000. In effect, retirement fund values of R75 000 or less can be withdrawn as lump sum.

**Exempt portion of lump sum on retirement or death**

The calculation of the exempt portion of the lump sum has been simplified as the period of membership of the fund and average salary are no longer used to calculate the tax-free portion of the lump sum.

On retirement or death the deduction to be allowed is the lesser of:

- the amount received from the funds, or
- the amount calculated in terms of Formula ‘B’

Formula ‘B’ is  $Z = C + E - D$  where

Z = the tax free portion

C = R300 000

D = the sum of deductions allowed in previous years of assessment

E = the sum of the taxpayer’s own contributions which were not allowed as a deduction

**Rate of tax on lump sum payments**

A table of rates has been issued which applies for years of assessment ending on or after 29 February 2008:

R	R	
0 – 300 000	–	+ 18% of the amount over R1
300 001 – 600 000	54 000	+ 27% of the amount over R300 000
600 001 – and over	135 000	+ 36% of the amount over R600 000

**PAYE**

PAYE will be deducted by the administrators based on the tax directives received. Where recipient earned less than the tax threshold in the previous year no PAYE will be deducted.

**Withdrawal or resignation from the fund**

No changes have been made relative to the lump sums paid on withdrawal or resignation.

The tax free portion is R22 500 plus the amounts paid into another pension or retirement fund subject to the maximum deduction being the lump sum and the minimum being the contributions not previously allowed as deductions.

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## ***MICRO BUSINESSES***

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A turnover tax for micro businesses with a turnover of up to R1million will become effective from 1 March 2009.

The turnover tax will be a substitute for income tax, CGT, STC and VAT and will apply to sole proprietors, partnerships, close corporations, companies and co-operatives. The turnover tax is optional.

The tax will be applied according to the table on page 3. It will be levied annually on the year of assessment ending in February. It will include two six monthly interim payments.

If elected, the turnover tax will apply for at least 3 years unless the conditions for registration no longer apply. If deregistered the business cannot reregister for 3 years.

Micro businesses will be exempted from CGT, but 50% of the amounts recovered from disposal of the business assets will be included in taxable turnover.

Micro businesses will be exempted from STC to the extent that dividends do not exceed R200 000. Any excess will be subject to STC.

The VAT threshold will be increased to R1 million with effect from 1 March 2009 and micro businesses registered for the turnover tax system will be excluded from registration.

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## ***COMPANIES AND CLOSE CORPORATIONS***

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### **NORMAL TAX**

#### **Normal companies**

Close corporations are included in the definition of company and are taxed in the same way.

The normal tax rate for years ending on or after 31 March 2008 is 28%.

#### **Small business corporations**

These entities are entitled to certain allowances and reduced tax rates. They are defined as corporations where all the shareholders or members were natural persons for the entire year, the gross income does not exceed R14 million, no shareholder holds any interest in any other company (except listed companies, shareblock companies and body corporates) during the year and less than 20% of the income is investment income or personal service income.

The tax rates applicable to these entities are:

On first R54 200	0%
From R54 200 to R300 000	10%
Thereafter	28%

The incentive allowances include:

100% write off of all plant and machinery used in the process of manufacture or similar process, 50: 30: 20 write off of all other assets.

## **LABOUR BROKERS AND PERSONAL SERVICE PROVIDERS**

Labour brokers and personal service providers (companies and trusts) are classified as employees from 1 March 2009 and the persons paying them are required to deduct employee tax.

The employee tax deduction is: 40% where the personal service provider or labour broker is a trust and 33% if a company.

A labour broker is a natural person who provides a client with other persons to render a service or perform a service and who remunerates such persons. The definition applies from 1 March 2009 and does not include companies, close corporations or trusts. Such entities are dealt with under the definition of personal service provider.

A labour broker can apply for an exemption certificate.

A personal service provider is company or trust which renders any service personally by a person who is a connected person so such company or trust and:

- such person is regarded as an employee of the client if the services were rendered directly; or
- where the duties are performed mainly at the premises of the client or are subject to the control and supervision of the client as to the manner in which the duties are performed; or
- where more than 80% of the income of such company consists on amounts paid directly or indirectly by one client, except where such company or trust employs 3 or more full-time employees throughout the year of assessment who are not connected persons.

Personal service companies cannot qualify as micro businesses.

## **DIVIDEND**

The definition of dividend was amended with effect from 1 October 2007.

Dividend means any amount distributed by a company to its shareholders and includes specifically:

- liquidation and deregistration dividends
- going concern dividends
- reductions in share capital pursuant to share “buybacks” and excludes specifically:
  - capitalisation issues from share premium
  - reductions in share capital or share premium
  - amounts distributed to a shareholder in the same group of companies to the extent that the shareholder reduces the cost of the shares in terms of generally accepted accounting policies
  - amounts distributed by co-operatives by way of bonus to the extent that they are deductible from the co-operatives income.

Profits distributed by way of dividend include both realised and unrealised profits whether or not the unrealised profits have been recognised in its financial records.

## **Liquidation and deregistration dividends**

A portion of distributions made by a company that is being liquidated, wound up or deregistered is not deemed to be dividends.

The profits that are included in dividends are:

- revenue profits
- capital profits on assets acquired on or after 1 October 2001
- capital profits earned after 1 October 2001 on assets acquired before 1 October 2001.

Profits excluded from dividends are:

- capital profits earned before 1 October 2001.

The exemption only applies where the company has taken the steps to liquidate, wind up or deregister within 6 months of the distribution. Suitable resolutions and notifications must be lodged with the Registrar of Companies, Registrar of Close Corporations and South African Revenue Services.

Dividends declared will be treated in the same way as going concern dividends.

## **Secondary Tax on Companies "STC"**

Dividends declared on or after 1 October 2007 are subject to STC at 10%. The STC is paid on the amount by which the dividend declared is greater than the dividends received in the dividend cycle.

The dividend cycle is the period between dividend declarations – the earliest date being 1 September 1992.

The STC is payable by the end of the month following that in which the dividend is declared. Interest will be charged at the prescribed rate on late payments.

