



chartered accountants  
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# Tax Guide 2018/2019



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**1 VAT Rate**

As from 1 April 2018, the VAT rate increases from 14% to 15%.

**2 Donations Tax**

As from 1 March 2018, the rate increases to 25% for donations above R30 million.

**3 Estate Duty**

As from 1 March 2018, the rate increases to 25% of the value of the estate in excess of R30 million.

**4 Annuitisation - Provident Funds**

The annuitisation of retirement benefits for provident funds has been postponed to 1 March 2019 for further consultation at Nedlac. Should no agreement be reached the continuation of the tax deduction will be reviewed.

**5 Medical Credits**

Increases below inflation to the medical credits will be utilised to fund the National Health Programme over the next few years

**6 Controlled Foreign Companies**

The draft legislation tabled in 2017 provided for a reclassification of distributions from foreign trusts to resident beneficiaries to be taxed as income. These proposals were postponed and will be reconsidered in the current year.

**7 Sugar Tax**

As from 1 April 2018, tax on sugary beverages will be levied at 2.1 cents per gram exceeding 4 grams per 100 ml.

**8 Enhancements in Tax Administration**

SARS will release a discussion paper on the potential use of electronic fiscal devices, known as electronic cash registers, to assist revenue administration by monitoring business transactions.

**9 Official Rate of Interest**

Consideration is being given to increase the official rate of interest to align it with the prime lending rate.

**10 Cryptocurrency**

SARS and the Davis Tax Committee are investigating the tax treatment of the various types of income from cryptocurrency - trade, arbitrage and mining. The Income Tax and VAT legislation will be amended to address any potential risk these transactions pose to the fiscus.

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As from 1 March 2017, interest-free or low interest loans to a trust by a connected natural person or by a company connected to that natural person give rise to a deemed donation. The donation is the difference between the interest rate charged and the official interest rate applied to the loan amount. This deemed donation applies to new and existing loans, excluding:

- Loans to certain vesting trusts
- Loans to special trusts created solely for the benefit of a minor child with a disability
- Loans to certain share incentive trusts
- Loans to approved public benefit organisations
- Loans funding the primary residence of that person or their spouse
- Loans to small business funding entities
- Loans where transfer pricing rules apply
- Loans provided in terms of a Sharia compliant financing arrangement
- Loans subject to Dividends Tax
- Unpaid beneficiary distributions, subject to certain provisions which may include a requirement that:
  - the trust deed stipulates (or the trustees have the sole discretion to determine) the time and extent of payment of such vested amount
  - the beneficiary has not entered into an agreement with the trustee to retain such amount in the trust.

The interest foregone is treated as an ongoing annual donation by the natural person as at the end of the tax year. Donations Tax will be payable at the end of March each year. The annual Donations Tax exemption of R100 000 may be claimed.

With effect from 19 July 2017, further anti-avoidance rules have been implemented which extend the deemed donation to loans provided by natural persons to companies held by trusts or to loans that have been ceded to connected natural persons such as trust beneficiaries.

**Example:** Where an interest free loan of R1.5 million is provided to a trust on 1 March 2017 and the loan remained constant during the year the deemed donation and Donations Tax is:

|                                                                    | R            |
|--------------------------------------------------------------------|--------------|
| Loan                                                               | 1 500 000.00 |
| Interest 1 March 2017 to 31 July 2017 (153/365 days) at 8%         | 50 301.37    |
| Interest 1 August 2017 to 28 February 2018 (212/365 days) at 7.75% | 67 520.55    |
| Deemed donation                                                    | 117 821.92   |
| Less annual exemption                                              | 100 000.00   |
| Net deemed donation at 28 February 2018                            | 17 821.92    |
| Donations Tax at 20% (due 30 March 2018)                           | 3 564.38     |

# FOREIGN EMPLOYMENT

## INCOME

Foreign employment income is fully exempt where a person spends more than 183 days, of which at least 60 days is continuous, outside of South Africa in any 12 month period commencing or ending during that year of assessment.

As from 1 March 2020, this exemption will only apply to the first R1 million of the foreign employment income, subject to the same criteria. Foreign employment income in excess of R1 million will be taxed in accordance with the normal tax tables applicable to individuals less an adjustment for any foreign taxes paid.

# TAX RATES

## COMPANIES

### Income Tax

For years of assessment ending during the following periods:

|                              |     |
|------------------------------|-----|
| 1 April 1994 - 31 March 1999 | 35% |
| 1 April 1999 - 31 March 2005 | 30% |
| 1 April 2005 - 31 March 2008 | 29% |
| 1 April 2008 - 31 March 2019 | 28% |

### SA Income - Foreign Company/Branch Tax

For years of assessment ending during the following periods:

|                              |     |
|------------------------------|-----|
| 1 April 1996 - 31 March 1999 | 40% |
| 1 April 1999 - 31 March 2005 | 35% |
| 1 April 2005 - 31 March 2008 | 34% |
| 1 April 2008 - 31 March 2012 | 33% |
| 1 April 2012 - 31 March 2019 | 28% |

### Secondary Tax on Companies

|                                                               |       |
|---------------------------------------------------------------|-------|
| Dividend declared between 22 June 1994 and 13 March 1996      | 25%   |
| Dividend declared between 14 March 1996 and 30 September 2007 | 12,5% |
| Dividend declared between 1 October 2007 and 31 March 2012    | 10%   |

### Dividends Tax

|                                                                |     |
|----------------------------------------------------------------|-----|
| Dividend paid or becomes due and payable from 1 April 2012     | 15% |
| Dividend paid or becomes due and payable from 22 February 2017 | 20% |

## EFFECTIVE

## TAX RATE

|                            | Tax year           |                                 |                             |                    |
|----------------------------|--------------------|---------------------------------|-----------------------------|--------------------|
|                            | 2014<br>to<br>2016 | 2017<br>Prior to<br>22 Feb 2017 | 2017<br>From<br>22 Feb 2017 | 2018<br>to<br>2019 |
|                            | R                  | R                               | R                           | R                  |
| Taxable income             | 100,00             | 100,00                          | 100,00                      | 100,00             |
| Less: Normal tax           | 28,00              | 28,00                           | 28,00                       | 28,00              |
| Available for distribution | 72,00              | 72,00                           | 72,00                       | 72,00              |
| Less: Dividend             | 72,00              | 72,00                           | 72,00                       | 72,00              |
| Retained                   | 0                  | 0                               | 0                           | 0                  |
| Total tax                  | 38,80              | 38,80                           | 42,40                       | 42,40              |
| Normal tax                 | 28,00              | 28,00                           | 28,00                       | 28,00              |
| Dividends Tax              | 10,80              | 10,80                           | 14,40                       | 14,40              |
| Effective rate             | 38,80%             | 38,80%                          | 42,40%                      | 42,40%             |

Assumes all profits are declared as a dividend.

**TAX RATES****INDIVIDUALS - 2018****Taxable income****Rates of tax**

|                        |                                              |            |
|------------------------|----------------------------------------------|------------|
| R 0 - R 189 880        | 18% of each R1                               |            |
| R 189 881 - R 296 540  | R 34 178 + 26% of the amount over R 189 880  | R 189 880  |
| R 296 541 - R 410 460  | R 61 910 + 31% of the amount over R 296 540  | R 296 540  |
| R 410 461 - R 555 600  | R 97 225 + 36% of the amount over R 410 460  | R 410 460  |
| R 555 601 - R 708 310  | R149 475 + 39% of the amount over R 555 600  | R 555 600  |
| R 708 311 - R1 500 000 | R209 032 + 41% of the amount over R 708 310  | R 708 310  |
| R1 500 001 +           | R533 625 + 45% of the amount over R1 500 000 | R1 500 000 |

**TAX RATES****INDIVIDUALS - 2019****Taxable income****Rates of tax**

|                        |                                              |            |
|------------------------|----------------------------------------------|------------|
| R 0 - R 195 850        | 18% of each R1                               |            |
| R 195 851 - R 305 850  | R 35 253 + 26% of the amount over R 195 850  | R 195 850  |
| R 305 851 - R 423 300  | R 63 853 + 31% of the amount over R 305 850  | R 305 850  |
| R 423 301 - R 555 600  | R100 263 + 36% of the amount over R 423 300  | R 423 300  |
| R 555 601 - R 708 310  | R147 891 + 39% of the amount over R 555 600  | R 555 600  |
| R 708 311 - R1 500 000 | R207 448 + 41% of the amount over R 708 310  | R 708 310  |
| R1 500 001 +           | R532 041 + 45% of the amount over R1 500 000 | R1 500 000 |

**TAX****THRESHOLDS**

|                         | <b>Taxable income<br/>2018</b> | <b>2019</b> |
|-------------------------|--------------------------------|-------------|
| Persons under 65        | R 75 750                       | R 78 150    |
| Persons 65 and under 75 | R117 300                       | R121 000    |
| Persons 75 and over     | R131 150                       | R135 300    |

**TAX****REBATES**

| <b>Amounts deductible from the tax payable</b> | <b>2018</b> | <b>2019</b> |
|------------------------------------------------|-------------|-------------|
| Persons under 65                               | R13 635     | R14 067     |
| Persons 65 and under 75                        | R21 114     | R21 780     |
| Persons 75 and over                            | R23 607     | R24 354     |

**MEDICAL AID****TAX CREDITS**

| <b>Monthly amounts deductible from tax payable</b> | <b>2018</b> | <b>2019</b> |
|----------------------------------------------------|-------------|-------------|
| Main member                                        | R303        | R310        |
| Main member with one dependant                     | R606        | R620        |
| Main member with two dependants                    | R810        | R829        |

Each additional dependant qualifies for a further rebate or credit of R209 (2018 : R204) per month.

## TAX RATES

## TRUSTS

| Rate of tax        | 2015 | 2016-2017 | 2018-2019 |
|--------------------|------|-----------|-----------|
| All taxable income | 40%  | 41%       | 45%       |

Special trusts are taxed at the rates applicable to individuals, but are not entitled to any rebate. The 40% inclusion rate for a taxable capital gain applies to both types of special trusts.

A special trust is one created:

- solely for the benefit of a person affected by a mental illness or serious physical disability which prevents that person from earning sufficient income to maintain himself. Where the person for whose benefit the trust was established dies prior to or on the last day of the year of assessment the trust will no longer be regarded as a special trust
- as a testamentary trust established solely for the benefit of minor children who are alive and related to the deceased on the date of death. Where the youngest beneficiary turns 18 (2013 : 21) years of age prior to or on the last day of the year of assessment, the trust will no longer be regarded as a special trust.

## TURNOVER TAX

## MICRO-BUSINESSES

Years of assessment ending between 1 April 2014 and 31 March 2015

| Turnover              | Rates of tax                               |
|-----------------------|--------------------------------------------|
| R 0 - R 150 000       | Nil                                        |
| R150 001 - R 300 000  | 1% of the amount over R 150 000            |
| R300 001 - R 500 000  | R 1 500 + 2% of the amount over R 300 000  |
| R500 001 - R 750 000  | R 5 500 + 4% of the amount over R 500 000  |
| R750 001 - R1 000 000 | R 15 500 + 6% of the amount over R 750 000 |

Years of assessment ending between 1 April 2015 and 31 March 2019

| Turnover              | Rates of tax                              |
|-----------------------|-------------------------------------------|
| R 0 - R 335 000       | Nil                                       |
| R335 001 - R 500 000  | 1% of the amount over R 335 000           |
| R500 001 - R 750 000  | R 1 650 + 2% of the amount over R 500 000 |
| R750 001 - R1 000 000 | R 6 650 + 3% of the amount over R 750 000 |

This simplified turnover-based tax system applies to small sole proprietors, partnerships and incorporated businesses with a turnover of less than R1 million per year.

This system is elective. For years of assessment commencing on or after 1 March 2012, a micro-business can voluntarily exit the system at the end of any year of assessment. However, once out of the system the taxpayer will not be permitted to re-enter.

Prior to this, a three year lock-in period existed for exit and re-entry into the system. Personal services rendered under employment-like conditions and certain professional services are **excluded** from this system.

For years of assessment commencing on or after 1 March 2018, transitional measures have been introduced to eliminate penalties when turnover exceeds R1 million and the micro-business is obliged to exit the system.



Years of assessment ending between 1 April 2017 and 31 March 2018

| <b>Taxable income</b> | <b>Rates of tax</b>                       |
|-----------------------|-------------------------------------------|
| R 0 - R 75 750        | Nil                                       |
| R 75 751 - R365 000   | 7% of the amount over R 75 750            |
| R365 001 - R550 000   | R20 248 + 21% of the amount over R365 000 |
| R550 001 +            | R59 098 + 28% of the amount over R550 000 |

Years of assessment ending between 1 April 2018 and 31 March 2019

| <b>Taxable income</b> | <b>Rates of tax</b>                       |
|-----------------------|-------------------------------------------|
| R 0 - R 78 150        | Nil                                       |
| R 78 151 - R365 000   | 7% of the amount over R 78 150            |
| R365 001 - R550 000   | R20 080 + 21% of the amount over R365 000 |
| R550 001 +            | R58 930 + 28% of the amount over R550 000 |

### These tax rates apply if:

- All shareholders or members throughout the year of assessment are natural persons who do not hold shares in any other private company or members' interest in any other close corporation or co-operative other than those which:
  - are inactive and have assets with a market value less than R5 000; or
  - have taken steps to liquidate, wind-up or deregister (effective for years of assessment commencing on or after 1 January 2011).
- Gross income for the year of assessment does not exceed R20 million (2013 : R14 million).
- Not more than 20% of the gross income and all capital gains consists collectively of **investment income** and income from the rendering of a **personal service**.

**Investment income** includes any annuity, interest, rental income from immovable property, royalty or any income of a similar nature, local dividends, foreign dividends (as from 1 April 2012) and any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property.

**Personal service** includes any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draughtmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science, performed personally by any person who holds an interest in the company, co-operative or close corporation, except where such small business corporation employs three or more unconnected full-time employees for core operations throughout the year of assessment.

- The company, close corporation or co-operative is not a personal service provider or venture capital company.

### Investment incentive

The full cost of any asset used directly in a process of manufacture and brought into use for the first time on or after 1 April 2001, may be deducted in the tax year in which the asset is brought into use. As from 1 April 2005, all other depreciable assets may be written off on a 50:30:20 basis.

Dividends Tax is applicable to all South African resident companies as well as non-resident companies listed on the JSE. Dividends Tax is borne by the shareholder at a rate of 20% (prior to 22 February 2017 : 15%), subject to any reduction in terms of a double taxation agreement. Tax on dividends *in specie* remains the liability of the company declaring the dividend.

## Exemptions from Dividends Tax

South African resident companies, the Government, public benefit organisations (PBO's), certain exempt bodies, closure rehabilitation trusts, retirement funds, shareholders in a registered micro-business (provided the dividend does not exceed R200 000 in the year of assessment), are exempt from Dividends Tax. The exemption also applies to dividends *in specie*. As from 1 April 2012, any dividend that was subject to STC is also exempt. A non-resident receiving a dividend from a non-resident company which is listed on the JSE is exempt from Dividends Tax.

## Withholding Tax Obligations

The company declaring the dividend other than dividends *in specie*, is required to withhold the Dividends Tax on payment. Liability for withholding tax shifts if the dividend is paid to a regulated intermediary which includes central securities depository participants, brokers, collective investment schemes, approved transfer secretaries and linked investment service providers.

Dividends Tax can be eliminated or reduced upon the timely receipt of a written declaration and undertaking that the shareholder is either entitled to an exemption or to double taxation agreement relief and that the shareholder will inform the company should there be a change in circumstances.

In the case of dividends *in specie* there is no withholding obligation as the tax is the liability of the company declaring the dividend. However, the Dividends Tax may similarly be eliminated or reduced on timely receipt of the relevant written declaration and undertaking.

As from 16 January 2014, the company paying the dividend and the company receiving the dividend are required to submit a Dividends Tax return.

## STC Credits

Companies were deemed to have declared a dividend of nil on 31 March 2012 in order to ascertain the STC credits that would be available for set-off from 1 April 2012. STC credits had to be exhausted first. As from 1 April 2015, STC credits can no longer be utilised.

## Revised Dividend Definition

As from 1 January 2011, the definition of a dividend has been simplified and includes all distributions to a shareholder other than, amongst others, a reduction of contributed tax capital (consisting of untainted stated capital), capitalisation issues and a general share buy-back by a JSE listed company. A distribution of contributed tax capital must be recorded in writing by the directors, immediately prior to making the distribution.

## Low Interest or Interest-Free Loans

There is a deemed dividend implication where a low interest or interest-free loan or advance is made by a company to a resident natural person or trust connected to the company or to a person (other than a company) who is connected to such natural person or trust. The deemed dividend is the difference between the interest rate charged and the official interest rate applied to the loan amount and is treated as a cash dividend.

## **First Year of Assessment**

Where a taxpayer has not been assessed previously, a reasonable estimate of the taxable income must be made. The basic amount cannot be estimated as nil, unless fully motivated.

### **First Payment**

One half of the total tax in respect of the estimated taxable income for the year is payable within six months of the beginning of the year of assessment.

### **Second Payment**

A two-tier system applies depending on the taxpayer's taxable income:

- **Actual taxable income of R1 million or less**  
To avoid any penalty the basic amount can be used. If a lower estimate is used, this must be within 90% of the taxable income finally assessed.
- **Actual taxable income exceeds R1 million**  
To avoid any penalty the estimate must be within 80% of the taxable income, excluding retirement fund lump sums, finally assessed.

If the above requirements are not met, a penalty of 20% of the provisional tax underpaid will be imposed unless sufficient PAYE and provisional tax has been paid in the year of assessment. The penalty can be remitted if the taxpayer can prove that due care has been taken in seriously calculating the estimate.