## **Deemed dividends**

Benefits received by a shareholder or person connected to the shareholder can be deemed as dividends for STC and include:

- cash or assets distributed for the benefit of the recipient
- release of recipient's monetary obligation to company
- settlement of recipient's obligation to third party
- amounts applied for the benefit of the recipient
- distributable reserves when the company ceases to be resident.

The above deeming provisions will not apply where the distributions are:

- capitalisation issues paid out of share premium
- distributions from share premium account
- remuneration due to recipient
- in excess of the reserves available for distribution
- loans subject to interest at a rate not less than the official rate
- loans in terms of normal loan scheme available to employees
- loans made to a trust to acquire shares in the company in terms of a share incentive scheme
- loans repaid before the end of the next financial year, not included in any subsequent loan and where this provision has not been applied by the company in any previous year of assessment
- loans made to a company within the same group of companies and the deemed dividend has been taken into account in the profits of the recipient company.

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## ***RESIDENCE BASED TAXATION***

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A resident is:

- a natural person ordinarily resident in South Africa
- a natural person who complies with the physical presence test
- any entity incorporated, established or formed in South Africa or which has its place of effective management in South Africa, but excludes any person deemed to be resident of country with which a double taxation agreement is in force.

The physical presence test which must be performed each year requires a resident to comply with all three requirements which are:

- 91 days in aggregate during the current year of assessment
- 91 days in aggregate during each of the previous five years of assessment
- 915 days in aggregate during the previous five years.

A person ceases to be a resident if physically absent for 330 continuous days.

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## ***FOREIGN INCOME***

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All foreign income must be included in taxable income. Individuals are entitled to R3 500 exempt income from foreign investments in the form of dividends or interest subject to a total exemption of R21 000 (over 65 – R30 000) including local interest.

SARS has the discretion to impose a deemed amount as foreign income on assets taking into account any information it may have relative to assets held, transferred or disposed of during the period. The income is attributed at the official interest rate – currently 13%.

### **Investments**

Interest, net rental income and income from unit trusts must be included in income. Losses incurred on rental property may not be set off against South African income but may be carried forward to future foreign income.

### **Employment**

South African residents who render services outside South Africa for a period which in aggregate exceeds 183 days commencing or ending during the period of assessment and for a continuous period exceeding 60 days during that 183 days period will not be subject to taxation on their remuneration for the period they are absent from South Africa.

### **Pensions**

Pensions are included in gross income except where they are received in terms of the social security system of another country or relate to past employment in another country.

### **Trading activities**

Income earned from a business owned as a sole proprietor outside South Africa is taxed in the normal course, except where restrictions are imposed by the foreign country on the remittance of income. In this instance the income is taxed when remitted. Losses may not be set off against income earned in South Africa.

## **Foreign dividends**

As from years of assessment commencing on or after 1 June 2004 foreign dividends received from a non-resident company, including deemed dividends, are taxable, except where:

- taxpayer holds more than 25% of the equity
- the company is a listed company and residents hold more than 10% of its equity share capital
- the company is a controlled foreign company (CFC) and the dividends do not exceed amounts deemed to be the resident shareholder's income under the CFC rules
- the profits from which the dividends were declared are taxable in South Africa or arose from dividends declared by a resident company.

Interest is deductible where it is incurred in the production of foreign dividends to the extent that they are included in gross income.

Excess interest paid may be carried forward to the following tax year.

The withholding tax paid is allowed as a credit.

### **Controlled foreign companies (CFC)**

A CFC is a non-resident entity in which South African residents hold more than 50% of the participation rights or voting control. The income of the CFC is imputed as income of the taxpayer in the ratio of the participation share. Any loss must be carried forward for set off against future income.

The proportionate share of the tax payable by the CFC will be allowed as a tax rebate.

The net income of a CFC attributable to a foreign business establishment is excluded.

Where the taxpayer holds between 10% and 20% of the participation rights and voting control, an election can be made to treat the investment as a CFC.

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## **NON-RESIDENTS**

### **Interest**

Interest paid to non-residents is exempt from tax provided the taxpayer is physically absent from South Africa for 183 days and did not carry on a business and is not deemed to be ordinarily resident.

### **Dividends**

All South African dividends are exempt from tax.

### **Royalties**

A withholding tax of 12% is levied on royalty payments subject to the International agreement in force.

### **Sale of immovable property**

Non-residents are subject to CGT on the disposal of immovable property or the assets of a permanent establishment, branch or agency through which a trade is carried on situated in South Africa. The purchaser of the property is required to withhold the following amounts from the price paid on the sale of immovable property unless a directive is provided by the seller:

- 5% where the seller is a natural person
- 7,5% where the seller is a company
- 10% where the seller is a trust.

### **Estate duty**

Assets located in South Africa will be subject to estate duty, subject to International agreements.

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## **PUBLIC BENEFIT ORGANISATIONS (PBO)**

These bodies as well as new entities wishing to conduct public benefit activities have to be approved as PBOs after complying with the qualifying provisions, the most important of which are that the main object of the entity must be to carry on substantially in the Republic in a non-profit manner in one or more public benefit activities in the following categories to qualify as a PBO the main object of the entity must be to carry on substantially in the Republic in a non-profit manner one or more public benefit activities in the following categories and meet all the qualifying conditions in each category:

- welfare and humanitarian
- health care
- land and housing
- education and development
- religion, belief or philosophy
- cultural
- conservation, environment and animal welfare
- research and consumer rights
- sport
- providing funds, assets or other resources.

Donations to public benefit organisations are exempt as follows:

Company donations limited to 10% of taxable income

Individual donations limited to 10% of taxable income before the deduction of medical expenses.

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## **CAPITAL GAINS TAX (CGT)**

Residents are taxed on capital profits on world-wide assets, whilst non residents are taxed on capital profits arising on the disposal of fixed property, an interest or right in fixed property or the assets of South African permanent establishment.

## Exclusions for natural persons and special trusts

An annual exclusion of R17 500 applies to both gains and losses during the person's lifetime whilst R120 000 applies in the year the person dies.

### Effective rate of tax

<i>Taxpayer</i>	<i>Included</i>	<i>Tax rate</i>	<i>Effective rate</i>
Natural person	25%	0 – 40%	0 – 10%
Special trust	25%	0 – 40%	0 – 10%
Other trusts	50%	40%	20%
Companies	50%	28%	14%
Small business corporation	50%	10 – 28%	5 – 14%
Employment companies	50%	33%	17%

### Capital losses

Capital losses may not be set off against taxable income but must be carried forward for setoff against future capital gains.

### Disposals include:

- sale
- donation
- expropriation, conversion, grant, cession, exchange
- alienation or transfer of ownership
- forfeiture
- termination
- redemption, cancellation, surrender, discharge, release, waiver, expiry or abandonment
- scrapping, loss or destruction.

### Disposals exclude:

- transfer of assets as security for a debt
- issue or cancellation of own company shares
- grant of option by company to acquire shares or debentures
- distribution of assets by a trust to a beneficiary who has a vested interest.

## Deemed disposals or acquisitions

### Change of residence

When a person leaves South Africa permanently he is deemed to have sold all assets at market value, except immovable property and assets of a permanent establishment and shares and options granted less than 5 years before.

When a person becomes a resident in South Africa he is deemed to have disposed of his assets one day prior to becoming a resident and reacquired them on the day he becomes a resident, excluding immovable property and assets of a permanent establishment.

### Trading stock

The conversion of an asset from a capital asset to trading stock (or vice versa) can trigger income tax or capital gains tax.

### Personal use assets

The disposal of personal use assets is not subject to CGT, a deemed disposal is triggered when an asset ceases to be a non-personal use asset.

## Proceeds on disposal of an asset

These comprise the amount received or accruing to the taxpayer or deemed to have been received or accrued. Proceeds specifically include:

- amount by which a debt is reduced or discharged
- amount received by or accrued to a lessee for improvements to property
- market value of assets donated.

## Base cost

The base cost of assets acquired after 1 October 2001 is the cost of the asset plus any other cost incurred directly in the acquisition, improvement or selling. Only one third of the cost of holding shares or unit trust may be added to the cost in arriving at the base cost. The costs which cannot be taken into account (unless they apply to business assets and are deductible for normal tax) include borrowing costs, raising fees, rates and taxes and insurance.

Where the asset is acquired by donation the base cost is equal to the deemed proceeds taken into account at date of donation plus a portion of the donations tax depending on who pays the tax (donor or donee).

The base cost of assets acquired before 1 October 2001 may be determined at the option of the taxpayer on one of the following bases:

- market value on 1 October 2001, or
- time-apportioned base cost, or
- 20% of the proceeds on disposal (after taking into account expenditure after 1 October 2001).

The market value is determined as follows:

- South African listed securities using the values published in Government Gazette on 25 January 2002
- other listed securities at listed values on 1 October 2001
- long term insurance policies at the greater of the surrender value or fair market value according to the insurer
- all other assets on a valuation according to willing buyer and willing seller at arms length. No method of valuation is prescribed but it must be reasonable and capable of defence.

The market value should have been established by 30 September 2004.

The time-apportioned base cost requires that the date of acquisition and cost are known and is calculated according to the following formula:

$$B + \frac{[(P - B) \times N]}{T + N}$$

Where:

B = expenditure before 1 October 2001

P = proceeds on disposal (or per adjustment formula)

N = number of years held before 1 October 2001

T = number of years held after 1 October 2001

The adjustment formula applies where allowable expenditure is incurred after 1 October 2001 and is used to compute P in the previous formula as follows:

$$R \times \frac{B}{A + B}$$

Where:

R = actual proceeds

A = expenditure incurred after 1 October 2001

B = expenditure incurred before 1 October 2001

The 20% of proceeds rule is generally used where none of the other information is available. This method should not be disregarded where there has been a dramatic increase in the value of the assets.

The base cost of foreign assets in respect of which amnesty was granted cannot exceed the value of that asset on 28 February 2003 and expenditure incurred after that date.

### **Excluded assets**

Assets which are not taken into account in computing CGT include:

- primary residence where the gross proceeds do not exceed R2 million
- most personal use assets excluding gold or platinum coins, immovable property, aircraft exceeding 450kg, boat exceeding 10 metres in length, financial instrument, usufructuary or fiduciary interest which decreases over time
- lump sum benefits from pension, provident or retirement annuity funds
- long term assurance paid to original beneficiary, spouse, dependent or deceased estate
- disposal of small business (where assets do not exceed R5 million) up to R750 000 due to ill health or reaching the age of 55, subject to some conditions
- compensation for personal injury, illness or defamation
- gains from gambling, competitions or games by natural persons
- gains or losses made by PBO
- gains and losses made by unit trust funds
- donations or bequests to PBO.

### **Foreign currency assets**

Until 28 February 2003 gains or losses on foreign currency assets and liabilities were not subject to CGT. A foreign currency asset constitutes a unit of currency or an amount owing to a person, while a foreign currency liability is a foreign loan.

Any gains or losses are taxable with effect from 1 March 2003 on disposals which include:

- the conversion, sale, donation, expropriation, cession, exchange or any alienation or transfer of that foreign currency asset; or
- the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry, abandonment or loss of that foreign currency asset; or
- the vesting of any foreign currency asset of a trust in a beneficiary of that trust.

For each foreign currency a pool must be maintained. Any addition to the pool requires the “total asset pool base cost” to be redetermined. Disposals are allocated pro rata to the “total asset pool base cost”. The average exchange rate for the year is used in the computations.

### **Rollovers**

In certain cases the gain on the disposal of certain assets can be deferred until a subsequent CGT event, including:

- transfer of assets between spouses (provided both are resident)
- involuntary disposals – where the asset is expropriated, lost or destroyed provided the full proceeds are reinvested in a similar asset in terms of a contract entered into within a year and the asset is brought into use within 3 years
- reinvestment in replacement assets that are subject to certain tax allowances if brought into use within 3 years and full proceeds are used to replace the asset. The gain may be deferred over 5 equal annual instalments from date of replacement.

### **Trusts**

Capital gains retained in trust are taxed in the trust’s hands whilst those distributed in the same year are taxed in the beneficiary’s hands.

Donations to trusts not vesting in beneficiaries are taxed in the hands of the donor.

## **DONATIONS**

Donations tax is payable on the value of any gratuitous disposal of property including disposals for inadequate consideration by a taxpayer.

Donations tax is payable at 20% and within three months of the donation.