- **Non-submission of a return**

Where the return is not submitted within four months of the due date, the estimate of taxable income is deemed to be nil.

### **Third Payment**

Third provisional payments are only applicable to individuals and trusts with taxable income in excess of R50 000 and companies and close corporations with taxable income in excess of R20 000. Such payments must be made before 30 September in the case of a taxpayer with a February year end and within six months of other year ends to avoid interest being charged.

### **Basic Amount**

As from 1 March 2015, the basic amount is the taxable income of the latest preceding tax year, provided the assessment is issued at least 14 days prior to the submission of the provisional tax return. If that assessment is for a tax year older than 18 months, the basic amount is increased by 8% per year.

### **Permissible Reductions in the Basic Amount**

Capital gains, retirement fund lump sums and certain severance benefits are excluded from the basic amount.

### **Estimates**

As from 1 March 2015, the consent of SARS is no longer required for an estimate lower than the basic amount provided capital gains are included in the estimate and the taxpayer's circumstances justify a lower estimate. Capital gains must be included in the second estimate if the final taxable income is expected to exceed R1 million. SARS has the right to increase any estimate, even if based on the basic amount, to an amount considered reasonable.

### **Exemptions**

Natural persons, excluding sole proprietors, are exempt from provisional tax if either:

- the taxable income does not exceed the tax threshold
- the taxable income derived from interest, foreign dividends, rental from letting immovable property and remuneration from a foreign employer (not registered for PAYE) does not exceed R30 000.

Body corporates, deceased estates, PBO's, recreational clubs, shareblocks and small business funding entities are exempt from provisional tax.

## Medical Aid Contributions

Medical aid contributions may be claimed as a **medical scheme fees tax credit** against tax payable as follows:

- R310 (2018 : R303) per month each for the taxpayer and the first dependant
- R209 (2018 : R204) per month for each additional dependant

## Younger than 65 years

Excess contributions and other qualifying medical expenses may be claimed as an **additional medical expense tax credit** calculated as follows:

- The amount by which the formula  $\{[\text{medical aid contributions} - (\text{medical scheme fees tax credit} \times 4)] + \text{other qualifying medical expenses}\}$  exceeds 7,5% of taxable income, divided by a factor of 4.

## 65 years and older, or younger than 65 years if the taxpayer or an immediate family member has a disability

Excess contributions and other qualifying medical expenses may be claimed as an **additional medical expense tax credit** calculated as follows:

- $\{[\text{Medical aid contributions} - (\text{medical scheme fees tax credit} \times 3)] + \text{other qualifying medical expenses}\}$ , divided by a factor of 3.

## Other qualifying medical expenses include:

- payments to medical practitioners, nursing homes and hospitals
- payments to pharmacists for **prescribed** medicines
- payments necessarily incurred and related to a disability or physical impairment including:
  - costs of special care (including training of parents or caregivers)
  - service animals
  - insurance, maintenance and supply of aids and special devices
  - prosthetics (including prosthetic breasts, limbs or eyes)
  - special devices (including computers suitably adapted, kidney machines, mobile ramps, wheelchairs, crutches, orthopaedic shoes, pacemakers, prescription spectacles and contact lenses)
  - alterations or modifications to assets (including doorways, elevators and outdoor ramps)
  - special education for learners with disabilities (including fees for a school assistant, classroom costs and school fees, limited to the amount in excess of the fees of the closest fee-paying school)
  - certain services costs (including deaf-blind intervening services, lip-reading services, rehabilitative therapy and sign language)
  - certain reasonable travel expenses (including accommodation)
  - continence products (including catheters, diapers and disposable briefs).

**Disability** means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of physical, sensory, communication, intellectual or mental impairment, if the limitation lasts more than a year and is diagnosed by a duly registered medical practitioner.

According to the SARS guide on the medical tax credits (issue 8):

- diabetes and asthma are regarded as medical conditions and not a disability or physical impairment
- bad eyesight, hearing problems, paralysis of a portion of the body and brain disfunctions (including dyslexia, hyperactivity or lack of concentration) are regarded as physical impairments and not disabilities.

Recovery of expenses (including amounts received from a medical aid savings account) reduces the claim.

Expenditure paid by a taxpayer on behalf of a spouse or child must be claimed by the taxpayer who paid the expense.

## EXEMPTIONS

## INDIVIDUALS

- Dividends received or accrued from South African companies or JSE dual listed non-resident companies are generally not subject to income tax. Dividends paid by a real estate investment trust (REIT) to a resident are subject to income tax.
- As from 1 March 2014, dividends received for services rendered or by virtue of employment including share incentive trust distributions are not exempt, subject to certain exclusions.
- For years of assessment commencing on or after 1 March 2017, foreign dividends are partially exempt in terms of a formula whereby the maximum effective rate is 20% (previously 15%).
- Interest received by or accrued to a non-resident is exempt from income tax unless the individual was physically present in South Africa for a period exceeding 183 days in aggregate or carried on business through a permanent establishment in South Africa at any time during the 12 month period prior to the date of receipt or accrual. As from 1 March 2015, where this exemption is applicable, a final withholding tax of 15% is imposed on interest paid to a non-resident subject to an exemption or reduction in the rate in terms of a double taxation agreement.
- South African sourced interest received by natural persons:

|                            |         |                  |
|----------------------------|---------|------------------|
| Persons under 65 years     | R23 800 | (2013 : R22 800) |
| Persons 65 years and older | R34 500 | (2013 : R33 000) |
- Unemployment insurance benefits.
- Road Accident Fund payouts as from 1 March 2012.

### Termination Lump Sum from Employer

As from 1 March 2011, employer provided severance payments for reasons of age, ill health and retrenchment are aligned with the taxation of lump sum benefits, including the R500 000 (2012 : R315 000) tax free limit. In the case of retrenchment this concession does not apply where that person at any time held an interest of more than 5% in that entity.

### Compensation

As from 1 March 2007, compensation awards paid by an employer on the death of an employee in the course of employment are exempt, limited to R300 000. As from 1 March 2011, previous retrenchment exemptions are no longer set-off against this amount.

## DEDUCTIONS

## EMPLOYEES

Employees or holders of office are limited to the following deductions from their remuneration:

- Bad debts allowance
- Doubtful debts allowance
- Wear and tear allowance
- Business travel expenses limited to the travel allowance or fringe benefit for the use of a company motor vehicle
- Pension or retirement annuity fund contributions, subject to a limitation
- As from 1 March 2016, provident fund contributions, subject to a limitation
- Donations to qualifying public benefit organisations, subject to a limitation
- Home office expenses, subject to certain requirements
- Legal expenses, subject to certain requirements
- Prior to 1 March 2015, premiums paid for an income protection policy
- As from 1 March 2008, refunded awards for services rendered and refunded restraint of trade awards.

## DEEMED EMPLOYEES

Labour brokers and personal service providers are regarded as deemed employees.

For years of assessment commencing on or after 1 March 2009:

- A **labour broker** is a natural person who, for reward, provides a client with other persons to render a service to the client or procures other persons for the client and remunerates such persons
- A **personal service provider** is a company, close corporation or trust where any service rendered on behalf of the entity to its client is rendered personally by any person who is a connected person in relation to such entity, and **one** of the following provisions apply:
  - the person would have been regarded as an employee of the client, if the service was not rendered through an entity
  - the person or entity rendering the service must perform such service mainly at the premises of the client and such person or entity is subject to the control or supervision of such client as to the manner in which the duties are performed
  - more than 80% of the income derived from services rendered is received from one client or associated person in relation to the client
- The entity will **not** be regarded as a **personal service provider** where such entity employs three or more unconnected full-time employees for core operations throughout the year of assessment.

### Implications

- A labour broker, not in possession of an exemption certificate, is subject to PAYE on income received at the rates applicable to individual taxpayers. Deductible expenditure is limited to remuneration paid to employees
- A personal service provider is subject to PAYE at the rate of 28% (2012 : 33%) in the case of a company and 45% (2017 : 41%) in the case of a trust
- No PAYE is required to be deducted where the entity provides an affidavit confirming that it does not receive more than 80% of its income from one source
- The deemed employee may apply to SARS for a tax directive for a lower rate of tax to be applied
- Deductions available to personal service providers are limited to remuneration to employees, contributions to pension, provident and benefit funds, legal expenses, bad debts, expenses in respect of premises, finance charges, insurance, repairs, fuel and maintenance in respect of assets used **wholly and exclusively** for trade and any amount previously included in taxable income and subsequently refunded by the recipient.

## **TAX FREE**

## **SAVINGS ACCOUNTS**

As from 1 March 2015, natural persons can invest in approved saving instruments which include unit trusts, fixed deposits or real estate investment trusts. These investments are subject to a lifetime investment limit of R500 000, and an annual investment limit of R33 000 (2017 : R30 000). All proceeds, including interest, dividends and capital gains on the disposal of these investments, are fully exempt from tax.

Where the annual or lifetime limits are exceeded, a penalty of 40% of the excess capital contributed is applicable.

## **MARRIED**

## **IN COMMUNITY OF PROPERTY**

Taxpayers married in community of property are taxed on half of their own interest, dividends, rental income and capital gain and half of the interest, dividends, rental income and capital gain of their spouse, regardless of the spouse in whose name the assets are registered (other than assets excluded from the joint estate).

All other taxable income is taxed only in the hands of the spouse to whom that income is received or accrued.

## **ARBITRATION**

## **AWARDS**

Arbitration awards are generally awarded due to unfair dismissal, termination of the employment contract prior to the expiry date or unfair labour practices. Amounts paid due to unfair dismissal and early termination of the contract constitute remuneration and are taxable.

## **RESTRAINT**

## **OF TRADE**

### **Gross Income**

Any amount received by or accrued to any natural person, labour broker or personal service provider for a restraint of trade imposed on such person, is included in gross income in the year of receipt or accrual.

### **Deduction**

Where an expense was incurred in respect of a restraint of trade imposed on any person, the deduction, in a year of assessment, is limited to the lesser of:

- the expense apportioned over the period for which the restraint applies or
- one-third of the amount incurred per year.

Where the expense did not constitute income in the hands of the recipient, no deduction is allowed.

## **DIRECTORS**

## **FEES**

Prior to 1 March 2017, directors of private companies and members of close corporations were deemed to have received a monthly remuneration, subject to PAYE, calculated in accordance with a formula, which did not apply where at least 75% of their remuneration was in the form of fixed monthly payments.

As from 1 March 2017, this formula is no longer applicable and PAYE is calculated on a payment basis.

As from 1 June 2017, resident non-executive directors are regarded as independent contractors, resulting in no PAYE being withheld from directors fees, unless voluntarily agreed to. Where the fees exceed R1 million in a 12 month period, that non-executive director is required to register for VAT and generate a tax invoice to the company for the directors fees.

**Right of Use of Motor Vehicle**

As from 1 March 2015, for vehicles acquired or financed, the determined value for the fringe benefit is the retail market value (previously cost) including VAT but excluding finance charges and interest. The employee will be taxed on 3,5% (2011 : 2,5%) per month of the determined value of the motor vehicle less any consideration paid by the employee towards the cost of the vehicle.

The fringe benefit is reduced to 3,25% if the vehicle is subject to a maintenance plan for not less than three years and/or 60 000 kilometres.

As from 1 March 2013, for vehicles acquired under an operating lease, the value of the fringe benefit is based on the rental and fuel cost to the employer.

Where an employee is given the use of more than one vehicle and can prove that each vehicle is used primarily for business purposes, the value placed on the private use of all the vehicles is determined according to the value attributed to the vehicle carrying the highest value of private use.

For PAYE purposes the employer is required to include in the employee's monthly remuneration 80% of the taxable benefit. The inclusion rate may be limited to 20% if the employer is satisfied that at least 80% of the use of the vehicle for a year of assessment will be for business purposes.

On assessment SARS is obliged, provided it is satisfied that accurate records have been maintained in respect of distances travelled for:

- business purposes, to reduce the value of the fringe benefit by the same proportion that the business distance bears to the total distance travelled during the year of assessment
- private purposes and the employee has borne the full cost of the specified vehicle running expenses, to reduce the value of the fringe benefit:
  - by the same proportion that the private distance bears to the total distance travelled during the year of assessment, in the case of licence, insurance and maintenance costs
  - by applying the prescribed rate per kilometre to the kilometres travelled for private purposes in the case of the fuel cost pertaining to private use.

No value is placed on the private use of an employer-owned vehicle if:

- it is available to and used by all employees, private use is infrequent and incidental to the business use and the vehicle is not normally kept at or near that employee's residence when not in use outside business hours
- the nature of the employee's duties requires regular use of the vehicle for the performance of duties outside normal hours of work and private use is infrequent or incidental to business use or limited to travel between place of residence and place of work.

The provision of an employer-owned vehicle constitutes a deemed supply for VAT purposes. The vendor must account for output VAT on the deemed consideration by applying the VAT fraction on a monthly basis.

The deemed consideration is determined as follows:

|                          |                                               |
|--------------------------|-----------------------------------------------|
| Motor vehicle/Double-cab | 0,3% of cost of vehicle (excl. VAT) per month |
| Bakkies                  | 0,6% of cost of vehicle (excl. VAT) per month |

**Use of Business Cellphones and Computers**

As from 1 March 2008, no taxable value is placed on the private use by employees of employer-owned cellphones and computers which are used mainly for business purposes.

**Low Interest or Interest-Free Loans**

- The fringe benefit is the difference between the interest rate charged by the employer and the official interest rate applied to the loan amount
- No fringe benefit arises where the loan is less than R3 000 or where a loan is made to an employee to further his own studies.



## **Long Service and Bravery Awards**

R5 000 of the value of any asset awarded, excluding cash, is not subject to tax.

## **Medical Aid Contributions**

As from 1 March 2010, the full contribution by an employer is a fringe benefit. If the employer makes a lump sum payment for all employees, the fringe benefit is determined in accordance with a formula, which will have the effect of apportionment amongst all employees concerned.

The fringe benefit has no value where the contributions are made for an employee retired due to superannuation or ill health, or for dependants of a deceased employee.

## **Holiday Accommodation**

The employee is taxed on the prevailing market rental where the property is owned by the employer or rented from an associated entity, or the actual rental where the employer rents the accommodation from a third party.

## **Residential Accommodation**

The value of the fringe benefit to be taxed is the rental value less any consideration paid by the employee. As from 1 March 2015, where the accommodation is not owned by the employer but by an unconnected person, the rental value is the lower of the formula value or the arm's length rental.

As from 1 March 2008, no rental value is placed on:

- the supply of any accommodation to an employee away from his usual place of residence in South Africa for the performance of his duties
- the supply of any accommodation in South Africa to an employee away from his usual place of residence outside South Africa for a two year period, subject to a limit of R25 000 per month. This concession does not apply if the employee was present in South Africa for more than 90 days in the tax year prior to the date of arrival for the purpose of his duties.

## **Employer-Owned Insurance Policies**

As from 1 March 2012, any premium paid by an employer under an employer-owned insurance policy (group life or disability plan), directly or indirectly, for the benefit of the employee, spouse, child, dependant or nominee is taxed in the hands of the employee as a fringe benefit. Prior to 1 March 2015, the premium may have qualified as an income protection insurance contribution deduction by the employee. If the employer makes a lump sum payment for all employees, the fringe benefit is determined in accordance with a formula, which will have the effect of apportionment amongst all employees concerned.

## **Uniform Allowance**

An employer may provide a uniform to an employee or an allowance in order to purchase such uniform. No value is placed on the fringe benefit, provided that the employee is required to wear the uniform while on duty and it is clearly distinguishable from ordinary clothing.

## **Free or Subsidised Meals and Refreshments**

Free or subsidised meals provided by the employer give rise to a fringe benefit, valued at the cost to the employer less any consideration paid by the employee.

No value is placed on the benefit if:

- it is provided at a place mainly or wholly used by the employees or at the employer's premises
- it is provided during business hours (normal or extended) or on a special occasion.

## **Low-Cost Housing Transferred to Employee**

As from 1 March 2014, no value is placed on immovable property transferred to an employee where **all** of the following are applicable:

- the market value of the property does not exceed R450 000
- the employee's remuneration does not exceed R250 000
- the employee is not a connected person in relation to the employer.

## SUBSISTENCE ALLOWANCES

If an employee is obliged to spend at least one night away from his usual residence in South Africa on business, the employer may pay an allowance for personal subsistence and incidental costs without such amounts being included in the employee's taxable income, subject to the employee travelling for business by no later than the end of the following month. If such allowance is paid to an employee and that employee does not travel for business purposes by the end of the following month, the allowance becomes subject to PAYE in that month.

The following amounts are deemed to have been incurred by an employee in respect of a subsistence allowance:

### Local travel

- R128 (2018 : R122) per day or part of a day for incidental costs
- R416 (2018 : R397) per day or part of a day for meals and incidental costs.

Where an allowance is paid to an employee to cover accommodation, meals and incidental costs, the employee is required to prove the expense incurred while away on business, which is limited to the allowance received.

### Overseas travel

Actual accommodation expenses plus an allowance per country as set out on [www.sars.gov.za](http://www.sars.gov.za) (2009 : \$215) per day for meals and incidental costs incurred outside South Africa. Where the absence is for a continuous period in excess of six weeks, the deemed expenditure does not apply.

## TRAVEL ALLOWANCES

### Fixed Travel Allowances

As from 1 March 2010, 80% of the fixed travel allowance is subject to PAYE. As from 1 March 2011, where the employer is satisfied that at least 80% of the use of the vehicle in the year of assessment will be for business purposes, the inclusion rate may be limited to 20%. The full allowance is disclosed on the employee's IRP5 certificate, irrespective of the percentage of business travel.

### Reimbursive Travel Expenses

Prior to 1 March 2018, where an employee receives a reimbursement based on the actual business kilometres travelled, no other compensation is paid to the employee and the cost is calculated in accordance with the prescribed rate of 361 cents (2018 : 355 cents) per kilometre, no PAYE is deductible, provided the business travel does not exceed 12 000 (2017: 8 000) kilometres per year. The reimbursement must be disclosed under code 3703 on the IRP5 certificate. No PAYE is withheld and the amount is not subject to taxation on assessment.

If the business kilometres travelled exceed 12 000 (2017: 8 000) kilometres per year, or if the reimbursive rate per kilometre exceeds the prescribed rate, or if other travel compensation is paid to the employee the allowance must be disclosed separately under code 3702 on the IRP5 certificate.

As from 1 March 2018, where the reimbursive rate exceeds the prescribed rate, irrespective of the business kilometres travelled, there is an inclusion in remuneration for PAYE purposes. The full inclusion amount is subject to PAYE unlike the fixed travel allowance where only 80% of the amount is subject to PAYE.

**Example:** Where 17 891 kilometres are reimbursed for business travel at 420 cents whereas the prescribed rate is 361 cents. The amount included in remuneration is calculated as  $17\,891 \times (420 \text{ cents less } 361 \text{ cents}) = \text{R}10\,555,69$ .

## INCOME PROTECTION CONTRIBUTIONS

Prior to 1 March 2015, insurance premiums paid on income protection policies were deductible.

## DEDUCTIONS

## TRAVEL EXPENSES

Accurate records of the opening and closing odometer readings must be maintained in all circumstances.

As from 1 March 2010, the claim must be based on the actual distance travelled for business purposes as supported by a log book.

The deduction in respect of business travel is limited to the allowance granted and may be determined using actual expenditure incurred or on a deemed cost per kilometre basis in accordance with the table below.

The cost of the vehicle includes VAT but excludes finance costs. Where actual expenditure is used the value of the vehicle is limited to R595 000 (2017 : R560 000) for purposes of calculating wear and tear, which must be spread over a **seven** year period.

The finance costs are also limited to a debt of R595 000 (2017 : R560 000). In the case of a leased vehicle, the instalments in any year of assessment may not exceed the fixed cost component in the table.

### DEEMED EXPENDITURE - 2018

| Cost of vehicle                   | Fixed R | Fuel c | Repairs c |
|-----------------------------------|---------|--------|-----------|
| Does not exceed R85 000           | 28 492  | 91,2   | 32,9      |
| Exceeds R 85 001 but not R170 000 | 50 924  | 101,8  | 41,2      |
| Exceeds R170 001 but not R255 000 | 73 427  | 110,6  | 45,4      |
| Exceeds R255 001 but not R340 000 | 93 267  | 118,9  | 49,6      |
| Exceeds R340 001 but not R425 000 | 113 179 | 127,2  | 58,2      |
| Exceeds R425 001 but not R510 000 | 134 035 | 146,0  | 68,4      |
| Exceeds R510 001 but not R595 000 | 154 879 | 150,9  | 84,9      |
| Exceeds R595 000                  | 154 879 | 150,9  | 84,9      |

### DEEMED EXPENDITURE - 2019

| Cost of vehicle                   | Fixed R | Fuel c | Repairs c |
|-----------------------------------|---------|--------|-----------|
| Does not exceed R85 000           | 28 352  | 95,7   | 34,4      |
| Exceeds R 85 001 but not R170 000 | 50 631  | 106,8  | 43,1      |
| Exceeds R170 001 but not R255 000 | 72 983  | 116,0  | 47,5      |
| Exceeds R255 001 but not R340 000 | 92 683  | 124,8  | 51,9      |
| Exceeds R340 001 but not R425 000 | 112 443 | 133,5  | 60,9      |
| Exceeds R425 001 but not R510 000 | 133 147 | 153,2  | 71,6      |
| Exceeds R510 001 but not R595 000 | 153 850 | 158,4  | 88,9      |
| Exceeds R595 000                  | 153 850 | 158,4  | 88,9      |

## VARIABLE

## REMUNERATION

As from 1 March 2013, variable remuneration, such as commission, bonuses, overtime, leave pay and reimbursive travel, is taxed on a payment basis. This is applicable in respect of the deduction of PAYE, the employee's gross income inclusion and the employer's income tax deduction.

## RELOCATION OF AN EMPLOYEE

The following expenses incurred by the employer for relocation, appointment or termination of an employee are exempt from tax:

- transportation of the employee, members of the household and personal possessions
- hiring temporary residential accommodation for the employee and members of his household for up to 183 days after transfer
- other related costs, including new school uniforms, replacement of curtains, bond registration and cancellation fees, legal fees, transfer duty, motor vehicle registration fees and estate agents commission on the sale of the previous residence.

The loss on sale of the previous residence and architect's fees for the design of, or alterations to, a new residence are excluded.

As from 22 November 2017, the actual cost must be reflected on the IRP5 under code 3714. Previously one month's basic salary could be deemed as the relocation allowance.

## DEDUCTIONS RETIREMENT

### Prior to 1 March 2016

#### Current Pension Fund Contributions

Limited to the greater of 7,5% of remuneration from retirement-funding employment (the amount taken into account to determine contributions to a pension or provident fund) or R1 750.

Excess contributions are not carried forward to the next year of assessment but are accumulated for the purpose of determining the tax-free portion of the lump sum and/or annuity upon retirement.

#### Arrear Defined Benefit Pension Fund Contributions

Up to a maximum of R1 800 per year. Any excess may be carried forward.

#### Current Retirement Annuity Fund Contributions

Limited to the greater of 15% of taxable income from non-retirement-funding employment, excluding any retirement fund lump sum benefits, or R3 500 less current contributions to a pension fund, or R1 750. Any excess may be carried forward.

#### Reinstated Retirement Annuity Fund Contributions

Up to a maximum of R1 800 per year. Any excess may be carried forward.

### As from 1 March 2016

#### Pension, Provident and Retirement Annuity Fund Contributions

The total contributions to retirement funds are deductible but limited to 27,5% of the greater of remuneration or taxable income, including capital gains, but excluding lump sums, prior to the deduction for donations, capped at an annual limit of R350 000. Any excess may be carried forward.

Contributions paid by the employer are taxed as a fringe benefit in the hands of the employee and are deemed to be contributions paid by the employee in order to calculate the allowable deduction.

The employer deduction for contributions made to these funds on the employee's behalf is not subject to any limitation (2016 : 20% of remuneration).

#### Annuity Rules

Pension and retirement annuity funds are subject to the one-third lump sum and the two-thirds annuity rules unless the lump sum is below R247 500 (2016 : R75 000).

As from 1 March 2019, lump sums from provident funds will be subject to annuitisation and apportioned to ensure contributions made prior to 1 March 2019 and the resultant growth may be paid out as a lump sum. Where the member will be at least 55 years old on 1 March 2019 the lump sum from the provident fund is not subject to the annuitisation rules.

## RETIREMENT

## LUMP SUM BENEFITS

As from 1 October 2007, the **taxable portion** of a lump sum from a pension, provident or retirement annuity fund on retirement or death is the lump sum less any contributions that have not been allowed as a tax deduction **plus the taxable portion of all lump sums previously received**. As from 1 March 2011, certain severance benefits are also taxed in terms of this table.

This amount is subject to tax at the following rates **less any tax on the previous lump sums which is calculated in accordance with the current table regardless of the tax actually paid on that lump sum**:

Lump sums accruing between 1 March 2011 and 28 February 2014

| Taxable portion of lump sum |                                             | Rates of tax |
|-----------------------------|---------------------------------------------|--------------|
| R 0 - R 315 000             | Nil                                         |              |
| R 315 001 - R 630 000       | 18% of the amount over R 315 000            |              |
| R 630 001 - R 945 000       | R 56 700 + 27% of the amount over R 630 000 |              |
| R 945 001 +                 | R141 750 + 36% of the amount over R 945 000 |              |

An assessed loss cannot be set-off against the taxable lump sum.

Lump sums accruing between 1 March 2014 and 28 February 2019

| Taxable portion of lump sum |                                              | Rates of tax |
|-----------------------------|----------------------------------------------|--------------|
| R 0 - R 500 000             | Nil                                          |              |
| R 500 001 - R 700 000       | 18% of the amount over R 500 000             |              |
| R 700 001 - R1 050 000      | R 36 000 + 27% of the amount over R 700 000  |              |
| R1 050 001 +                | R130 500 + 36% of the amount over R1 050 000 |              |

An assessed loss cannot be set-off against the taxable lump sum.

## WITHDRAWAL

## LUMP SUM BENEFITS

As from 1 March 2009, the **taxable portion** of a pre-retirement lump sum from a pension or provident fund is the amount withdrawn less any transfer to a new fund **plus all withdrawal lump sums previously received**.

This amount is subject to tax at the following rates **less any tax on the previous lump sums which is calculated in accordance with the current table regardless of the tax actually paid on that lump sum**:

Lump sums accruing between 1 March 2009 and 28 February 2014

| Taxable portion of withdrawal |                                            | Rates of tax |
|-------------------------------|--------------------------------------------|--------------|
| R 0 - R 22 500                | Nil                                        |              |
| R 22 501 - R600 000           | 18% of the amount over R 22 500            |              |
| R600 001 - R900 000           | R103 950 + 27% of the amount over R600 000 |              |
| R900 001 +                    | R184 950 + 36% of the amount over R900 000 |              |

An assessed loss cannot be set-off against the taxable lump sum.

Lump sums accruing between 1 March 2014 and 28 February 2019

| Taxable portion of withdrawal |                                            | Rates of tax |
|-------------------------------|--------------------------------------------|--------------|
| R 0 - R 25 000                | Nil                                        |              |
| R 25 001 - R660 000           | 18% of the amount over R 25 000            |              |
| R660 001 - R990 000           | R114 300 + 27% of the amount over R660 000 |              |
| R990 001 +                    | R203 400 + 36% of the amount over R990 000 |              |

An assessed loss cannot be set-off against the taxable lump sum.

## YOUTH EMPLOYMENT INCENTIVE

As from 1 January 2014, a special incentive is allowed as a credit against the employer's monthly PAYE payment. To qualify for the incentive:

- **Employers must**
  - be registered for PAYE and be tax compliant
  - not be the Government or a municipal entity
  - not have been disqualified by the Minister of Finance
- **Employees must**
  - have a South African bar-coded ID/card or asylum seeker permit
  - be at least 18 years old and not older than 29 years
  - not be a domestic worker or connected to the employer
  - earn at least R2 000 per month or the minimum amount stipulated by the regulated industry but not more than R6 000 per month
  - be employed on or after 1 October 2013

The credit is determined for each qualifying employee as follows:

| Monthly Remuneration | Per month during the first 12 months of employment | Per month during the next 12 months of employment |
|----------------------|----------------------------------------------------|---------------------------------------------------|
| R 0 - R2 000         | 50% of monthly remuneration                        | 25% of monthly remuneration                       |
| R2 001 - R4 000      | R1 000                                             | R500                                              |
| R4 001 - R6 000      | R1 000 - (0,5 x (Monthly Remuneration - R4 000))   | R500 - (0,25 x (Monthly Remuneration - R4 000))   |

As from 1 March 2015, where an employee is employed on a full-time basis for at least 160 hours per month (excluding overtime hours), an employer is entitled to claim the full incentive. Where less than 160 hours are worked, the incentive must be apportioned pro-rata.

Where the credit exceeds the PAYE liability of the employer, the excess amount is refundable provided the employer is tax compliant.

As from 1 March 2017, monthly claims can only be made up to the date of each six monthly reconciliation.

This incentive ceases to apply from 1 March 2019.

## BURSARIES AND SCHOLARSHIPS

*Bona fide* scholarships or bursaries granted to enable any person to study at a recognised educational institution are exempt from tax. Where the benefit is granted to an employee, the exemption will not apply unless the employee agrees to reimburse the employer in the event that the studies are not completed. Where the benefit is granted to a relative of the employee, the exemption will only apply if the annual remuneration proxy in the prior year of the employee is less than R600 000 (2017 : R400 000) and to the extent that the bursary does not exceed R60 000 (2017 : R40 000) per relative for higher education and R20 000 (2017 : R15 000) per relative for basic education to grade 12 (NQF Level 4).

As from 1 March 2018, where the benefit is granted to a relative with a disability, the exemption will apply to the extent that the bursary does not exceed R90 000 per relative for higher education and R30 000 per relative for basic education to grade 12 (NQF Level 4).

## BROAD-BASED EMPLOYEE EQUITY

Employer companies may issue qualifying shares up to a cumulative limit of R50 000 (2008 : R9 000) per employee in respect of the current tax year and the immediately preceding four (2008 : two) tax years. A tax deduction limited to a maximum of R10 000 (2008 : R3 000) per year per employee will be allowed in the employer's hands. There are no tax consequences for the employee, other than a taxable capital gain, provided the employee does not sell the shares for at least five years.

## **LIMITATION** OF INTEREST DEDUCTION

### **Debt arising as a result of a corporate restructure**

As from 1 January 2015, the interest deduction in respect of certain corporate restructures may be limited and calculated in accordance with a formula.

Any excess interest cannot be carried forward to the next tax year. As a result the excess interest is permanently non-deductible.

The interest deduction limitation must be applied in the tax year in which the restructure transaction is entered into and the five tax years immediately thereafter.

### **Recipient of interest is not subject to tax in South Africa**

As from 1 January 2015, interest paid to an exempt or foreign person who is not subject to tax in South Africa may be limited and calculated in accordance with a formula.

Any excess interest is carried forward to the next tax year, and is subject to the formula in that year.

This will generally apply in the case of:

- interest paid to a public benefit organisation
- interest paid to a foreign person where the withholding tax on interest is reduced to nil in terms of a double taxation agreement.

This limitation is only applicable when the parties involved are in a controlling relationship, whereby a person directly or indirectly holds more than 50% of the equity shares or voting rights in that company.

## **DEBT** REDUCTIONS

As from 1 January 2013, a reduction or waiver of debt is not subject to Capital Gains Tax. The tax consequences of a debt reduction or waiver is determined in accordance with the purpose of the debt funding.

Where the debt funded:

- a capital asset and the asset has not been disposed of:
  - the base cost of that asset is reduced
  - future allowances are limited to the reduced base cost
  - to the extent that the debt reduction exceeds the base cost any capital loss is reduced
- a capital asset and the asset has been disposed of:
  - any capital loss is reduced
- an allowance asset and the asset has not been disposed of:
  - the base cost of that asset is reduced
  - to the extent that the debt reduction exceeds the base cost a recoupment, limited to previous allowances granted, is recognised as income
- an allowance asset, which has already been disposed of:
  - a recoupment arises but is limited to previous allowances granted
- trading stock:
  - reductions are made to opening stock, purchases and/or closing stock depending on whether the stock was brought forward from the previous tax year, purchased in the current tax year or has not been disposed of in the current tax year
- deductible expenditure:
  - a recoupment is recognised as income.

Certain transactions are excluded or partially excluded from these provisions such as transactions involving deceased estates, donations, group of companies, fringe benefits and companies in liquidation.

## ENVIRONMENTAL EXPENDITURE

Expenditure incurred to conserve or maintain land is deductible if it is carried out in terms of a biodiversity management agreement with a duration of at least five years. Where the conservation or maintenance of land owned by the taxpayer is carried out in terms of a declaration of at least 30 years' duration, the expenditure incurred is deemed to be a donation to the Government which qualifies as a deduction under section 18A.

In certain circumstances where the land is declared a national park an annual donation based on 10% of the lesser of cost or market value of the land is deemed to be made and qualifies for a section 18A deduction in the year the declaration is made and in each of the subsequent nine years.

Recoupments arise where the taxpayer breaches the agreement.