Exemptions include donations:

- by natural persons not exceeding R100 000 per year
- to a spouse
- to approved PBO
- casual donations up to R10 000 by donors other than natural persons
- by a public company.

## **PROVISIONAL TAX**

The following taxpayers are required to register as provisional taxpayers:

- companies and close corporations
- individuals who earn taxable income of at least R10 000 which is not remuneration as defined.

Natural persons over 65 years old, whose taxable income is less than R120 000, who do not carry on business are exempt from provisional tax.

### **First provisional payment**

The first payment is due six months before the end of the tax year. The payments is based on the basic amount or such lower amount as the taxpayer estimates for the year – provided that the estimate must be approved by Revenue.

The basic amount used in determining the provisional tax payments is calculated:

- on most recent tax assessment issued 60 days before due date excluding capital gains tax, or
- estimate of taxable income in the first year of assessment, or
- other amount SARS considers reasonable.

### **Second provisional payment**

The second payment, due on the last day of the year, has to be based on an estimate of taxable income. If the estimate is less than 80% of the actual taxable income finally assessed, a penalty of 20% on the underpayment of tax may be imposed. The requirement to estimate the taxable income applies to years ending on or after 1 March 2009.

Late payment of these provisional payments invokes a 10% penalty on the amount paid late and interest at the prescribed rate.

### **Third provisional payment**

Where the taxable income, including capital gains tax, exceeds R20 000 in the case of company or R50 000 in the case of an individual or trust, a third provisional tax payment is required to avoid interest being charged on the balance of tax due for the year.

The third provisional payment is due 6 months after the financial year end, except where the year end is February, in which case the payment is due in September.

### **Overpayment of provisional tax**

Interest at the prescribed rate will be paid on overpayment of provisional tax.

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## ***PRESCRIBED INTEREST RATES***

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<b>Period</b>	<b>Payable to taxpayer (taxable)</b>	<b>Payable by taxpayer (non-deductible)</b>
01/04/2003 to 30/06/2003	12,5%	16,5%
01/07/2003 to 31/08/2003	11,0%	15,0%
01/09/2003 to 30/09/2003	10,0%	14,0%
01/10/2003 to 30/11/2003	9,0%	13,0%
01/12/2003 to 31/10/2004	7,5%	11,5%
01/11/2004 to 31/10/2006	6,5%	10,5%
01/11/2006 to 28/02/2007	7,0%	11,0%
01/03/2007 to 31/10/2007	8,0%	12,0%
01/11/2007 to 29/02/2008	9,0%	13,0%
01/03/2008 to 31/08/2008	10,0%	14,0%
01/09/2008 to date	11,0%	15,0%

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## ***LEARNERSHIP ALLOWANCES***

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These allowances will apply from 1 October 2001 until 31 October 2011.

Where the employer enters into a registered learnership agreement with a learner who was previously employed, the employer may deduct the lesser of:

- 70% of the annual equivalent of the remuneration of the learner, or
- R20 000.

Where the learner was not previously employed, the employer may deduct the lesser of:

- the annual equivalent of the remuneration of the learner, or
- R30 000.

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## ***RESEARCH AND DEVELOPMENT***

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Research and development performed for the purposes of

- discovering novel, practical and non-obvious information of a scientific or technological nature or,
- creating any invention, patent, design or computer copyright or similar property of a scientific or technological nature

qualifies for incentive allowances whereby

- 150% of the operating expenses are deductible and
- capital expenditure is depreciated on a 50:30:20 basis.

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## ***WEAR AND TEAR ALLOWANCES***

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Wear and tear can be calculated on a straight-line basis provided the taxpayer complies with certain requirements:

- adequate records must be maintained
- the method must be applied to all assets in the same class
- the taxpayer must be able to provide a detailed schedule of assets disposed of including date of acquisition, tax value in the previous tax year, the price on disposal or scrapping, the final written down value of the asset to be reflected at R1, the records must be maintained so that each asset's value can be established at any point in time.

Practice Note 19 sets out write-off periods that are acceptable to Revenue. The most common of which are:

<b>Item</b>	<b>No of years</b>
Air-conditioners (window type, moving parts only)	6
Aircraft (light passenger, commercial and helicopters)	4
Bulldozers, concrete mixers	3
Burglar alarms (removable)	10
Cellular telephones	3
Cinema equipment	5
Compressors	4
Computers (personal computers)	3
Computer software (mainframes)	
• purchased	3
• self-developed	1
Computer software (personal computers)	2
Containers	5
Containers (stainless steel – transport of liquids)	5
Crop sprayers, fertilizer spreaders, harvesters, ploughs, seed separators	6
Curtains	5
Delivery vehicles	4
Demountable partitions	6
Dental and doctors' equipment	5
Drilling equipment (water)	5
Drills, electric saws	6
Electrostatic copiers	6
Excavators	4
Fax machines	3
Fishing vessels	12
Fitted carpets	6
Fork-lift trucks, front-end loaders	4
Gantry cranes	6
Graders	4
Grinding machines	6
Gymnasium equipment	10
Hairdressers' equipment	5
Heating equipment	6
Laboratory research equipment	5
Lathes	6
Laundromat equipment	5
Lift installations (goods and passengers)	12
Mobile caravans	5
Mobile cranes	4
Motorcycles	4
Musical instruments	5
Ovens and heating devices	6
Paintings (valuable)	25
Pallets	4
Passenger cars	5

<b>Item</b>	<b>No of years</b>
Photocopying equipment	5
Racehorses	4
Refrigerated milk tankers	4
Refrigeration equipment	6
Security systems	5
Shop fittings	6
Telephone equipment	5
Television and advertising films	4
Textbooks	3
Tractors	4
Trailers	5
Trucks (heavy-duty)	3
Trucks (other)	4
Workshop equipment	5
X-ray equipment	5

Assets costing R5 000 or less can be written off in full in the year of acquisition.

## **CAPITAL ALLOWANCES**

### **Urban development zone allowance**

The capital allowances will apply until 31 March 2014 to buildings in an urban development zone.

The refurbishment of existing buildings entitles the taxpayer to an allowance of 20% straight-line over 5 years, whilst the construction of a new building entitles the taxpayer to an allowance of 20% in the first year and 8% thereafter provided that the building commenced after 21 October 2008. Where the building commenced prior to that date the annual allowance is 5%.

Low-cost residential units qualify for higher allowances. A low-cost residential unit is a building whose cost does not exceed R200 000 or an apartment whose cost does not exceed R250 000. The refurbishment of such units may be written off over 4 years, whilst new units may be written off: 25% in year 1, 13% in years 2 – 6, and 10% in year 7.

### **Residential units**

Residential units acquired or erected after 21 October 2008 qualify for an allowance provided that the unit is new and unused, used solely for the purposes of trade, situated in the Republic and the taxpayer must own at least 5 residential units for the purposes of trade. The annual allowance until the cost is written off is 5% on normal units and 10% on low-cost units.

### **Special depreciation allowance**

Certain assets used for trade qualify for this allowance and include:

- plant and machinery used directly in a process of manufacture
- machinery, implements and utensils used by a hotelkeeper
- aircraft and ships brought into use after 1 April 1995.

These assets all qualify to be written off over 5 years, except for new and unused plant which may be written off 40% in the first year and 20% for the subsequent 3 years.

Farming plant and equipment, assets used for the production of bio-diesel or bio-ethanol or assets used for the production of electricity from wind, sunlight, gravitational water forces or biomass may be written off 50% in year 1, 30% in year 2 and 20% in year 3.

### **Industrial buildings**

Building erected after 30 September 1999 used mainly for manufacture qualify for a 5% annual allowance. The allowance can be claimed by a purchaser of a qualifying building.

### **Hotel buildings**

New buildings erected after 4 June 1988 qualify for a 5% annual allowance, whilst improvements which do not extend the exterior framework of the building qualify for a 20% annual allowance.

### **Commercial buildings**

New and unused buildings erected for the purposes of trade which does not include residential accommodation qualify for a 5% annual allowance.

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## ***ASSET REINVESTMENT RELIEF***

The taxpayer can elect to postpone the recoupment on disposal of an asset where:

- the disposal of the asset was involuntary, or
- the asset disposed of was subject to a capital deduction or wear and tear provided that the replacement assets are brought into use within three years.

The recoupment can be set off over the same period as the wear and tear.

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## ***RESTRAINT OF TRADE***

Restraint of trade payments are taxable in the hands of individuals, labour brokers and personal service providers. Such payments are deductible by the payer over 3 years if the period of the restraint is less than 3 years, or over the period of the restraint if longer.

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## ***LEASEHOLD IMPROVEMENTS***

Improvements made to leasehold property in terms of a lease agreement by the lessee must be included in the income of the lessor. Either the stipulated amount or a fair and reasonable value will be included.

The lessee may deduct such expenditure over the period of the lease. The lessor may be entitled to discount the value of the improvements over the period of the lease.

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## **BURSARIES**

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Bursaries are exempt from tax where:

- the bursary is granted to an employee who agrees to reimburse the employer for the bursary if the employee fails to complete his studies
- the bursary is granted to a relative of an employee who earns less than R100 000 per annum or is limited to R10 000 where the employee earns more than R100 000 per annum.

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## **PRE-TRADE EXPENDITURE**

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Expenditure which would normally be deductible from income, actually incurred prior to the commencement and in connection with a specific trade can be deducted from the income of that trade. The deduction is limited to income from that trade and any shortfall can be carried forward to the subsequent years of assessment.

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## **PRE-PRODUCTION INTEREST**

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Interest and finance charges incurred on borrowings raised for the acquisition, installation, erection or construction of machinery, plant, building, etc which are to be used in the taxpayer's trade may be deducted in the year in which the asset is brought into use.

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## **VALUE ADDED TAX (VAT)**

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VAT is levied on the supply of most goods at 14%.

### **Registration and submission of returns**

An enterprise whose turnover has exceeded R1 million in any twelve month period or if there are reasonable grounds to believe that turnover will exceed R1 million, is required to register as a VAT vendor. Voluntary registration is allowed where turnover is likely to exceed R50 000 (R60 000 in the case of commercial rental).

PBOs can register for VAT even if they do not carry on an enterprise.

VAT returns must be submitted:

- Every four months if annual turnover is less than R1,2 million
- Every two months if annual turnover is between R1,2 million and R30 million
- Every month if annual turnover is over R30 million.

The annual turnover relates to any 12 month period. It is incumbent on the vendor to notify SARS as soon as the turnover exceeds or is expected to exceed R30 million.

### **Exempt supplies**

Certain supplies are exempt from VAT and they include:

- rental of residential accommodation
- education services
- road and rail transport for passengers
- share block and body corporate levies
- certain financial services (unless zero-rated).

## **Zero-rated supplies**

Certain taxable supplies are zero-rated and include:

- sale of a going-concern if both seller and purchaser are registered for VAT
- certain goods for farming purposes
- basic foodstuffs
- petrol and diesel
- gold coins issued by the Reserve Bank
- transport of passengers and goods to and from export country, including insurance
- certain services rendered to non-residents who are outside South Africa at time service is rendered
- welfare activities, including provision of food and lodging, etc
- municipal property rates from 1 July 2006.

## **Input tax**

Input tax can only be claimed where:

- the tax is incurred by the vendor for the purpose of making taxable supplies
- there is a valid tax invoice which is required for any supply in excess of R3 000, which states the name and VAT number of the customer as well as full details of the supplier.

Notional input tax can be claimed where

- the record keeping requirements for second hand goods are met
- the supplier of a property was not registered for VAT limited to the amount of transfer duty paid.

The VAT may not be claimed on:

- entertainment expenses, including food, beverages, amusement or recreation
- fees or subscriptions in respect of club or society membership
- on motor cars (including hire). Game-viewing vehicles and hearses have been excluded from the motor car definition.

## **Time of supply**

The time of supply is generally the earlier of:

- date of invoice or
- date of payment of any part of the price.

The actual date of supply is not regarded unless the parties are connected.

Rentals or periodic supplies take place at the earlier of when payment is due or made.

## **Value rules**

Generally the value is the consideration paid.

Where the enterprise deregisters as a vendor, all goods on hand are valued at the lesser of cost or market value.

The VAT on motor vehicle fringe benefits is calculated monthly as follows: cash cost of vehicle (excluding VAT) x 0,3% x 14/114.