## HOTEL ALLOWANCES

| Asset type      | Conditions for annual allowance                                                                                                                                                               | Annual allowance |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Hotel buildings | Construction of buildings or improvements, provided used in trade as hotelkeeper or used by lessee in trade as hotelkeeper<br>Refurbishments (note) which commenced on or after 17 March 1993 | 5% of cost       |
|                 |                                                                                                                                                                                               | 20% of cost      |
| Hotel equipment | Machinery, implements, utensils or articles brought into use on or after 16 December 1989                                                                                                     | 20% of cost      |

### Note

- Refurbishment is defined as any work undertaken within the existing building framework

## RESIDENTIAL BUILDING ALLOWANCES

| Asset type             | Conditions for annual allowance                                                                                                                                                                                                                                                                                                         | Annual allowance                                                                                                                               |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Residential buildings  | Buildings erected on or after 1 April 1982 and before 21 October 2008 consisting of at least five units of more than one room intended for letting, or occupation by <i>bona fide</i> full-time employees                                                                                                                               | 2% of cost and an initial allowance of 10% of cost                                                                                             |
|                        | New and unused buildings acquired, erected or improved on or after 21 October 2008 if situated anywhere in South Africa and owned by the taxpayer for use in his trade, either for letting or as employee accommodation. Enhanced allowances are available where the low cost residential unit is situated in an urban development zone | 5% of cost or 10% of cost for low cost residential units not exceeding R300 000 for a stand-alone unit or R350 000 in the case of an apartment |
| Employee housing       | 50% of the costs incurred or funds advanced or donated to finance the construction of housing for employees on or before 21 October 2008 subject to a maximum per dwelling                                                                                                                                                              | R6 000 prior to 1 March 2008<br>R15 000 between 1 March 2008 and 20 October 2008                                                               |
| Employee housing loans | Allowance on amounts owing on interest free loan account in respect of low cost residential units sold at cost by the taxpayer to employees and subject to repurchase at cost only in case of repayment default or termination of employment                                                                                            | 10% of amount owing at the end of each year of assessment                                                                                      |



| Asset type                                                               | Conditions for annual allowance                                                                                                                                                                                                                                                                                                                                                                                             | Annual allowance                                                                 |
|--------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Industrial buildings or improvements (note 1)                            | Construction of buildings or improvements on or after 1 January 1989, where a building is used wholly or mainly for a process of manufacture or similar process or research and development. Construction of buildings or improvements on or after 1 July 1996 to 30 September 1999 and the buildings or the improvements are brought into use before 31 March 2000 and used in a process of manufacture or similar process | 5% of cost (previously 2%) (note 2)<br><br>10% of cost (note 2)                  |
| New commercial buildings (other than residential accommodation) (note 3) | Any cost incurred in erecting any new and unused building, or improving an existing building on or after 1 April 2007 wholly or mainly used for the purposes of producing income in the course of trade                                                                                                                                                                                                                     | 5% of cost                                                                       |
| Building in an urban development zone (note 3)                           | Costs incurred in erecting, demolishing or extending a building, excavating land, providing water, power, parking, drainage, security, waste disposal or access<br>Improvements to existing buildings                                                                                                                                                                                                                       | 20% in first year<br>8% in each of 10 subsequent years<br><br>20% of cost        |
| Aircraft                                                                 | Acquired on or after 1 April 1995                                                                                                                                                                                                                                                                                                                                                                                           | 20% of cost (note 2)                                                             |
| Farming equipment and assets used in production of renewable energy      | Machinery, implements, utensils or articles (other than livestock) brought into use on or after 1 July 1988. Bio-diesel plant and machinery brought into use after 1 April 2003                                                                                                                                                                                                                                             | 50% in first year<br>30% in second year<br>20% in third year                     |
| Ships                                                                    | South African registered ships used for prospecting, mining or as a foreign-going ship, acquired on or after 1 April 1995                                                                                                                                                                                                                                                                                                   | 20% of cost (note 2)                                                             |
| Plant and machinery (note 1)                                             | New or unused manufacturing assets acquired on or after 1 March 2002 are subject to allowances over four years<br><br>Used manufacturing assets                                                                                                                                                                                                                                                                             | 40% in 1st year<br>20% in each of the 3 subsequent years (note 4)<br>20% of cost |
| Plant and machinery (small business corporations only)                   | Plant or machinery brought into use for the first time by that taxpayer on or after 1 April 2001 and used directly in a process of manufacture                                                                                                                                                                                                                                                                              | 100% of cost                                                                     |
| Non-manufacturing assets (small business corporations only)              | Acquired on or after 1 April 2005                                                                                                                                                                                                                                                                                                                                                                                           | 50% in first year<br>30% in second year<br>20% in third year                     |
| Licences                                                                 | Expenditure, other than for infrastructure, to acquire a licence from a government body to carry on telecommunication services, exploration, production or distribution of petroleum or the provision of gambling facilities                                                                                                                                                                                                | Evenly over the period of the licence, subject to a maximum of 30 years          |

## Notes

- As from 1 April 2012, new or unused assets or buildings used for the purpose of research and development also qualify for the allowances
- Recoupments of allowances can be deducted from the cost of the replacement asset
- Allowances available to owners as users of the building or as lessors
- Where plant and machinery is used in a process of manufacture or a similar process, the taxpayer is obliged to make use of the allowances and not the wear and tear rates.

# WEAR AND TEAR

# ALLOWANCES

The following rates of wear and tear are allowed by SARS in terms of Interpretation Note 47:

| Type of asset                                        | No. of years for write-off | Type of asset                         | No. of years for write-off |
|------------------------------------------------------|----------------------------|---------------------------------------|----------------------------|
| Adding machines                                      | 6                          | Drills                                | 6                          |
| Air-conditioners                                     |                            | Electric saws                         | 6                          |
| window                                               | 6                          | Electrostatic copiers                 | 6                          |
| mobile                                               | 5                          | Engraving equipment                   | 5                          |
| room unit                                            | 10                         | Escalators                            | 20                         |
| Air-conditioning assets                              |                            | Excavators                            | 4                          |
| absorption type chillers                             | 25                         | Fax machines                          | 3                          |
| air handling units                                   | 20                         | Fertiliser spreaders                  | 6                          |
| centrifugal chillers                                 | 20                         | Firearms                              | 6                          |
| cooling towers                                       | 15                         | Fire extinguishers (loose units)      | 5                          |
| condensing sets                                      | 15                         | Fire detections systems               | 3                          |
| Aircraft (light passenger or commercial helicopters) | 4                          | Fishing vessels                       | 12                         |
| Arc welding equipment                                | 6                          | Fitted carpets                        | 6                          |
| Artefacts                                            | 25                         | Food bins                             | 4                          |
| Balers                                               | 6                          | Food-conveying systems                | 4                          |
| Battery chargers                                     | 5                          | Forklift trucks                       | 4                          |
| Bicycles                                             | 4                          | Front-end loaders                     | 4                          |
| Boilers                                              | 4                          | Furniture and fittings                | 6                          |
| Bulldozers                                           | 3                          | Gantry cranes                         | 6                          |
| Bumping flaking                                      | 4                          | Garden irrigation equipment (movable) | 5                          |
| Carports                                             | 5                          | Gas cutting equipment                 | 6                          |
| Cash registers                                       | 5                          | Gas heaters and cookers               | 6                          |
| Cell phone antennae                                  | 6                          | Gear boxes                            | 4                          |
| Cell phone masts                                     | 10                         | Gear shapers                          | 6                          |
| Cellular telephones                                  | 2                          | Generators (portable)                 | 5                          |
| Cheque-writing machines                              | 6                          | Generators (standby)                  | 15                         |
| Cinema equipment                                     | 5                          | Graders                               | 4                          |
| Cold drink dispensers                                | 6                          | Grinding machines                     | 6                          |
| Communication systems                                | 5                          | Guillotines                           | 6                          |
| Compressors                                          | 4                          | Gymnasium equipment                   |                            |
| Computers                                            |                            | Cardiovascular                        | 2                          |
| mainframe/server                                     | 5                          | Health testing                        | 5                          |
| personal                                             | 3                          | Weights and strength                  | 4                          |
| Computer software (mainframes)                       |                            | Spinning                              | 1                          |
| purchased                                            | 3                          | Other                                 | 10                         |
| self-developed                                       | 1                          | Hairdressers' equipment               | 5                          |
| Computer software (personal computers)               | 2                          | Harvesters                            | 6                          |
| Concrete mixers portable                             | 4                          | Heat dryers                           | 6                          |
| Concrete transit mixers                              | 3                          | Heating equipment                     | 6                          |
| Containers                                           | 10                         | Hot-water systems                     | 5                          |
| Crop sprayers                                        | 6                          | Incubators                            | 6                          |
| Curtains                                             | 5                          | Ironing and pressing equipment        | 6                          |
| Debarking equipment                                  | 4                          | Kitchen equipment                     | 6                          |
| Delivery vehicles                                    | 4                          | Knitting machines                     | 6                          |
| Demountable partitions                               | 6                          | Laboratory research equipment         | 5                          |
| Dental and doctors' equipment                        | 5                          | Lathes                                | 6                          |
| Dictaphones                                          | 3                          | Laundromat equipment                  | 5                          |
| Drilling equipment (water)                           | 5                          | Law reports                           | 5                          |

| Type of asset                     | No. of years for write-off | Type of asset                    | No. of years for write-off |
|-----------------------------------|----------------------------|----------------------------------|----------------------------|
| Lift installations                | 12                         | Runway lights                    | 5                          |
| Medical theatre equipment         | 6                          | Sanders                          | 6                          |
| Milling machines                  | 6                          | Scales                           | 5                          |
| Mobile caravans                   | 5                          | Security systems removable       | 5                          |
| Mobile cranes                     | 4                          | Seed separators                  | 6                          |
| Mobile refrigeration units        | 4                          | Sewing machines                  | 6                          |
| Motors                            | 4                          | Shakers                          | 4                          |
| Motorcycles                       | 4                          | Shopfittings                     | 6                          |
| Motorised chain saws              | 4                          | Solar energy units               | 5                          |
| Motorised concrete mixers         | 3                          | Special patterns and tooling     | 2                          |
| Motor mowers                      | 5                          | Spin dryers                      | 6                          |
| Musical instruments               | 5                          | Spot welding equipment           | 6                          |
| Navigation systems                | 10                         | Staff training equipment         | 5                          |
| Neon signs and advertising boards | 10                         | Surge bins                       | 4                          |
| Office equipment                  |                            | Surveyors                        |                            |
| electronic                        | 3                          | field equipment                  | 5                          |
| mechanical                        | 5                          | instruments                      | 10                         |
| Oxygen concentrators              | 3                          | Tape recorders                   | 5                          |
| Ovens and heating devices         | 6                          | Telephone equipment              | 5                          |
| Ovens for heating food            | 6                          | Television and advertising films | 4                          |
| Packaging equipment               | 4                          | Television sets, video           |                            |
| Paintings                         | 25                         | machines and decoders            | 6                          |
| Pallets                           | 4                          | Textbooks                        | 3                          |
| Passenger cars                    | 5                          | Tractors                         | 4                          |
| Patterns, tooling and dies        | 3                          | Trailers                         | 5                          |
| Pellet mills                      | 4                          | Traxcavators                     | 4                          |
| Perforating equipment             | 6                          | Trollies                         | 3                          |
| Photocopying equipment            | 5                          | Trucks (heavy-duty)              | 3                          |
| Photographic equipment            | 6                          | Trucks (other)                   | 4                          |
| Planers                           | 6                          | Truck-mounted cranes             | 4                          |
| Pleasure craft                    | 12                         | Typewriters                      | 6                          |
| Ploughs                           | 6                          | Vending machines (including      |                            |
| Portable safes                    | 25                         | video game machines)             | 6                          |
| Power tools (hand-operated)       | 5                          | Video cassettes                  | 2                          |
| Power supply                      | 5                          | Warehouse racking                | 10                         |
| Public address systems            | 5                          | Washing machines                 | 5                          |
| Pumps                             | 4                          | Water distillation and           |                            |
| Racehorses                        | 4                          | purification plant               | 12                         |
| Radar systems                     | 5                          | Water tankers                    | 4                          |
| Radio communication               | 5                          | Water tanks                      | 6                          |
| Refrigerated milk tankers         | 4                          | Weighbridges (movable parts)     | 10                         |
| Refrigeration equipment           | 6                          | Wireline rods                    | 1                          |
| Refrigerators                     | 6                          | Workshop equipment               | 5                          |
|                                   |                            | X-ray equipment                  | 5                          |

## Notes

- 1 Wear and tear may be claimed on either a diminishing value method or on a straight-line basis, in which case certain requirements apply
- 2 Costs incurred in moving business assets from one location to another are not deductible as these are regarded as being capital in nature. Wear and tear may be claimed over the remaining useful life of the assets
- 3 When an asset is acquired for no consideration, a wear and tear allowance may be claimed on its market value at date of acquisition
- 4 Prior to 1 January 2013, wear and tear on any assets acquired from a connected person may only be claimed on the original cost to the seller less allowances claimed by the seller, plus recoupments and CGT included in the seller's income
- 5 The acquisition of "small" items at a cost of less than R7 000 (2009 : R5 000) per item may be written off in full during the year of acquisition.

# STRATEGIC

## ALLOWANCES

| Asset type                                        | Conditions for annual allowance                                                                                                                                                                                                         | Annual allowance                                         |
|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| Strategic projects                                | An additional industrial investment allowance is allowed on new and unused assets used for preferred qualifying strategic projects which were approved between 31 July 2001 and 31 July 2005<br>Any other qualifying strategic projects | 100% of cost                                             |
|                                                   |                                                                                                                                                                                                                                         | 50% of cost                                              |
| Pipelines<br>electricity cables<br>railway tracks | New and unused structures contracted for and construction commenced on or after 23 February 2000                                                                                                                                        | 10% of cost (oil pipelines)<br>5% of cost (other)        |
| Electronic telecommunication lines or cables      | New and unused structures contracted for and construction commenced on or after 23 February 2000                                                                                                                                        | 5% of cost                                               |
|                                                   | As from 1 April 2015 new and used structures                                                                                                                                                                                            | 6.67% of cost                                            |
| Airport and port assets                           | New and unused assets and improvements brought into use on or after 1 January 2008 and used directly and solely for purpose of business as airport, terminal or transport operation or port authority                                   | 5% of cost                                               |
| Rolling stock                                     | Brought into use on or after 1 January 2008                                                                                                                                                                                             | 20% of cost                                              |
| Environmental assets                              | Environmental treatment and recycling assets as from 8 January 2008 for new and unused assets                                                                                                                                           | 40% in 1st year<br>20% in each of the 3 subsequent years |
|                                                   | Environmental waste disposal assets of a permanent nature                                                                                                                                                                               | 5% of cost                                               |
| Energy efficiency savings                         | All forms of energy efficiency savings as reflected on an energy savings certificate in any year of assessment ending before 1 January 2020                                                                                             | Determined in accordance with a formula                  |
| Solar PV renewable energy                         | Generation capacity not exceeding 1 000 kW or 1 MW                                                                                                                                                                                      | 50% in 1st year<br>30% in 2nd year<br>20% in 3rd year    |
|                                                   | For years of assessment on or after 1 January 2016                                                                                                                                                                                      | 100% of cost                                             |

# CAPITAL

## GAINS TAX

As from 1 October 2001, Capital Gains Tax (CGT) applies to a resident's worldwide assets and to a non-resident's immovable property or assets of a permanent establishment situated in South Africa.

### Disposals

CGT is triggered on disposal of an asset.

- **Important disposals include**

- abandonment, scrapping, loss or donation
- vesting of an interest in an asset of a trust in the beneficiary
- distribution of an asset by a company to a shareholder
- granting, renewal, extension or exercise of an option

- **Deemed disposals include**

- termination of South African residency
- a change in the use of an asset
- an asset ceasing to be part of a permanent establishment
- for years of assessment commencing on or after 1 January 2013, the reduction or waiver of a debt, subject to certain exclusions

- **Disposals exclude**

- the transfer of an asset as security for a debt or the release of such security
- issue of, or grant of an option to acquire a share, debenture or unit trust
- loans and the transfer or release of an asset securing debt.

## Calculation of a Capital Gain/Loss

- A capital gain or loss is the difference between the proceeds and the base cost. An aggregate capital loss is carried forward and is available for set-off against subsequent capital gains.

### Base Cost

- Expenditure included in the base cost**
  - acquisition, disposal, transfer, stamp duty, STT and similar costs
  - remuneration of advisers, consultants and agents
  - costs of moving an asset and improvement costs
- Expenditure excluded from the base cost**
  - expenses deductible for income tax purposes
  - interest and raising fees, except for listed shares and business assets
  - expenses initially recorded and subsequently recovered
- Methods for an asset acquired before 1 October 2001**
  - Valuation as at 1 October 2001
  - 20% of the proceeds
  - Time apportionment base cost

**Example:** If an asset cost R250 000 on 1 October 1998 and was sold on 30 September 2014 for R450 000, as CGT was implemented on 1 October 2001, the base cost is:

|                              |            |
|------------------------------|------------|
| Original cost expenditure    | R250 000   |
| Add:                         | R 37 500*  |
| *Proceeds from disposal      | R450 000   |
| Less: Base cost expenditure  | (R250 000) |
| Time apportionment base cost | R287 500   |

**Note 1:** When determining the number of years to be included in the time apportionment calculation, a part of the year is treated as a full year.

**Note 2:** Where expenditure in respect of a pre-valuation date asset was incurred on or after 1 October 2001 and an allowance has been allowed in respect of that asset, an extended formula is applied.

**Note 3:** Expenditure incurred on or after 1 October 2001 is then added to the base cost determined in accordance with one of the above methods.

- Part disposals**
  - Base cost is apportioned unless it is separately identifiable

### Proceeds

- The total amount received or accrued from the disposal
- Excluded**
  - amounts included in gross income for income tax purposes
  - amounts repayable or a reduction in the sale price in the year of disposal
- Specific transactions**
  - connected persons - deemed to be at market value
  - deceased persons - market value as at date of death
  - deceased estates - the bequest is deemed to be at the base cost i.e. market value at date of death.

### Inclusion Rates and Effective Rates

|                | Inclusion rate |       |       | Maximum effective rate |       |       |
|----------------|----------------|-------|-------|------------------------|-------|-------|
|                | 2017           | 2018  | 2019  | 2017                   | 2018  | 2019  |
| Individuals    | 40,0%          | 40,0% | 40,0% | 16,4%                  | 18,0% | 18,0% |
| Special Trusts | 40,0%          | 40,0% | 40,0% | 16,4%                  | 18,0% | 18,0% |
| Companies      | 80,0%          | 80,0% | 80,0% | 22,4%                  | 22,4% | 22,4% |
| Trusts         | 80,0%          | 80,0% | 80,0% | 32,8%                  | 36,0% | 36,0% |

In the case of Collective Investment Schemes (unit trusts), the unitholder is liable for the CGT on disposal of the units. Retirement Funds are exempt from CGT.

## Exclusions and Rebates

- **Annual exclusion**

Natural persons and special trusts R40 000 (2016 : R30 000)

Natural persons in the year of death R300 000 (2012 : R200 000)

The annual exclusion is applied to the net capital gain or loss prior to the application of the inclusion rate.

- **Other exclusions**

- A primary residence, owned by a natural person or a special trust, used for domestic residential purposes, where the proceeds do not exceed R2 million. Where the proceeds exceed R2 million, the exclusion is R2 million (2012 : R1,5 million) of the calculated capital gain
- Personal use assets owned by a natural person or a special trust
- Lump sums from insurance and retirement benefits, except for certain second-hand policies
- Small business assets or an interest in a small business, limited to R1,8 million (2012 : R900 000) if certain requirements are met, including:
  - the market value of all the person's business assets at the date of disposal is less than R10 million (2012 : R5 million)
  - the natural person was a sole proprietor, partner or held a minimum shareholding of 10%, and was actively involved in the business for at least five years
  - the natural person is at least 55 years old, or suffers from ill-health, is infirm or deceased
- Compensation, prizes and donations to certain PBO's
- Assets used by registered micro-businesses for business purposes.

## Rollover Relief

The capital gain is disregarded until ultimate disposal of the asset or in the case of a replacement asset it is spread over the same period as wear and tear may be claimed for the replacement asset, commencing when the replacement asset is brought into use unless disposed of earlier.

The relief applies to the following:

- certain involuntary disposals
- replacement of qualifying business assets (excluding buildings)
- transfer of assets between spouses
- shareblock conversions to sectional title or full title
- certain corporate restructure transactions.

## Valuations

Valuations should have been obtained before 30 September 2004. For certain assets these valuations should have been lodged with the first tax return submitted after 30 September 2004, or such other time as SARS may allow, provided the valuation was in fact done prior to the requisite date:

- where the market value of any intangible asset exceeded R1 million
- where the market value of any other asset exceeded R10 million

## Non-resident Sellers of Immovable Property

Where a non-resident disposes of immovable property in South Africa in excess of R2 million, the purchaser is obliged to withhold the following taxes from the proceeds (unless a directive to the contrary has been issued):

### **Seller's status**

### **Withholding tax**

**1/9/2007-21/2/2017**

**As from 22/2/2017**

|                |       |       |
|----------------|-------|-------|
| Natural person | 5,0%  | 7,5%  |
| Company        | 7,5%  | 10,0% |
| Trust          | 10,0% | 15,0% |

The tax withheld is regarded as a pre-payment of the tax due as a result of the capital gain made by the non-resident upon the submission of a tax return for that year of assessment. If a return is not submitted within 12 months of the end of the tax year the pre-payment is regarded as a final tax.

## UNQUANTIFIED

## PROCEEDS

Where an asset is disposed of for an unquantified amount, the portion of the price which cannot be quantified in that year is deemed to accrue in the year that it becomes quantifiable. Any recoupment, capital gain or capital loss arising from such transaction is deferred until such time as the price becomes quantifiable.

**Example:** Where an asset is brought into use in the first year, but the price can only be quantified in the second year, the wear and tear for both years will be claimed in the second year.

## REINVESTMENT

## RELIEF

Taxpayers can defer taxable recoupments and capital gains on the sale of business assets (excluding buildings) if they fully reinvest the sale proceeds in other qualifying assets. These assets must be contracted for within 12 months and brought into use within three years. Tax on the recoupment and capital gain upon the disposal of the old asset is spread over the same period as wear and tear may be claimed for the replacement asset.

## DEEMED CAPITAL

## DISPOSAL OF SHARES

As from 1 October 2007, the proceeds on the sale of an equity share or collective investment scheme unit will automatically be of a capital nature if held continuously for at least three years except in the case of:

- a share in a non-resident company, subject to certain exclusions
- a share in a shareblock company
- a hybrid equity instrument.

Previously the taxpayer could elect that the proceeds on the sale of a listed share held for at least five years be treated as capital.

## RESEARCH

## AND DEVELOPMENT

As from 2 November 2006, specific deductions were introduced for expenditure incurred in respect of qualifying research and development.

### **As from 1 October 2012:**

- 100% automatic deduction of expenditure incurred solely and directly in respect of separately identifiable research and development activities
- 50% additional deduction of expenditure incurred solely and directly in respect of separately identifiable research and development activities, which is subject to pre-approval by the Department of Science and Technology.

### **As from 1 January 2014:**

- Research and development excludes, amongst others:
  - internal business processes that are used by connected parties
  - routine testing, analysis, collecting of information and quality control
  - market research, market testing or sales promotion
  - the creation or development of financial instruments or products
  - the creation or enhancement of trademarks or goodwill.
- The Department of Science and Technology must approve the entire 150% deduction. Only expenditure incurred on or after the date of receipt of the application is eligible for this deduction.

Research and development capital assets are written off as follows:

- new and unused machinery or plant on a 50:30:20 basis (prior to 1 January 2012 - 40:20:20:20)
- buildings or improvements at 5% per year.

This incentive ceases to apply from 1 October 2022.

## LEARNERSHIP

## ALLOWANCES

For years of assessment ending on or after 1 January 2010, employers may claim learnership allowances in respect of registered learnerships, over and above the normal remuneration deduction.

This allowance is granted in two parts which consists of a recurring annual allowance and a completion allowance. The annual allowance is subject to a pro-rata depending on the number of months falling within the relevant tax year. The completion allowance is determined by multiplying the number of completed 12 month periods of the learnership to the amounts below.

Prior to 1 October 2016, the allowances were R30 000 (disabled person R50 000) regardless of the person's NQF level.

For learnerships entered into on or after 1 October 2016, the allowance is determined as follows:

- NQF levels 1 to 6: R40 000 (disabled person R60 000)
- NQF levels 7 to 10: R20 000 (disabled person R50 000)

The NQF level descriptions are as follows:

- NQF levels 1 to 4: Up to grade 12 (National Certificate)
- NQF level 5: Higher Certificate
- NQF level 6: Diploma or Advanced Certificate
- NQF levels 7 to 10: Bachelor's Degree to Doctorate.

The allowances cease to apply from 1 April 2022.

## VENTURE

## CAPITAL INVESTMENTS

As from 1 July 2009, a taxpayer is entitled to a deduction of 100% of the cost of shares issued by a venture capital company subject to the following limitations:

- a natural person may deduct R750 000 in a year of assessment and a total of R2 250 000
- a listed company and any company held 70% directly or indirectly by that listed company can deduct a maximum of the cost of up to 40% of the total equity interest in the venture capital company
- the venture capital company must be approved by SARS as a qualifying company and satisfy a number of pre-conditions.

As from 1 January 2012, taxpayers are entitled to this deduction without any limitation provided certain conditions are met.

## INDUSTRIAL POLICY

## PROJECTS

An additional investment allowance for an approved project is available to a brownfield project expansion or upgrade, or a greenfield project for new and unused manufacturing items. Subject to certain limits, the additional allowance is 55% for preferred projects and 35% for non-preferred projects.

Where the project is undertaken in an industrial development zone the allowances are increased to 100% and 75% respectively.

There is also an additional project related training allowance of R36 000 per employee per annum for costs incurred by the end of the compliance period, limited to R30 million for preferred projects and R20 million for non-preferred projects.



## SECURITIES

## TRANSFER TAX

As from 1 July 2008, Securities Transfer Tax (STT) is payable at a rate of 0,25% on the greater of the consideration, closing price or market value on the transfer, cancellation or redemption of any listed or unlisted share, member's interest in a close corporation or cession of a right to receive distributions from a company or close corporation.

- On listed securities, the STT is payable by the 14th day of the month following the month during which the transfer occurred
- On unlisted securities, the STT is payable by the end of the second month following the month during which the transfer occurred
- If not paid in full within the prescribed period, interest is imposed at the prescribed rate and a 10% penalty is payable
- No STT is payable if the consideration, closing price or market value is less than R40 000
- No STT is levied on the issue of shares.

## PRE-PAID

## EXPENDITURE

Expenditure paid should be apportioned to the extent that only expenditure actually incurred in a year of assessment is deductible. The remainder of the pre-paid expenditure will be deductible in subsequent years of assessment.

This does not apply if one of the following requirements are met:

- the goods, services or benefits are supplied or rendered within six months after the end of the year of assessment
- the total pre-paid expenditure does not exceed R100 000 (2012 : R80 000)
- expenditure with specifically determined timing and accrual
- pre-paid expenditure payable in terms of a legislative obligation.

## PRE-TRADING

## EXPENDITURE

Expenditure and losses incurred in connection with, but prior to the commencement of trade, is allowed as a deduction, provided the expenditure and losses, including section 24J interest, would have been deductible had the trade commenced. Such expenditure and losses are ring-fenced and can only be set-off against income from that trade. The balance is carried forward and can be claimed in a subsequent year of assessment.

## PRE-PRODUCTION

## INTEREST

Prior to 1 January 2012, interest and related finance charges incurred on any borrowing for the acquisition, installation or construction of any machinery, plant, building or improvements to a building or other assets, including land, were deductible when the asset was brought into use in the production of income. Such expenses are now deductible as pre-trading expenditure.

## CORPORATE

## RESTRUCTURES

Tax relief exists for certain corporate transactions, including:

- Asset-for-share transactions and share-for-share transactions
- Amalgamation and unbundling transactions
- Intra-group transactions
- Liquidation, winding up or deregistration transactions within a group.

Certain controlled foreign companies also qualify.

As from 1 January 2001, residents are taxable on their worldwide income.

## **Resident means**

- A natural person who is ordinarily resident in South Africa
- As from 1 March 2005, a natural person who is physically present in South Africa for at least 92 days in the current and each of the preceding five tax years, and at least 916 days during the five preceding tax years. These days do not need to be consecutive
- A company or trust that is incorporated, established, formed or which has its place of effective management in South Africa.

## **Resident excludes**

- A natural person, who was previously regarded as a deemed resident, if physically absent from South Africa for a continuous period of at least 330 days from the date of departure
- A person who is deemed to be exclusively a resident of another country for the purposes of the application of any double taxation agreement.

## **Exemptions**

- Remuneration for services rendered outside South Africa during the tax year if such person was outside South Africa for periods in aggregate of more than 183 days, of which more than 60 days were continuous
- Foreign pension and social security payments, subject to certain conditions.

## **Foreign Dividends**

Foreign dividends received from a non-resident company and dividends received from a headquarter company are taxable, except if:

- the shareholder holds at least 10% of the equity and voting rights of the distributing company
- the distributing company is listed on the JSE, including a dividend *in specie* from 1 March 2014
- the distributing 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
- foreign dividends declared by one company to another company resident in the same country.

For years of assessment commencing on or after 1 March 2017, any remaining taxable foreign dividends are subject to a formula whereby the maximum rate of taxation is 20% (previously 15%) subject to a reduction in terms of a double taxation agreement.

A resident is entitled to a credit calculated in accordance with a formula, for any withholding tax paid in respect of a foreign dividend that is included in gross income, provided such dividend is not fully exempt.

As from 1 April 2012, no deduction is allowed for expenditure, including interest, incurred in the production of foreign dividends.

## **Controlled Foreign Companies**

A CFC is a non-resident company in which residents, other than a head-quarter company, directly or indirectly own or control more than 50% of the participation or voting rights or is consolidated in terms of IFRS 10.

As from 1 April 2012, a resident holding between 10% and 20% of a foreign company, may no longer elect to treat the company as a CFC.

- A resident must include in his income:

$$\text{Net income of CFC} \times \frac{\text{Resident's participation rights in the CFC}}{\text{Total participation rights in the CFC}}$$

- The net income of a CFC should be calculated according to South African tax principles. If the calculation results in a loss, the deductions are limited to income and the excess is carried forward.

### Exemptions

- The net income, including capital gains, of the CFC that is derived from an active *bona fide* foreign business establishment situated outside South Africa, subject to certain exclusions
- Income of the CFC otherwise taxed in South Africa at normal rates
- Foreign dividends received by the CFC from another CFC to the extent that the income from which the dividend is declared has already been included in the resident's taxable income under the CFC rules
- Net income attributable to interest, royalties or similar income payable to the CFC by other foreign companies forming part of the same group of companies
- The high tax exemption applies where the aggregate of foreign taxes payable by the CFC is at least 75% of the amount of South African tax that would have been imposed had the CFC been a South African taxpayer.

### Relief from Foreign Taxes

- Where a resident has to include in his taxable income any foreign sourced income or capital gain, the proportionate amount of the net income of a CFC, foreign dividends, or other attributable amounts, a rebate in respect of any foreign taxes paid or payable in respect of such amount to a foreign government is allowed
- The rebate is limited to the foreign tax payable and may not exceed:

$$\text{Total South African normal tax} \times \frac{\text{Taxable foreign income}}{\text{Total taxable income}}$$

- If the foreign tax paid exceeds the limit set out above, the excess may be carried forward for a maximum of seven years, but is not refundable
- As from 1 January 2012, foreign taxes withheld on income arising from services rendered in South Africa may be claimed as a rebate. For years of assessment commencing on or after 1 January 2016 this is no longer available
- Tax withheld in a foreign country in respect of South African sourced income is recognised as a deduction against such income, not as a rebate against South African tax payable on that income.

### General

- A loss incurred in carrying on a business outside South Africa may not be set-off against income in South Africa
- A foreign capital loss may be set off against a local capital gain
- The amount of foreign tax payable must be converted to rands at the last day of the tax year by applying the average exchange rate
- Foreign income is converted to rands by applying the spot exchange rate at the date the income accrues. Natural persons and non-trading trusts may elect to apply the average exchange rate for that tax year
- Where foreign income may not be remitted because of restrictions imposed by the source country, such income is included in the resident's gross income in the tax year during which that amount may be remitted to South Africa.

Double taxation arises where two countries have a taxing right on the same amount. South Africa has negotiated double taxation agreements with various countries around the world. The purpose of these agreements is to eliminate double taxation. The double taxation agreements are available on [www.sars.gov.za](http://www.sars.gov.za)

**TAXATION OF****NON-RESIDENTS****Interest**

Interest received by or accrued to a non-resident is exempt from normal tax unless the individual was physically present in South Africa for a period of more than 183 days in aggregate or carried on business through a permanent establishment in South Africa at any time during the prior 12 month period. As from 1 March 2015, where this exemption is applicable, a final withholding tax of 15% is imposed on interest paid to a non-resident, subject to a reduction in the rate in terms of a double taxation agreement.

**Dividends**

As from 22 February 2017, Dividends Tax is payable at a rate of 20% (previously 15%), subject to a reduction in the rate in terms of a double taxation agreement. Prior to 1 April 2012, dividends were subject to Secondary Tax on Companies.

**Royalties**

As from 1 January 2015, a final withholding tax of 15% (previously 12%) is imposed on royalties paid to a non-resident, subject to a reduction in the rate in terms of a double taxation agreement.

Residents require Government and SARB approval for royalty payments to a non-resident.

**Service Fees**

There is no withholding tax on cross-border consultancy, management and technical fees from a South African source.

**Other Income**

Non-residents are taxed on South African sourced income only.

**Payment to Non-Resident Sportspersons and Entertainers**

A withholding tax of 15% is payable by non-resident sportspersons and entertainers on income earned in South Africa.

**WITHHOLDING TAX****ON INTEREST**

As from 1 March 2015, a final withholding tax of 15% is imposed on interest paid to a non-resident from a South African source, subject to a reduction in the rate in terms of a double taxation agreement, on the date it is paid or becomes due and payable except interest:

- payable by any sphere of the South African Government
- arising on any listed debt instrument
- arising on any debt owed by a bank, the DBSA, the IDC or the SARB
- payable by a headquarter company where transfer pricing does not apply
- accruing to a non-resident natural person who was physically present in South Africa for a period exceeding 183 days in aggregate, during that year, or carried on a business through a permanent establishment situated in South Africa at any time during the prior 12 month period
- payable by a local stockbroker to a non-resident.

The person paying the interest has a withholding obligation, unless he is in possession of a written declaration and undertaking confirming that the recipient is either entitled to an exemption or to double taxation relief and that such person will inform him of any change in circumstances.

As from 1 March 2016, interest earned by a trust and distributed to a non-resident beneficiary is not subject to the withholding tax.

## **WITHHOLDING TAX** ON ROYALTIES

As from 1 January 2015, a final withholding tax of 15% (previously 12%) is imposed on royalties paid to a non-resident from a South African source, subject to a reduction in the rate in terms of a double taxation agreement.

Royalties are exempt from the withholding tax if:

- the non-resident natural person was physically present in South Africa for a period exceeding 183 days in aggregate during the 12 month period preceding the date on which the royalty is paid
- the non-resident natural person, company or trust carried on business through a permanent establishment situated in South Africa during the 12 month period preceding the date on which the royalty is paid
- the royalty is paid by a headquarter company and the intellectual property is sub-licensed to one or more of the foreign companies in which the headquarter company holds at least 10% of the equity and voting rights.

The person paying the royalty has a withholding obligation, unless he is in possession of a written declaration and undertaking confirming that the recipient is either entitled to an exemption or to double taxation relief and that such person will inform him of any change in circumstances.

## **DEDUCTION** ROYALTY TO NON-RESIDENTS

As from 1 January 2009, no deduction is allowed in respect of royalty payments to non-residents if:

- the intellectual property was at any time wholly or partly owned by the taxpayer or another South African resident, or
- the intellectual property was developed by the taxpayer or a connected person who is a resident.

If the royalty is subject to a withholding tax at a rate of 10% then a deduction of one-third of the royalty is allowed.

If the royalty is subject to a withholding tax at a rate of 15% then a deduction of half of the royalty is allowed.

## **HEADQUARTER** COMPANY

The headquarter company rules apply from years of assessment commencing on or after 1 January 2011 and provide for several benefits, including:

- its subsidiaries are not treated as controlled foreign companies
- dividends are not subject to Dividends Tax
- no application of thin capitalisation or transfer pricing rules in the case of back-to-back cross-border loans
- exemption from the withholding tax on interest in respect of back-to-back loans.

As from 1 January 2011, a special regional investment fund rule is applicable. Qualifying foreign investors will be regarded as passive investors with no exposure to South African tax when using a South African portfolio manager. A company may elect to be treated as a headquarter company on an annual basis. This election results in the company ceasing to be South African tax resident and liable for exit taxes such as Capital Gains Tax, Dividends Tax and normal tax.