## **Penalties and interest**

VAT returns are to be submitted and payment made by the last business day on or before the 25th day of the month unless the returns are eFiled, in which case the due date is the last business day of the month.

The late submission of a VAT return results in a penalty of 10% of the VAT payable and interest at the prescribed rate for the month or part thereof.

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## ***SKILLS DEVELOPMENT LEVY (SDL)***

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The levy is utilised to develop the skills of the workforce, improve productivity and the quality of life of the workers.

Employers are encouraged to create an active learning environment by being eligible for grants if their training programs meet the Sector Education and Training Authority (SETA) requirements.

Employers with a payroll in excess of R500 000 are required to register and pay the 1% levy on the total remuneration used to compute employees' tax.

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## ***OBJECTIONS AND APPEAL***

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If a taxpayer disagrees with any tax assessment, an objection may be lodged followed by an appeal to the Tax Board or the Tax Court.

Provision is also made for the matter to be dealt with by way of an alternative dispute resolution (ADR) process.

The process is as follows:

Receive assessment and lodge objection thereto within 30 days by way of ADR1 form, including the grounds for the objection. The Commissioner may condone a "late" objection in certain circumstances.

The Commissioner then has 90 days from the date of the objection to respond. He may allow, partially allow or disallow the objection.

The taxpayer may lodge an appeal against the decision by way of an ADR2 document within 30 days of the notice of disallowance. The lodging of an appeal does not take away the obligation to pay the assessed tax.

The matter can then be heard by the Tax Board and possibly followed by the Tax Court, or

- proceed directly to the Tax Court, or
- go to ADR and thereafter the Tax Board or Tax Court, if necessary.

The Income Tax Act governs the procedures for all the legal steps. At any of the stages, the parties may not accept the findings and proceed to the next level, until it reaches the Tax Court.

The final costly step in the process is for the matter to be heard by the Appellate Division of the High Court of South Africa, at which stage the decision is final and binding.

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## **GENERAL ANTI-AVOIDANCE PROVISIONS**

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The new section 80 provisions apply to schemes or arrangements entered into on or after 2 November 2006.

- Impermissible avoidance arrangements are those whose sole or main object is to obtain a tax benefit and are entered into in a manner not normally employed for bona fide business purposes, or lack commercial substance or create rights and obligations not normally created between persons dealing at arm's length.
- Consequences of such arrangements may result in the Commissioner disregarding, combining or recharacterising any steps of the arrangement, disregarding any accommodating or tax indifferent party, deeming connected persons to be a single person, or treatment of the arrangement as if it had not been entered into.
- Lack of commercial substance exists if the arrangement does not have a substantial effect on the business risks, utilises round trip financing or an accommodating or tax indifferent party and has elements that have the effect of offsetting or cancelling each other.
- Presumption of purpose of the arrangement as being one solely or mainly created to obtain a tax benefit by the Commissioner must be disproved by the taxpayer.

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## **2010 FIFA WORLD CUP**

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As part of the bid to host the 2010 FIFA World Cup, various guarantees were issued to FIFA including those dealing with Customs Duties and other taxes. The legislation is effective from 1 April 2006.

A "tax-free bubble" concept applies to Income Tax and VAT and is restricted to FIFA-designated Sites for specified periods. The profit on goods sold or services rendered will not be subject to income tax and the VAT will be zero-rated. Expenses incurred in the production of the tax free income will not be permitted as deductions. The tax relief will apply to both residents and non-residents.

The "tax-free bubble" will only be operative in respect of sub-components of a FIFA-designated Site as follows:

- the stadia, any exclusion zone, official Championship-related parking areas, Championship press and television centres, VIP and other areas and facilities utilised for Official events as agreed by FIFA and SARS for the period commencing one week before the 2009 FIFA Confederation Cup and ending immediately after the closing ceremony;
- training sites for official FIFA sanctioned training days;
- official host city public viewing venues on Championship match days; and
- the FIFA Flagship Store for six months before the 2009 FIFA Confederation Cup and ending one month after the closing ceremony.

Relief from import taxes will apply to qualifying persons including FIFA and its subsidiaries, FIFA National Associations, FIFA confederations, media representatives, commercial affiliates, merchandising partners, licensees, FIFA Flagship Store operators and other FIFA designated service providers, host broadcaster.

**STAMP AND TRANSFER DUTIES**

**Transfer duty of immovable property**

Natural persons after 1 March 2006

On first R500 000	0%
On R500 001 to R1 000 000	5%
On amount above R1 000 000	8%

Companies, close corporations and trusts	8%
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The transfer of shares in a residential property company is subject to transfer duty as above. The residential property company owns a dwelling house, holiday home, land zoned for residential use, other than apartment complexes, and where the fair value of the property is more than 50% of the total fair value of all other assets (other than financial instruments).

The Stamp Duty Act has been repealed with effect from 1 April 2009.

**RETENTION OF RECORDS**

Below are the recommended retention periods which commence from the date of the last entry in the record.

<b>Statutory Records</b>	<b>Originals</b>
Memorandum and Articles of association, certificate to commence business, certificate of incorporation and change of name, founding statement, amended founding statement, minute books and notice of minutes.	Indefinite
Share registers, directors' attendance registers, directors' interests	15 years
Cancelled share certificates	12 years

<b>Accounting records</b>	
Books of prime entry, including cash books, creditors' ledgers, debtors' ledgers, fixed asset registers, general ledgers, journals, purchase and sales journals, subsidiary journals and ledgers	15 years
Vouchers, working papers, bank statements, costing records, creditors' invoices and statements, debtors' invoices and statements, goods received notes, journal vouchers, payrolls, purchase orders and invoices, salary and wage registers, sales tax records, tax returns and assessments	5 years

**Employee records**

Personnel records, payrolls, tax records 5 years

**Capital gains tax**

All records to date of sale including base costs and valuations, thereafter from date return lodged 5 years

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**FOREIGN EXCHANGE**

The regulations and restrictions discussed below are in force as at 11 February 2009.

**Residents**

Residents (natural persons), who are over the age of 18 years may be permitted to avail of a single allowance (“general allowance”) within an overall limit of R500 000 per individual per calendar year, without the requirement to obtain a Tax Clearance Certificate, to cover the following discretionary allowances:

- Monetary gifts and loans
- donations to missionaries
- maintenance transfers
- travel allowance.