# WITHHOLDING TAXES SUMMARY

## DOUBLE TAXATION AGREEMENTS

Double taxation agreements provide for relief in respect of royalties, dividends and interest withholding taxes.

|                              | Royalties % | Dividends % | Interest % |
|------------------------------|-------------|-------------|------------|
| <b>Non-Treaty Countries</b>  | <b>15</b>   | <b>15</b>   | <b>15</b>  |
| <b>Treaty Countries</b>      |             |             |            |
| Algeria                      | 10          | 10/15       | 10         |
| Australia                    | 5           | 5/15        | 10         |
| Austria                      | 0           | 5/15        | 0          |
| Belarus                      | 5/10        | 5/15        | 5/10       |
| Belgium                      | 0           | 5/15        | 10         |
| Botswana                     | 10          | 10/15       | 10         |
| Brazil                       | 10/15       | 10/15       | 15         |
| Bulgaria                     | 5/10        | 5/15        | 5          |
| Cameroon                     | 10          | 10/15       | 10         |
| Canada                       | 6/10        | 5/15        | 10         |
| Chile                        | 5/10        | 5/15        | 5/15       |
| Croatia                      | 5           | 5/10        | 0          |
| Cyprus                       | 0           | 5/10        | 0          |
| Czech Republic               | 10          | 5/15        | 0          |
| Democratic Republic of Congo | 10          | 5/15        | 10         |
| Denmark                      | 0           | 5/15        | 0          |
| Egypt                        | 15          | 15          | 12         |
| Ethiopia                     | 15          | 10          | 8          |
| Finland                      | 0           | 5/15        | 0          |
| France                       | 0           | 5/15        | 0          |
| Germany                      | 0           | 7,5/15      | 10         |
| Ghana                        | 10          | 5/15        | 5/10       |
| Greece                       | 5/7         | 5/15        | 8          |
| Hong Kong                    | 5           | 5/10        | 10         |
| Hungary                      | 0           | 5/15        | 0          |
| India                        | 10          | 10          | 10         |
| Indonesia                    | 10          | 10/15       | 10         |
| Iran                         | 10          | 10          | 5          |
| Ireland                      | 0           | 5/10        | 0          |
| Israel                       | 0/15        | 15          | 15         |
| Italy                        | 6           | 5/15        | 10         |
| Japan                        | 10          | 5/15        | 10         |
| Kenya                        | 10          | 10          | 10         |
| Korea                        | 10          | 5/15        | 10         |
| Kuwait                       | 10          | 0           | 0          |
| Lesotho                      | 10          | 10/15       | 10         |
| Luxembourg                   | 0           | 5/15        | 0          |
| Malawi                       | 15          | 15          | 15         |
| Malaysia                     | 5           | 5/10        | 10         |
| Malta                        | 10          | 5/10        | 10         |
| Mauritius                    | 5           | 5/10        | 10         |
| Mexico                       | 10          | 5/10        | 10         |
| Mozambique                   | 5           | 8/15        | 8          |
| Namibia                      | 10          | 5/15        | 10         |
| Netherlands                  | 0           | 5/10        | 0          |

|                           | <b>Royalties %</b> | <b>Dividends %</b> | <b>Interest %</b> |
|---------------------------|--------------------|--------------------|-------------------|
| New Zealand               | 10                 | 5/15               | 10                |
| Nigeria                   | 7,5                | 7,5/10             | 7,5               |
| Norway                    | 0                  | 5/15               | 0                 |
| Oman                      | 8                  | 5/10               | 0                 |
| Pakistan                  | 10                 | 10/15              | 10                |
| Peoples Republic of China | 7/10               | 5                  | 10                |
| Poland                    | 10                 | 5/15               | 10                |
| Portugal                  | 10                 | 10/15              | 10                |
| Qatar                     | 5                  | 0/5/10             | 10                |
| Romania                   | 15                 | 15                 | 15                |
| Russian Federation        | 0                  | 10/15              | 10                |
| Rwanda                    | 10                 | 10/20              | 10                |
| Saudi Arabia              | 10                 | 0/5/10             | 5                 |
| Seychelles                | 0                  | 5/10               | 0                 |
| Sierra Leone              | 15                 | 15                 | 0                 |
| Singapore                 | 5                  | 0/5/10             | 7,5               |
| Slovak Republic           | 10                 | 5/15               | 0                 |
| Spain                     | 5                  | 5/15               | 5                 |
| Swaziland                 | 10                 | 10/15              | 10                |
| Sweden                    | 0                  | 5/15               | 0                 |
| Switzerland               | 0                  | 5/15               | 5                 |
| Taiwan                    | 10                 | 5/15               | 10                |
| Tanzania                  | 10                 | 10/20              | 10                |
| Thailand                  | 15                 | 10/15              | 10/15             |
| Tunisia                   | 10                 | 10                 | 5/12              |
| Turkey                    | 10                 | 10/15              | 10                |
| Uganda                    | 10                 | 10/15              | 10                |
| Ukraine                   | 10                 | 5/15               | 10                |
| United Arab Emirates      | 10                 | 0/5/10             | 10                |
| United Kingdom            | 0                  | 5/10/15            | 0                 |
| United States of America  | 0                  | 5/15               | 0                 |
| Zambia                    | 15                 | 15                 | 15                |
| Zimbabwe                  | 10                 | 5/10               | 5                 |

## Notes

- 1 A number of double taxation agreements provide for alternative rates, including zero, to be applied in specific circumstances. The double tax agreements are available on **[www.sars.gov.za](http://www.sars.gov.za)**
- 2 As from 1 January 2015, the withholding tax rate on royalties changed from 12% to 15%.
- 3 As from 1 March 2015, a withholding tax on interest paid to non-residents is imposed at a rate of 15%.
- 4 As from 22 February 2017, the withholding tax rate on dividends changed from 15% to 20%.
- 5 New comprehensive double taxation agreements are in the process of negotiation with Cuba, Gabon, Isle of Man, Morocco, Senegal, Sudan, Syria and Vietnam.
- 6 Existing comprehensive double taxation agreements are in the process of renegotiation with Germany, Malawi, Namibia and Zambia.
- 7 Tax information exchange agreements are currently in place with Argentina, Bahamas, Barbados, Belize, Bermuda, Cayman Islands, Cook Islands, Costa Rica, Gibraltar, Grenada, Guernsey, Jersey, Liberia, Liechtenstein, Samoa, San Marino, St Kitts and Nevis and Uruguay.
- 8 New tax information exchange agreements are in the process of negotiation with Andorra, Brunei Darussalam, Dominica, Isle of Man, Jamaica, Macao SAR, Maldives, Marshall Islands, Monaco, Panama, St. Lucia and Turks and Caicos Islands.

The common reporting standard is a process which allows for financial account information to be obtained from financial institutions and automatically exchanged with other tax jurisdictions on an annual basis. The financial institutions required to report include banks, brokers, asset managers, private equity funds, and long-term insurers.

The information in respect of reportable accounts include the person's particulars such as name, address, tax reference number, place of birth, and account number, as well as financial information such as account balances and income from interest, dividends, certain insurance products and proceeds from the sale of financial assets.

Reportable accounts include accounts held by individuals, entities (inclusive of trusts, partnerships and foundations) and passive entities.

#### **First exchanges in September 2017:**

Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Columbia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands and United Kingdom.

#### **First exchanges in September 2018:**

Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan, the Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica, Ghana, Greenland, Grenada, Hong Kong, Indonesia, Israel, Japan, Kuwait, Lebanon, Macao, Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan, Panama, Qatar, Russia, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay and Vanuatu.

#### **First exchanges in September 2019:**

Nigeria.

#### **First exchanges in September 2020:**

Albania and Maldives.

#### **Developing Countries - no date set for first exchange:**

Armenia, Benin, Botswana, Burkina Faso, Cambodia, Cameroon, Chad, Côte d'Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guatemala, Guyana, Haiti, Jamaica, Kazakhstan, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Moldova, Morocco, Niger, Papua New Guinea, Paraguay, Peru, Philippines, Rwanda, Senegal, Tanzania, Thailand, Togo, Tunisia, Uganda and Ukraine.

For years of assessment commencing on or after 1 January 2016, the ultimate parent company of a multinational enterprise (MNE) group that is a tax resident in South Africa will be required to file a country-by-country report to SARS. The threshold for reporting to SARS is a consolidated MNE group turnover of at least R10 billion in the fiscal year prior to the year in which the report must be submitted. The first report will have to be filed from 28 February 2018.

Where the ultimate parent company is not tax resident in South Africa, the South African tax resident company which forms part of the MNE group must inform SARS of the identity and tax residency of the reporting entity within 12 months.



Upon receipt of the report the revenue authority in that tax jurisdiction will then automatically exchange such information with the other tax jurisdictions. The report will contain extensive information in respect of transactions between the group entities and includes:

- revenue
- profit/loss before income tax
- income tax paid or accrued
- stated capital and accumulated earnings
- number of employees
- tangible assets, other than cash or cash equivalents.

The information obtained in the report will be utilised by SARS to assess high-level transfer pricing risks. The report is due within 12 months of the last day of the reporting fiscal year of the MNE group.

## **TRANSFER PRICING**

For years of assessment commencing on or after 1 October 2016, entities which enter into cross-border transactions with connected persons, and the value of the transactions exceed or are reasonably expected to exceed R100 million are required to maintain transfer pricing policy documentation.

Transfer pricing policy documentation, as required by SARS, includes:

- a description of the ownership structure of the entities
- detailed particulars (name, address, legal form and tax jurisdiction) of each connected person with whom potentially affected transactions have been entered into
- a summary of the entity's business operation including the nature of its business, specific business and external market conditions, business strategy
- a description of senior management including an organogram indicating the titles and location of persons
- major economic and legal issues affecting the profitability of the entity and/or the industry in which the entity operates
- a description of any business restructuring or transfer of intangibles
- the entity's market share within the industry and analysis of market competitor information
- key value drivers
- industry policy, incentives or restrictions
- the role of the entity and the connected persons in the supply chain of the group.

Where the value of a specific transaction exceeds R5 million, detailed records of the transaction must be maintained, including:

- the nature and terms of the transaction
- copies of the relevant contracts or agreements
- relevant SARS applications or approvals
- functional analysis
- operational flows such as information, product and cash flow
- comparable analysis
- comprehensive details of financial assistance.

Where a connected person retains these documents in the ordinary course of business, the entity will be deemed to comply with the requirement to retain such documentation.

Where the volume of transactions are high, SARS may agree to alternative records that the entity must retain in order to satisfy the arms-length requirement. The documents have to be submitted with the annual tax return.

# TRANSFER DUTY

## On Immovable Property (on or after 1 March 2017)

Payable by natural persons and legal entities:

| Property value            | Rates of tax                                   |
|---------------------------|------------------------------------------------|
| R 0 - R 900 000           | Nil                                            |
| R 900 001 - R 1 250 000   | 3% on the value above R 900 000                |
| R 1 250 001 - R 1 750 000 | R 10 500 + 6% on the value above R 1 250 000   |
| R 1 750 001 - R 2 250 000 | R 40 500 + 8% on the value above R 1 750 000   |
| R 2 250 001 - R10 000 000 | R 80 500 + 11% on the value above R 2 250 000  |
| R10 000 001 +             | R933 000 + 13% on the value above R 10 000 000 |

- No transfer duty is payable if the transaction is subject to VAT
- If a registered vendor purchases property from a non-vendor, the notional input tax credit is limited to the VAT fraction (14/114) applied to the lower of the selling price or the open market value. As from 10 January 2012, the notional input tax credit is no longer limited to the transfer duty paid
- A notional input tax credit is only claimable to the extent to which the purchase price has been paid and the property is registered
- Exemptions apply to certain corporate restructure transactions
- The acquisition of a contingent right in a trust that holds a residential property or the shares in a company or the member's interest in a close corporation, which owns residential property, comprising more than 50% of its CGT assets, is subject to transfer duty at the applicable rate
- Liabilities of the entity are to be disregarded when calculating the fair value of the contingent right in the trust, the shares in the company or the member's interest in the close corporation
- Residential property includes dwellings, holiday homes, apartments and similar abodes, improved and unimproved, zoned for residential purposes. It excludes a structure of five or more units, rented by five or more unconnected persons. It excludes immovable property forming part of the enterprise of a VAT vendor.

## PRIME OVERDRAFT RATES

| Date of change   | Rate % | Date of change    | Rate % |
|------------------|--------|-------------------|--------|
| 14 April 2005    | 10,50  | 04 May 2009       | 12,00  |
| 08 June 2006     | 11,00  | 29 May 2009       | 11,00  |
| 03 August 2006   | 11,50  | 14 August 2009    | 10,50  |
| 12 October 2006  | 12,00  | 26 March 2010     | 10,00  |
| 07 December 2006 | 12,50  | 10 September 2010 | 09,50  |
| 08 June 2007     | 13,00  | 19 November 2010  | 09,00  |
| 17 August 2007   | 13,50  | 31 July 2012      | 08,50  |
| 12 October 2007  | 14,00  | 31 January 2014   | 09,00  |
| 07 December 2007 | 14,50  | 31 July 2014      | 09,25  |
| 11 April 2008    | 15,00  | 24 July 2015      | 09,50  |
| 13 June 2008     | 15,50  | 20 November 2015  | 09,75  |
| 12 December 2008 | 15,00  | 29 January 2016   | 10,25  |
| 1 February 2009  | 14,00  | 18 March 2016     | 10,50  |
| 25 March 2009    | 13,00  | 21 July 2017      | 10,25  |

The above dates are applicable to Standard Bank. Banks do not always adjust their rates on the same day.

# BOND/INSTALMENT SALE

# REPAYMENTS

The following table reflects repayments on every R1 000 borrowed.

**Example:** A bond of R80 000 at 10,5% over 20 years

$R80\,000 \div R1\,000 \times 09,98 = R798.40$  a month over a 20 year period.

| Rate  | Mortgage Bonds |        |        |        |  | Short Term Financing |           |           |
|-------|----------------|--------|--------|--------|--|----------------------|-----------|-----------|
|       | 10 Yrs         | 20 Yrs | 25 Yrs | 30 Yrs |  | 36 Months            | 48 Months | 60 Months |
| 07,0% | 11,61          | 07,75  | 07,07  | 06,65  |  | 30,88                | 23,95     | 19,08     |
| 07,5% | 11,87          | 08,06  | 07,39  | 06,99  |  | 31,11                | 24,18     | 20,04     |
| 08,0% | 12,13          | 08,36  | 07,72  | 07,34  |  | 31,34                | 24,41     | 20,28     |
| 08,5% | 12,40          | 08,68  | 08,05  | 07,69  |  | 31,57                | 24,65     | 20,52     |
| 09,0% | 12,67          | 09,00  | 08,39  | 08,05  |  | 31,80                | 24,89     | 20,76     |
| 09,5% | 12,94          | 09,32  | 08,74  | 08,41  |  | 32,03                | 25,12     | 21,00     |
| 10,0% | 13,22          | 09,65  | 09,09  | 08,78  |  | 32,27                | 25,36     | 21,25     |
| 10,5% | 13,49          | 09,98  | 09,44  | 09,15  |  | 32,50                | 25,60     | 21,49     |
| 11,0% | 13,78          | 10,32  | 09,80  | 09,52  |  | 32,74                | 25,85     | 21,74     |
| 11,5% | 14,06          | 10,66  | 10,16  | 09,90  |  | 32,98                | 26,09     | 21,99     |
| 12,0% | 14,35          | 11,01  | 10,53  | 10,29  |  | 33,21                | 26,33     | 22,24     |
| 12,5% | 14,64          | 11,36  | 10,90  | 10,67  |  | 33,45                | 26,58     | 22,50     |
| 13,0% | 14,93          | 11,72  | 11,28  | 11,06  |  | 33,69                | 26,83     | 22,75     |
| 13,5% | 15,23          | 12,07  | 11,66  | 11,45  |  | 33,94                | 27,08     | 23,01     |
| 14,0% | 15,53          | 12,44  | 12,04  | 11,85  |  | 34,18                | 27,33     | 23,27     |
| 14,5% | 15,83          | 12,80  | 12,42  | 12,25  |  | 34,42                | 27,58     | 23,53     |
| 15,0% | 16,13          | 13,17  | 12,81  | 12,64  |  | 34,67                | 27,83     | 23,79     |
| 15,5% | 16,44          | 13,54  | 13,20  | 13,05  |  | 34,91                | 28,08     | 24,05     |
| 16,0% | 16,75          | 13,91  | 13,59  | 13,45  |  | 35,16                | 28,34     | 24,32     |
| 16,5% | 17,60          | 14,29  | 13,98  | 13,85  |  | 35,40                | 28,60     | 24,58     |

# PENALTIES AND

# INTEREST

| Type                              | Reason                   | Basis of charge                                                                                                                                                                                                           |
|-----------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Provisional tax                   | 1st and 2nd payment late | 10% penalty plus interest charged daily from due date to date of payment                                                                                                                                                  |
| Provisional tax                   | 3rd payment late         | Interest charged daily from effective date to earlier of payment date or assessment date. Effective date is six months after year-end, except in the case of February year-ends, where the effective date is 30 September |
| Provisional tax                   | Overpayment              | Interest credited daily from effective date to date of refund                                                                                                                                                             |
| Assessment                        | Late payment             | Interest charged on each completed month from first due date to date of payment                                                                                                                                           |
| Value-Added Tax (VAT)             | Late payment             | 10% penalty plus interest charged daily from due date to date of payment                                                                                                                                                  |
| Value-Added Tax (VAT)             | Refund                   | Interest credited monthly from 21 business days after receipt of return to date of payment. Period is suspended when vendor fails to provide information or update banking details                                        |
| Employees tax (PAYE)              | Late payment             | 10% penalty plus interest charged daily from due date to date of payment                                                                                                                                                  |
| Skills Development Levy (SDL)     | Late payment             | 10% penalty plus interest charged daily from due date to date of payment                                                                                                                                                  |
| Unemployment Insurance Fund (UIF) | Late payment             | 10% penalty plus interest charged daily from due date to date of payment                                                                                                                                                  |

## INTEREST RATES CHANGES

### Prescribed rate - Late payment of assessed tax, provisional tax, VAT and underpayment of provisional tax

| Date of change  | Rate % |
|-----------------|--------|
| 1 May 2016      | 10,25  |
| 1 July 2016     | 10,50  |
| 1 November 2017 | 10,25  |

All payments are first set-off against penalties, then interest and finally tax.