Residents (natural persons) under the age of 18 years may only be accorded a travel allowance of up to an amount of R160 000 per calendar year.

Residents living abroad temporarily are permitted to export household and personal effects motor vehicles, caravans, trailers, motorcycles, stamps and coins (excluding coins that are legal tender in the Republic) per family unit or single person within the overall ensured value of R1 million. Such persons must furnish an undertaking that:

- All goods exported on departure together with all accumulated foreign assets, where such foreign assets were acquired with funds transferred from the Republic, or the sale proceeds thereof will be repatriated on resumption of residency in the Republic; and
- local credit and/or debit cards will not be utilised whilst temporarily abroad.

Permanent residents who are taking full-time courses at schools, universities or similar educational institutions abroad may utilise foreign exchange facilities for study purposes available through Authorised Dealers on the basis

- of direct transfer to the institution concerned, the relative tuition and academic fees for the academic year;
- of an allowance in terms of the general allowance. Should a spouse accompany a student, the general allowance may be accorded the spouse;
- of the authorised export, on a Form N.E.P., of any household and personal effects, including jewellery (but excluding motor vehicles), up to a value of R30 000 per student.

Maintenance transfers, included in the general allowance, may be made by Authorised Dealers provided that the beneficiaries are either the father, mother, brother or sister of the applicant and are in necessitous circumstances. Documentary evidence signed by a magistrate or civic official in the city or town in which the beneficiary is resident stating, inter alia:

- The full names of the beneficiary;
- the address of the beneficiary;
- the family relationship with the remitter in the RSA (this relationship may only be father, mother, brother or sister); and
- confirming that the beneficiary is in need.

New documentary evidence must be called for after one year, and thereafter on an annual basis.

Alimony payments may be made by Authorised Dealers on production of a court order. An amount of R9 000 per month over and above the amount awarded may be transferred.

## **Capital investments**

### **Natural persons**

Residents (natural persons) who are tax-payers in good standing and over the age of 18 years, are permitted to make foreign investments of up to R2 million, but, prior to the transfer of any funds, a duly completed "TAX CLEARANCE CERTIFICATE (IN RESPECT OF FOREIGN INVESTMENTS)", issued by the South African Revenue Service, must be presented to the bank.

### **Companies**

Foreign direct investments of up to R50 million per calendar year no longer require approval from the Financial Surveillance department. This applies to new foreign direct investments whereby a minimum of 10% voting right is obtained.

The Authorised Dealers are required to ensure that the investments are bona fide and to report the investments to the Financial Surveillance Department.

Audited financial statements of the target company and its subsidiaries are to be submitted annually to the Financial Surveillance Department.

Foreign dividends repatriated to South Africa may be retransferred abroad at any time and used for any purpose. Such funds may, not be utilised to fund investments or loans in South Africa for any purpose whatsoever via a loop structure. These funds may be invested in investments listed on the JSE Limited or the Bond Exchange of South Africa.

### **Emigration**

Emigrants are required to complete an MP336 (setting out the details of their assets and liabilities) and to obtain written confirmation from the South African Revenue Services that their commitments have been met or that suitable arrangements have been made.

Emigrants are entitled to received the general allowance mentioned if over 18 years of age, and R160 000 if under 18 years of age. They are also entitled to a foreign capital allowance of:

- Single persons R2 000 000
- Family unit R4 000 000.

Emigrants can apply to transfer blocked assets in excess of the limit at an exit charge of 10% of the amount.

These capital allowances must be reduced by the capital foreign investments.

Household and personal effects, motor vehicles, caravans, trailers, motor cycles, stamps and coins with an insured value of R1 000 000 may be exported.

Assets of emigrants are classified as “blocked” and documents giving title to assets must be lodged with the Authorised Dealer. Blocked assets may be used for:

- Emigration expenses, eg moving and packing
- Investment in listed South African shares, gilts, futures and unit trusts
- Living expenses on return to South Africa limited to

Adults	R3 000 per day
Children (under 12)	R1 500 per day
Maximum per family	R75 000 per annum
- Travel cost for return visit to South Africa by most direct route
- Travel cost paid in South Africa to emigrant's new country of residence
- Income tax on income earned prior to emigration
- Tuition and boarding fees paid for children who have remained in South Africa or returned to complete studies
- Rates and taxes on vacant stands
- Membership and subscriptions fees to professional and technical societies
- Premiums on endowment, life assurance and retirement annuity funds taken out prior to departure:
  - capital proceeds will remain blocked
  - annuities will be remittable with approval
- Maintenance payments to a local resident in terms of a court order
- Professional fees for services rendered in connection with blocked assets
- Medical expenses incurred on return visit
- Gifts, donations and maintenance to third parties to maximum of R100 000 pa
- Maintenance and alterations to fixed property to maximum of R100 000 pa.

Income which is eligible for remittance to an emigrant is defined by the Financial Surveillance Department as:

- Interest and profits;
- dividends (the declaration of a dividend in specie or a special dividend for any purpose requires the prior approval of the Financial Surveillance Department);
- income distributions from close corporations;
- directors' fees/close corporation members' fees;

- monthly pension payments – paid by registered pension funds only;
- cash bonuses on insurance policies;
- income received from a trust created in terms of a last will and testament;
- rentals on fixed property;
- the difference between the purchase consideration and maturity value of quoted gilts;
- monthly annuity payments where the annuity has been in existence for a period of five years prior to the date of emigration; and
- monthly annuity payments where the annuity has been funded from a pension payout from a previous employer.

Applications for the transfer to emigrants of any other form of income must be referred to the Financial Surveillance Department.

Income from the following sources is not eligible for remittance without approval of the Financial Surveillance Department:

- Inter vivos trusts; and
- a donation or gift received by emigrants within the last three years or a capital distribution from a trust inter vivos received within the last three years prior to date of departure.

### **Borrowings**

Prior approval must be obtained for foreign loans from Authorised Dealers or the Financial Surveillance Department, in the case of affected persons. This approval is also required for loan commitments arising from non-payment for imports and overseas services.

The detailed information required includes the denomination of the loan, terms of repayment, interest rate, security, copy of the loan agreement, the relationship between the borrower and lender, confirmation that there is no South African interest in the foreign lender.

Companies (applies to close corporations, foundations, trusts and partnerships) having a non-resident interest of 75% are regarded as affected companies. These companies may not accept or repay loans from their non-resident shareholders without approval from the Financial Surveillance Department. These companies are required to ensure that their local borrowings fall within the restrictions imposed by the local borrowings formula.

### **Inheritances**

#### *Estate of South African resident*

Cash bequests to non-resident beneficiary of a deceased estate of a South African resident may be remitted.

Securities inherited by non-resident are to be endorsed “Nonresident” and the proceeds on disposal are remittable.

#### *Estate of non-resident*

South African assets are freely remittable to non-resident beneficiaries.

Foreign assets inherited by residents from a non-resident estate do not have to be disclosed to an Authorised Dealer but are to be disclosed to the South African Revenue Service if and when applicable.

## **Immigrants**

On arrival, immigrants are required to declare to an Authorised Dealer that they possess foreign assets and to undertake that their foreign assets will not be placed at the disposal of a third party South African resident.

Immigrants may freely deal with their foreign assets and income.

Assets introduced into South Africa may be retransferred together with normal growth during first 5 years.

After 5 years the immigrant will be classified as South African resident and qualifies for foreign capital investment and emigration allowances.

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## ***NEW BUSINESS START UP REQUIREMENTS***

First the decision of the best entity to house the business has to be made. The options range from the basic sole proprietorship to complex structures including companies and trusts.

On selection of company or close corporation, the following documents need to be lodged with the Registrar of Companies or Close Corporations:

Memorandum and Articles of Association and Certificate to Commence Business and confirmation of directors, officers and auditors or Founding Statement.

The opening of bank accounts is dependent on the above documents being duly registered.

Once the company, close corporation is duly registered and the bank account opened, application can be made for VAT registration. The application must be accompanied by a business plan.

The entity must be registered for income tax.

Employers must register for PAYE, Skills Development Levies, Unemployment Insurance and Workmen's Compensation  
The entity must register with the relevant Industrial Council.

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## ***PROMOTION OF ACCESS TO INFORMATION***

All private bodies that carry on a business or trade must compile and thereafter update a manual containing certain specific information. The manual must be made available for inspection as prescribed in the Act and copies submitted to the Human Rights Commission and any controlling body of which the private body is a member. The manual must also be available on the private body's website.

Entities that were required to register by 31 December 2005 comprised those that:

- employed 50 or more persons
- within certain sectors with turnovers according to the table:

Agriculture	R2 million
Mining and Quarrying	R7 million
Manufacturing	R10 million
Electricity, Gas and Water	R10 million
Construction	R5 million
Retail and Motor Trade and Repair Services	R15 million

Wholesale Trade, Commercial Agents and Allied Services	R25 million
Catering, Accommodation and other Trade	R5 million
Transport, Storage and Communications	R10 million
Finance and Business Services	R10 million
Community, Special and Personal Services	R5 million

## **FINANCING**

The payment required for each R1 000 borrowed is as stated below. For example, a bond of R100 000 for 20 years at 10% is  $100 \times 9.65 = R965$  per month.

### **Mortgage bond**

<b>Rate</b>	<b>10 years</b>	<b>20 years</b>	<b>25 years</b>	<b>30 years</b>
6%	11.10	7.16	6.44	6.00
7%	11.61	7.75	7.07	6.65
8%	12.13	8.36	7.72	7.34
9%	12.67	9.00	8.39	8.05
10%	13.22	9.65	9.09	8.78
11%	13.78	10.32	9.80	9.52
12%	14.35	11.01	10.53	10.29
13%	14.93	11.72	11.28	11.06
14%	15.53	12.44	12.04	11.85

### **Short term finance – instalment credit and leases**

<b>Rate</b>	<b>36 months</b>	<b>48 months</b>	<b>60 months</b>
6%	30.42	23.49	19.33
7%	30.88	23.95	19.80
8%	31.34	24.41	20.28
9%	31.80	24.89	20.76
10%	32.27	25.36	21.25
11%	32.74	25.85	21.74
12%	33.21	26.33	22.24
13%	33.69	26.83	22.75
14%	34.18	27.33	23.27
15%	34.67	27.83	23.79
16%	35.16	28.34	24.32
17%	35.65	28.86	24.85

## **FOREX RATES**

	<b>US\$</b>	<b>UK£</b>	<b>€</b>	<b>AUS\$</b>
29/02/2008	7.6342	15.1936	11.6197	7.2254
31/03/2008	8.1216	16.1267	12.8354	7.4294
30/04/2008	7.5940	14.9411	11.8173	7.0922
30/05/2008	7.5874	14.9555	11.7419	7.2359
30/06/2008	7.8791	15.7153	12.4613	7.6104
31/07/2008	7.3899	14.6297	11.5356	6.9881
29/08/2008	7.6696	14.0326	11.3145	6.6313
30/09/2008	8.3145	15.0155	11.9413	6.6979
31/10/2008	10.1919	16.4752	12.9401	6.7114
28/11/2008	9.9080	15.2974	12.8214	6.5189
31/12/2008	9.3035	13.4510	13.1105	6.4475
30/01/2009	10.1333	14.4091	13.0553	6.5359

## **PRIME OVERDRAFT RATES**

<b>Date of change</b>	<b>Rate</b>
	<b>%</b>
1998 29 August	25,50
19 October	24,50
9 November	23,50
7 December	23,00
1999 11 January	22,00
13 February	21,00
8 March	20,00
19 April	19,00
25 June	18,00
16 July	17,50
2 August	16,50
4 October	15,50
2000 19 January	14,50
2001 18 June	13,75
16 July	13,50
25 September	13,00
2002 16 January	14,00
18 March	15,00
14 June	16,00
14 September	17,00
2003 13 June	15,50
18 August	14,50
15 September	13,50
20 October	12,00
15 December	11,50
2004 16 August	11,00
2005 15 April	10,50
2006 8 June	11,00
3 August	11,50
13 October	12,00
8 December	12,50
2007 8 June	13,00
17 August	13,50
12 October	14,00
7 December	14,50
2008 11 April	15,00
13 June	15,50
12 December	15,00
2009 6 February	14,00

Banks do not always adjust their rates on the same day

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