### Prescribed rate - Refund of overpayment of provisional tax

| Date of change  | Rate % |
|-----------------|--------|
| 1 May 2016      | 6,25   |
| 1 July 2016     | 6,50   |
| 1 November 2017 | 6,25   |

Interest on overpayment of provisional tax is only payable if taxable income exceeds R50 000 (individuals and trusts), R20 000 (companies and close corporations) or the refund exceeds R10 000, regardless of taxable income.

### Prescribed rate - Refund of VAT after prescribed period, refund on successful objection, appeal or conceded appeal

| Date of change  | Rate % |
|-----------------|--------|
| 1 May 2016      | 10,25  |
| 1 July 2016     | 10,50  |
| 1 November 2017 | 10,25  |

### Official rate - Fringe benefits and loans to shareholders

| Date of change | Rate % |
|----------------|--------|
| 1 April 2016   | 8,00   |
| 1 August 2017  | 7,75   |

### Official rate - Loans to trusts and companies held by trusts

| Date of change | Rate % |
|----------------|--------|
| 1 March 2017   | 8,00   |
| 1 August 2017  | 7,75   |

As from 1 March 2011, the official rate is equal to the South African repurchase rate plus 100 basis points.

## NATIONAL CREDIT ACT

The maximum lending rates of interest are calculated as follows:

|                                |                                             |
|--------------------------------|---------------------------------------------|
| Mortgage agreements            | $\{(Repo\ rate \times 2.2) + 5\%$ per year  |
| Credit facilities              | $\{(Repo\ rate \times 2.2) + 10\%$ per year |
| Unsecured credit transactions  | $\{(Repo\ rate \times 2.2) + 20\%$ per year |
| Short term credit transactions | 5% per month                                |
| Other credit agreements        | $\{(Repo\ rate \times 2.2) + 10\%$ per year |
| Incidental credit agreements   | 2% per month                                |

The National Credit Act does not apply to large agreements as defined, or to credit agreements where the consumer is a juristic person with a turnover above a defined threshold, the state or an organ of the state, or where the lender is the South African Reserve Bank or a foreigner.

## SKILLS DEVELOPMENT LEVY

As from 1 April 2001, the Skills Development Levy is payable by employers at a rate of 1% (previously 0,5%) of remuneration.

As from 1 August 2005, employers paying annual remuneration of less than R500 000 are exempt from this levy.

Directors remuneration, on the same basis as for PAYE, will be subject to the Skills Development Levy.

Farming income is subject to the provisions of the First Schedule to the Income Tax Act.

### Summary of the First Schedule's Main Paragraphs

|           |                                            |         |                                                      |
|-----------|--------------------------------------------|---------|------------------------------------------------------|
| 2 – 5 & 9 | Valuation of livestock and produce         | 14 – 16 | Plantation farming                                   |
| 6 – 7     | Election of standard values                | 17      | Sugar cane destroyed by fire                         |
| 8         | Ring-fencing of livestock acquisitions     | 19      | Rating formula for farmers (who are natural persons) |
| 11        | Donations and <i>in specie</i> dividends   | 20      | Expropriation of farming land                        |
| 12        | Capital development expenditure            |         |                                                      |
| 13        | Forced sales and drought relief provisions |         |                                                      |

### Rating Formula Applicable to Farmers

Because a farmer's income fluctuates from year to year, a farmer who is a natural person may elect to be taxed in accordance with a rating formula. The formula is based on the average taxable farming income in the current and preceding four years. Should he elect to make use of this formula, it is binding upon him in future years and he is not permitted to make use of the provisions relating to government livestock reduction schemes, rating formula for plantation farmers and provisions relating to sugar cane farmers. For a farmer commencing farming operations the average taxable income from farming in the first year of assessment ending on or after 1 January 2008 will be two-thirds of the taxable income for that period.

### Capital Development Expenditure

The following items of capital expenditure, incurred during a year of assessment, are deductible against farming income:

- expenditure which is not restricted to taxable income from farming:
  - eradication of noxious weeds and invasive alien vegetation and prevention of soil erosion
- expenditure which is restricted to taxable income from farming:
  - dipping tanks, building of roads and bridges for farming operations
  - dams, irrigation schemes, boreholes, pumping plants and fences
  - additions, erection of, extensions and improvements to farm buildings not used for domestic purposes
  - costs of establishing the area for the planting of trees, shrubs and perennial plants
  - carrying of electric power from main power lines to farm machinery and equipment.

The excess expenditure over taxable income from farming is carried forward to the next year of assessment.

Machinery, implements, utensils and articles for farming purposes are written off over three years on a 50:30:20 basis. This does not apply to motor vehicles used to convey passengers, caravans, aircraft (excluding crop-spraying aircraft) or office furniture and equipment. Normal wear and tear may be claimed on these items.

### Non-Farming Income

Income from non-farming sources should be shown separately. The most common examples of non-farming income include:

- income derived from carrying on a trade other than farming
- rental income from farmland
- interest received
- annuities.

**Foreign Capital Allowance**

Individuals, 18 years and older, in good standing with SARS, can invest up to R10 million (prior to 1 April 2015 : R4 million) per calendar year abroad, subject to obtaining a SARS tax clearance certificate. Income accruing thereon may also be retained abroad.

Individuals who wish to invest amounts in excess of R10 million may make an application to the South African Reserve Bank (SARB) together with the relevant tax clearance certificate for consideration.

**Single Discretionary Allowance**

Individuals 18 years and older are permitted to transfer up to a limit of R1 million (2010 : R750 000) per calendar year without the requirement to obtain a tax clearance certificate which can be used to cover *inter alia*, donations to missionaries, maintenance, gifts and loans, travel, study, alimony and child support, wedding expenses and foreign investment.

Applications in excess of the R1 million will be considered on a case by case basis. Individuals, younger than 18 years, only have a travel allowance of R200 000 (2010 : R160 000) per calendar year.

**Specialised Medical/Dental Expenses Abroad**

No limit, provided supported by original documentary evidence of expenses.

**Directors Fees**

Subject to certain conditions and documentation, no limit is applicable to directors fees paid to non-residents, including emigrants.

**Guarantees by Residents for Foreign Liabilities**

Individuals may raise loans abroad to finance the acquisition of foreign assets without recourse to South Africa. Under no circumstances may local guarantees or sureties be issued or South African assets be encumbered.

**Emigrants**

Where the foreign capital allowance has not been fully utilised, emigrants are permitted to increase the allowance up to:

- R20 million (2015 : R8 million) per calendar year per family unit
- R10 million (2015 : R4 million) per calendar year per single emigrant

Household and personal and other effects (excluding coins which are legal tender in South Africa) may be exported within an overall insured value of R2 million per family unit or single emigrant.

In addition the balance of the single discretionary allowance limit, may be accorded once within 60 days prior to departure.

**Local Visits by Emigrants**

There is no limit on the daily utilisation of an emigrant's South African funds during a visit by an emigrant but these funds may not be loaned to a South African resident unless permission is obtained. Direct return airfares may be paid locally from such funds.

**Remittable Income to Emigrants**

Certain forms of income earned by an emigrant on his remaining South African assets are freely remittable abroad, after providing for tax.

**Inheritances**

Non-residents are entitled to transfer their inheritance from resident estates abroad, subject to certain documentary requirements. Former South African residents must have completed emigration formalities to qualify.

## **Foreign Investment in South Africa**

Non-residents may freely invest in South Africa provided that such transactions are concluded at arm's length. The proceeds on disposal of non-resident owned assets may be remitted freely subject to certain conditions. Interest and dividends are also freely remittable. Loans by non-residents to South African residents are subject to specific criteria and recording rules.

### **Outbound Investments by Companies**

Authorised Dealers (approved commercial banks) may approve investments up to R1 billion (2015 : R500 million) per calendar year.

Approval from the SARB will be required for foreign direct investments exceeding this limit. South African companies are allowed to make *bona fide* new outward foreign direct investments outside their current line of business excluding passive real estate investments.

Authorised Dealers may allow additional working capital funding subject to certain criteria. South African companies may now acquire between 10% and 20% equity and/or voting rights, whichever is the higher, in a foreign target entity which may hold investments and/or make loans into any common monetary area country.

Dividends declared by the offshore subsidiary may be retained abroad.

### **Restrictions on Local Financial Assistance**

Local financial assistance subject to the 1:1 ratio is available to:

- emigrants, where rand balances or rand assets are used as collateral
- non-residents, if the borrowing is required for the acquisition of residential or commercial property in South Africa and/or for financial transactions
- affected persons, if the borrowing is required for the acquisition of residential property in South Africa or for financial transactions
- non-resident wholly owned subsidiaries, if the borrowing is required for the acquisition of residential property in South Africa or for financial transactions.

### **Forward Cover**

South African companies may cover forward up to 75% of budgeted import commitments or export accruals in respect of the following financial year, subject to certain conditions.

### **International Headquarter Companies**

Newly established headquarter companies in South Africa may, subject to registration with the SARB for reporting purposes, invest offshore without restriction, subject to certain shareholding and asset criteria.

### **South African Holding Company for African and Offshore Operations**

Listed entities on the JSE and unlisted entities can now establish one subsidiary in South Africa to hold African and offshore operations, which will not be subject to exchange control restrictions, subject to certain conditions.

### **Residents Working Abroad Temporarily**

Remuneration earned whilst physically working abroad can be retained offshore. Residents temporarily abroad may use the single discretionary and foreign capital allowances without returning to South Africa. They may continue to use their local debit or credit cards within the overall single discretionary allowance limit. Income from pension and retirement annuity funds may be transferred abroad as well as monetary gifts and loans.

### **Imports Payments by Credit or Debit Cards**

Residents can make permissible foreign exchange payments for small transactions up to a limit of R50 000 per transaction using their credit or debit card.

# VALUE-ADDED TAX (VAT)

As from 1 April 2018, VAT is payable at 15% (previously 14%). The system provides for three types of supplies:

- **Standard-rated supplies** – supplies of goods or services subject to the VAT rate in force at the time of supply
- **Exempt supplies** – supplies of certain goods or services not subject to VAT. Vendors making exempt supplies only are not entitled to input credits
- **Zero-rated supplies** – supplies of certain goods or services subject to VAT at zero per cent. Vendors making zero-rated supplies are entitled to input credits. Zero-rated supplies include certain basic food items, export sales and services (subject to specific requirements) and the supply of a going concern. Supplies from South Africa to an Industrial Development Zone will be treated as exports.

Where a vendor makes mixed supplies of standard or zero-rated supplies together with exempt supplies the input credits are apportioned. Input credits on direct and indirect expenses relating to exempt supplies cannot be claimed.

Input credits may in general not be claimed in respect of motor vehicles (including sedan and double-cabs) and entertainment.

All fee-based financial services are subject to VAT with the exception of:

- premiums payable in respect of life policies issued in terms of the Long-term Insurance Act and contributions to pension, provident, retirement annuity and medical aid funds
- buying or selling of derivatives or granting of options.

## Registration Requirements

As from 1 March 2009, a vendor is required to register for VAT if taxable supplies in any 12 month period exceeds or is likely to exceed R1 million.

As from 1 April 2014, the compulsory VAT registration requirement was extended to existing or future businesses that have a written contractual commitment to make taxable supplies exceeding R1 million within the next 12 months.

Where turnover is less than R1 million in a 12 month period, but exceeds R50 000, a vendor can register voluntarily.

In the case of commercial rental establishments, the voluntary registration threshold is R120 000 (prior to 1 April 2016 : R60 000).

Notional input tax can be claimed as a "change in use" adjustment, on capital assets owned as at the date of registration as a vendor.

For years of assessment commencing on or after 1 March 2012, a registered micro-business may also be registered as a vendor for VAT purposes.

Where turnover is less than R30 million in a 12 month period, VAT returns may be rendered every two months. Where turnover exceeds R30 million a monthly VAT return is required to be rendered.

Farmers, with a turnover of less than R1,5 million, may render VAT returns every six months.

Normally a vendor accounts for VAT on an invoice basis. Where turnover in a 12 month period is likely to be less than R2,5 million, the vendor can apply to be placed on a payment basis if the vendor is a natural person or an unincorporated body of persons whose members are natural persons.

A tax invoice exceeding R5 000 (2013: R3 000) must be dated, have an individual serialised number and reflect both the seller's and purchaser's trade name, address, VAT registration number, description and quantity of goods, VAT amount and display the words "tax invoice", "VAT invoice" or "invoice".



## **VAT RELIEF** FOR DEVELOPERS

As from 10 January 2012, property developers who let residential property prior to a sale were granted temporary relief from the VAT change in use rules. The relief applied for a maximum period of 36 months per unit if the developer was unable to sell the property due to a lack of demand. If the rental period exceeds 36 months, the deemed change in use applied, based on the market value of the property on that date. The concession ceased to apply from 1 January 2018.

## **VAT RELIEF** INTER-GROUP

As from 10 January 2012, group debt older than 12 months is not subject to the VAT charge back provision and the group creditor is not entitled to claim a VAT input deduction for a bad debt written off.

## **ASSESSED LOSSES** RING-FENCED

As from 1 March 2004, losses from secondary trades are ring-fenced and are not available for set-off against income from any other trade.

It will only apply to an individual whose taxable income, before setting off any assessed loss or balance of assessed loss, is equal to or exceeds the level at which the maximum rate of tax is applicable.

For the restrictions to apply the person must have incurred an assessed loss from the secondary trade in at least three years of assessment during any five year period, or have carried on any of the following 'suspect' trades:

- Any sporting activities
- Any dealing in collectables
- The rental of accommodation, vehicles, aircraft or boats (unless at least 80% of the asset is used by persons who are not relatives of such person for at least half of the year of assessment)
- Animal showing
- Farming or animal breeding (otherwise than on a full-time basis)
- Performing or creative arts
- Gambling or betting.

The taxpayer will be able to circumvent these provisions if he can prove that there is a reasonable prospect of deriving taxable income within a reasonable period and where he complies with other tests, unless losses have been incurred in at least six out of ten years.

## **PATENT** AND INTELLECTUAL PROPERTY

A taxpayer may claim an allowance for the cost of acquiring any invention, patent, design, copyright, other property of a similar nature or knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted.

Where the cost exceeds R5 000, the allowance is limited to:

- 5% of the cost in respect of any invention, patent, copyright or other property of a similar nature
- 10% of the cost of any design or other property of a similar nature.

Where the intangible asset was acquired from a connected person the allowance is limited to the cost to the connected seller less allowances claimed by the seller plus recoupments and taxable capital gain included in the seller's income.

No allowance is allowed in respect of any expenditure incurred by the taxpayer in respect of the acquisition of any trademark or property of a similar nature on or after 29 October 1999.

## SPECIAL

## ECONOMIC ZONES

As from 27 January 2016, a company operating in a special economic zone, and as from 9 February 2017, certain companies located in an industrial development zone, will qualify for:

- a lower company tax rate of 15%
- an enhanced new and unused building allowance at a rate of 10%
- an enhanced employment incentive for all employees, without an age restriction, earning below R60 000 per annum.

In order to qualify the company must be formed and effectively managed in South Africa and generate at least 90% of its income within the zone.

This incentive ceases to apply from 1 January 2024 or 10 years after the commencement of the carrying on of business in a special economic zone.

## RECREATIONAL

## CLUBS

A recreational club is a non-profit organisation which provides social and recreational amenities or facilities for its members.

The annual trading income exemption is the greater of 5% of total membership fees and subscriptions or R120 000 (2010 : R100 000).

Income in excess of this exemption is subject to tax at 28%.

An approved recreational club is exempt from provisional tax.

## BODY

## CORPORATES

Levies received by sectional title body corporates or share block companies are exempt from income tax. In addition to this exemption all other receipts and accruals are exempt up to a maximum of R50 000 per annum.

Income in excess of this exemption is subject to tax at 28%.

Sectional title body corporates and share block companies are exempt from provisional tax.

## PUBLIC

## BENEFIT ORGANISATIONS

A public benefit organisation (PBO) must carry out certain public benefit activities in a non-profit manner substantially in South Africa.

The annual trading income exemption is the greater of 5% of total receipts and accruals or R200 000 (2010 : R150 000).

Income in excess of this exemption is subject to tax at 28%.

An approved public benefit organisation is exempt from provisional tax.

## DEDUCTIONS

## DONATIONS

Donations to certain approved PBO's qualify for a tax deduction:

**Companies and Trusts** - limited to 10% (2007 : 5%) of taxable income before the deduction of donations.

**Individuals** - limited to 10% (2007 : 5%) of taxable income, excluding retirement lump sum payments and severance benefits, and before the deduction of donations.

As from 1 March 2014, donations in excess of the 10% threshold may be carried forward to the next tax year.

Employees may also enjoy PAYE reductions when regular donations are made by way of salary deductions not exceeding 5% of net remuneration.

The participant in or the promoter of a reportable arrangement is obliged to report the arrangement to SARS within a period of 45 business days of the date that such arrangement was entered into. A participant is any person who directly or indirectly derives a tax benefit or financial benefit from the arrangement. A promoter is the person principally responsible for organising, designing, selling, financing or managing the arrangement.

These arrangements include:

- financing transactions whereby the calculation of interest, finance costs or similar fees are wholly or partly dependent on the tax treatment of that arrangement and provision has been made for the variation of such finance fees, and if the potential amount of the variation exceeds R5 million
- any arrangement which would have qualified as a hybrid equity instrument (except in the case of listed instruments) if the prescribed period for that provision was 10 years
- a share buy-back transaction on or after 3 February 2016 with one or more shareholders for an aggregate amount exceeding R10 million and that company issued or is required to issue shares within 12 months of entering into the share buy-back
- contributions or payments made by a resident, on or after 16 March 2015, to a foreign trust where that person has or acquires a beneficial interest in that trust and the total contributions made before and after that date, or the value of interest exceeds or is reasonably expected to exceed R10 million, subject to certain exceptions
- the acquisition of a direct or indirect controlling interest in a company on or after 3 February 2016, which has carried forward or reasonably expects to carry forward an assessed loss exceeding R50 million
- an arrangement between a resident and a foreign insurer in terms of which an aggregate amount exceeding or reasonably expected to exceed R5 million is payable to the resident and any amount payable on or after 16 March 2016, is determined mainly by reference to the value of particular assets or categories of assets that are held by or on behalf of the foreign insurer or by another person
- the rendering of consultancy, construction, technical and managerial services to a resident or a permanent establishment in South Africa in terms of which a non-resident was or is anticipated to be physically present in South Africa for the purposes of rendering such services and the expenditure in respect of those services incurred or to be incurred on or after 3 February 2016, exceeds R10 million and does not qualify as remuneration.

There is no reporting requirement where the aggregate tax benefit does not exceed R5 million or where the tax benefit which is derived is not the main or one of the main benefits of the arrangement.

The failure to disclose a reportable arrangement within 45 business days will result in the imposition of monthly penalties (limited to 12 months) of R50 000 for the participant and R100 000 for the promoter. The penalties are doubled if the amount of the anticipated tax benefit exceeds R5 million and tripled if the benefit exceeds R10 million.

## VOLUNTARY

## DISCLOSURE

As from 1 October 2012, a permanent Voluntary Disclosure Programme is available to assist taxpayers to regularise their tax affairs.

The relief applies to penalties (excluding penalties for late submission), understatement penalties (previously additional tax) and criminal prosecution, but does not include foreign exchange contraventions and interest on late payments.

## UNDERSTATEMENT

## PENALTIES

### Assessments issued on or after 19 January 2017

| Behaviour                                      | Standard case | Obstructive or repeat case | Voluntary disclosure after audit notification | Voluntary disclosure before audit notification |
|------------------------------------------------|---------------|----------------------------|-----------------------------------------------|------------------------------------------------|
| Substantial understatement                     | 10%           | 20%                        | 5%                                            | 0%                                             |
| Reasonable care not taken in completing return | 25%           | 50%                        | 15%                                           | 0%                                             |
| No reasonable grounds for tax position         | 50%           | 75%                        | 25%                                           | 0%                                             |
| Impermissible avoidance arrangements           | 75%           | 100%                       | 35%                                           | 0%                                             |
| Gross negligence                               | 100%          | 125%                       | 50%                                           | 5%                                             |
| Intentional tax evasion                        | 150%          | 200%                       | 75%                                           | 10%                                            |

Where the taxpayer can prove that the understatement results from a *bona fide* inadvertent error, no understatement penalty will be imposed.

In the case of a substantial understatement (tax shortfall exceeds R1 million) SARS may waive the penalty if the taxpayer is in possession of an opinion provided by an independent registered tax practitioner before the return was due (unless that return was due before 1 October 2012) and the practitioner had been given all the material facts and concluded that the taxpayer was more than likely correct in the tax treatment of the transaction.

## DISPUTE

## RESOLUTION

Where there is uncertainty as to the basis of an assessment, a request for reasons can be submitted within 30 business days from the date of the issue of the assessment. If there is still a dispute with the basis of the assessment, the objection must be submitted within 30 business days from the date of assessment or from the date when a response to the request for reasons is received. Where an objection is disallowed the appeal must be submitted within 30 business days from the date the objection is disallowed. The prescribed form must accompany an objection or appeal. If an objection or appeal is submitted late adequate grounds must be provided to condone the late objection or appeal.

## ADMINISTRATIVE PENALTIES

Failure to submit certain returns or disclose information will give rise to the following fixed rate penalties:

| Assessed loss or taxable income for preceding year | Penalty  |
|----------------------------------------------------|----------|
| Assessed loss                                      | R 250    |
| R 0 – R 250 000                                    | R 250    |
| R 250 001 – R 500 000                              | R 500    |
| R 500 001 – R 1 000 000                            | R 1 000  |
| R 1 000 001 – R 5 000 000                          | R 2 000  |
| R 5 000 001 – R10 000 000                          | R 4 000  |
| R10 000 001 – R50 000 000                          | R 8 000  |
| Above R50 000 000                                  | R 16 000 |

- The penalty will automatically be imposed monthly until the taxpayer remedies the non-compliance
- At present the penalty is only payable if a taxpayer is a natural person who has more than one year's tax returns outstanding
- Non-compliance that will attract administrative penalties, once an effective date has been gazetted, include the failure to:
  - meet registration requirements such as failing to register or not registering timeously or not supplying supporting documents
  - inform SARS of a change of address, banking details or representative taxpayer
  - submit a return timeously or failure to sign the return
  - retain records for the prescribed period and in the prescribed format
  - provide information requested or co-operate during a field audit
- Late submission of the PAYE reconciliation attracts a penalty of 10% of the PAYE deducted for the tax year
- The failure to disclose a reportable arrangement will result in a monthly penalty, limited to 12 months, of R50 000 for a participant and R100 000 for a promoter, which may be increased, depending on the tax benefit.

## SUSPENSION OF PAYMENT

Subject to a formal application to SARS the payment of tax may be suspended pending an objection or appeal.

SARS is required to consider all relevant factors such as the compliance history of the taxpayer, whether the recovery of the disputed tax will be in jeopardy, the risk of dissipation of assets, whether adequate security was provided, whether the amounts involved would cause irreparable financial hardship to the taxpayer which does not justify the prejudice to SARS and whether *prima facie* fraud was involved.

The suspension may be revoked with immediate effect if no objection or appeal is lodged, the objection or appeal is found to be frivolous or vexatious, there is a material change in any of the factors previously considered or dilatory tactics are being employed by the taxpayer.

No recovery proceedings may be taken by SARS from the date of the submission of the application to the expiry of 10 business days after notice of the decision or revocation is provided to the taxpayer, unless there is a risk of dissipation of assets by the taxpayer.

A taxpayer's compliance status can be confirmed by obtaining a tax clearance certificate or a tax compliance status pin, provided that the taxpayer is registered for tax and does not have any tax debt outstanding (except if the debt has been suspended pending an objection or appeal or is less than R100) or returns outstanding (except if arrangements are in place to submit those returns).

SARS is obliged to issue or decline the clearance, within 21 business days from the application date. SARS may alter a taxpayer's compliance status if the tax clearance was issued in error or obtained on the basis of fraud or misrepresentation or where the taxpayer subsequently becomes non-compliant.

Distributions from trusts are taxed in terms of the conduit principle where the nature of income is retained and taxed in the hands of the beneficiary, subject to certain deeming provisions.

**Deeming provisions**

- Where the income or capital gain of the trust is attributable to any donation, settlement or other similar disposition (including the sale of an asset to a trust by way of an interest free loan) the income or a portion thereof may be deemed to accrue to the donor, rather than the beneficiary or the trust, subject to certain conditions
- A capital gain distributed to an exempt person, such as a public benefit organisation or a non-resident beneficiary, is taxed in the trust.

**Trust losses**

A loss incurred by a trust cannot be distributed to beneficiaries. The loss is retained in the trust and carried forward to the next tax year as an assessed loss.

**Distributions from a foreign trust to a South African resident beneficiary**

- Income distributions retain their nature and are taxed accordingly in the hands of the South African resident
- Capital distributions are taxed as normal income in the hands of the South African resident beneficiary where **all** of the following are applicable:
  - that person was a beneficiary of the trust in the year in which the income was earned
  - the amount had not already been taxed in South Africa
  - the amount would have constituted income of the trust if it had been a South African resident trust.

**Distributions from a South African trust to a non-resident beneficiary**

Income distributed to a non-resident beneficiary is taxed in the hands of the beneficiary on a source basis in South Africa.

Where the income is attributable to a donation or other similar disposition by a resident donor, it is deemed to accrue to the resident donor and is taxed in that donor's hands.

**Trust to trust distribution of a capital gain**

A capital gain distributed from one trust to another trust retains its nature and is taxed in the second trust. This distributed capital gain cannot then be further distributed to a beneficiary of the second trust unless the second trust had a vested interest in the asset of the first trust prior to the disposal.

## DONATIONS

## TAX

Donations Tax is payable at a rate of 20% on the value of any property disposed of gratuitously by a resident (natural person, corporate entity or trust). As from 1 March 2018, donations exceeding R30 million will be taxed at 25%. The tax is payable by the end of the month following the month in which the donation takes effect.

### Exemptions from Donations Tax include:

- Donations by natural persons up to R100 000 (2006 : R50 000) per year
- Donations by corporate entities not considered to be public companies up to R10 000 per year
- Donations between spouses
- *Bona fide* maintenance payments
- Donations to PBO's and qualifying traditional councils and communities
- Donations where the donee will not benefit until the death of the donor
- Donations made by companies which are recognised as public companies for tax purposes
- Donations cancelled within six months of the effective date
- Property disposed of under and in pursuance of any trust
- Donation of property or a right in property situated outside South Africa if acquired by the donor:
  - before becoming resident in South Africa for the first time
  - by inheritance or donation from a non-resident
- Donations between companies forming part of the same group of companies.

## ESTATE

## DUTY

### Rates of Estate Duty

- Persons deceased:
  - prior to 1 October 2001: 25%
  - on or after 1 October 2001: 20%
  - on or after 1 March 2018: 20% - first R30 million  
: 25% - on excess above R30 million.

### Exemptions from Estate Duty include:

- Persons deceased prior to 1 March 2006, the first R1,5 million
- Persons deceased on or after 1 March 2006, the first R2,5 million
- Persons deceased on or after 1 March 2007, the first R3,5 million
- Any bequest to a surviving spouse or a public benefit organisation
- As from 1 January 2010, the unutilised portion of the exemption of the first deceased spouse may be carried forward to the estate of the surviving spouse.

## EXECUTOR'S

## REMUNERATION

Subject to ratification by the Master, an executor is entitled to either of the following remuneration:

- the remuneration stipulated in the will
- 3,5% on the value of gross assets and 6% on income accrued and collected from date of death.

Executor's remuneration is subject to VAT where the executor is registered as a vendor.

**Normal Income Codes**

|      |                                                       |
|------|-------------------------------------------------------|
| 3601 | Income                                                |
| 3602 | Income (non-taxable)                                  |
| 3603 | Pension                                               |
| 3605 | Annual Payment                                        |
| 3606 | Commission                                            |
| 3608 | Arbitration Award                                     |
| 3610 | Annuity from a Retirement Annuity Fund                |
| 3611 | Purchased Annuity                                     |
| 3613 | Restraint of Trade                                    |
| 3614 | Other Retirement Lump Sums                            |
| 3615 | Director's Remuneration                               |
| 3616 | Independent Contractors                               |
| 3617 | Labour Brokers (PAYE) - without exemption certificate |
| 3619 | Labour Brokers (IT) - with exemption certificate      |

**Allowance Codes**

|      |                                              |
|------|----------------------------------------------|
| 3701 | Travel Allowance                             |
| 3702 | Reimbursive Travel Allowance (IT)            |
| 3703 | Reimbursive Travel Allowance (non-taxable)   |
| 3704 | Subsistence Allowance - Local Travel (IT)    |
| 3707 | Share Options Exercised (Section 8A)         |
| 3708 | Public Office Allowance                      |
| 3713 | Other Allowances                             |
| 3714 | Other Allowance - (non-taxable)              |
| 3715 | Subsistence Allowance - Foreign Travel (IT)  |
| 3717 | Broad-Based Employee Share Plan (Section 8B) |
| 3718 | Employee Equity Instruments (Section 8C)     |

**Fringe Benefit Codes**

|      |                                                                  |
|------|------------------------------------------------------------------|
| 3801 | General Fringe Benefits                                          |
| 3802 | Right of Use of Motor Vehicle                                    |
| 3805 | Free or cheap accommodation                                      |
| 3806 | Free or cheap services                                           |
| 3808 | Payment of Employees Debt                                        |
| 3809 | Taxable Bursaries or Scholarships - Basic Education              |
| 3810 | Company Contribution to Medical Aid                              |
| 3813 | Cost related to Medical Services paid by Company                 |
| 3815 | Non-Taxable Bursaries or Scholarships - Basic Education          |
| 3816 | Right of Use of Motor Vehicle acquired by operating lease        |
| 3817 | Pension Fund Contributions paid by employer for the employee     |
| 3820 | Taxable Bursaries and Scholarships - Further Education           |
| 3821 | Non-taxable Bursaries and Scholarships - Further Education       |
| 3822 | Non-taxable Fringe Benefits on acquisition of immovable property |
| 3825 | Provident Fund Contributions paid by employer for the employee   |
| 3828 | Retirement Annuity Contributions paid by employer                |

**Gross Remuneration Codes**

|      |                                   |
|------|-----------------------------------|
| 3696 | Gross Non-Taxable Income          |
| 3699 | Gross Employment Income (taxable) |

**Foreign Employment Income**

For employees with foreign employment income the value of 50 must be added to each relevant IRP5 code.

Example: Code 3601 will become 3651 for Foreign Income.



## **Lump Sum Codes**

- 3901 Gratuities and severance benefits (Retirement/Retrenchment or Death)
- 3906 Special Remuneration (e.g. proto-teams)
- 3907 Other Lump Sums (e.g. backdated salaries extended over previous tax year, non-approved funds)
- 3908 Surplus Apportionments and Exempt Policy Proceeds on or after 1 January 2006
- 3909 Unclaimed Benefits paid by fund
- 3915 Pension, Provident or Retirement Annuity Fund Lump Sum Benefits paid on or after 1 October 2007
- 3920 Lump Sum Withdrawal Benefits from Retirement Funds after 28 February 2009
- 3921 Living Annuity and Section 15C Surplus Apportionments accruing after 28 February 2009
- 3922 Compensation in respect of death during employment

## **Deduction Codes**

- 4001 Total Pension Fund Contributions paid or deemed paid by employee
- 4003 Total Provident Fund Contributions paid or deemed paid by employee
- 4005 Medical Aid Contributions paid or deemed paid by Employer
- 4006 Total Retirement Annuity Fund Contributions paid or deemed paid by employee
- 4024 Medical Services Costs Deemed paid for Immediate Family
- 4026 Arrear Pension Fund Contributions - Non-Statutory Forces
- 4030 Donations paid by the Employer to a PBO
- 4472 Employer's Pension Fund Contributions
- 4473 Employer's Provident Fund Contributions
- 4474 Employer's Medical Aid Contributions
- 4475 Employer's Retirement Annuity Fund Contributions
- 4493 Employer's Medical Aid Contributions i.r.o. Retired Employees
- 4497 Total Deductions
- 4582 Remuneration inclusion used in section 11(k) deduction

## **Employees Tax Deduction and Reason Codes**

- 4102 PAYE
- 4115 Tax on Retirement Lump Sum and Severance Benefits
- 4116 Medical Scheme Fees Tax Credit
- 4118 The sum of the Employment Tax Incentive
- 4120 Additional Medical Expense Tax Credit (65 years and older)
- 4141 UIF Employee and Employer Contribution
- 4142 SDL Contribution
- 4149 Total PAYE, SDL and UIF
- 4150
  - 01 - Invalid from March 2002
  - 02 - Earn Less than the Tax Threshold
  - 03 - Independent Contractor
  - 04 - Non-Taxable Earnings (including nil directive and income protection policy from 1 March 2015)
  - 05 - Exempt Foreign Employment Income
  - 06 - Director's Remuneration - Income Determined in the following Tax Year
  - 07 - Labour Broker with IRP30
  - 08 - No Tax Due to Medical Aid Tax Credit allowed
  - 09 - No Withholding of tax on shares possible

# RETENTION OF DOCUMENTS/RECORDS

## RECOMMENDED GUIDELINES

Retention periods commence from the date of the last entry in the particular record

| Companies                                             | Retention period |
|-------------------------------------------------------|------------------|
| Memorandum and Articles of Association/Incorporation  | Indefinite       |
| Certificate of Incorporation/Registration Certificate | Indefinite       |
| Certificate of Change of Name                         | Indefinite       |
| Certificate to Commence Business                      | Indefinite       |
| Share/Securities Register, Minute Book, CM25 and CM26 | Indefinite       |
| Rules                                                 | Indefinite       |
| Annual Financial Statements                           | 7 years          |
| Books of Account and supporting schedules             | 7 years          |
| Ancillary books of account                            | 7 years          |
| Record of past and present directors                  | 7 years          |
| Fixed Asset Registers                                 | 7 years          |
| Proxy Forms                                           | 3 years          |

### Close Corporations

|                                                   |            |
|---------------------------------------------------|------------|
| Founding Statement (CK1)                          | Indefinite |
| Amended Founding Statement (CK2)                  | Indefinite |
| Minute Book                                       | Indefinite |
| Annual Financial Statements                       | 15 years   |
| Books of Account                                  | 15 years   |
| Accounting records including supporting schedules | 15 years   |
| Fixed Asset Registers                             | 15 years   |

**When a company or close corporation reproduces its records on microfilm, the original may be destroyed after a period of three years**  
**The microfilm copies must be retained indefinitely**

### Other Suggested Periods of Retention

(Where relevant statutory or legal requirements have been taken into account)

|                                                        |            |
|--------------------------------------------------------|------------|
| Records of trust monies                                | Indefinite |
| Tax returns and assessments (after date of submission) | 5 years    |
| Staff personnel records (after employment ceased)      | 3 years    |
| Salary and wage registers                              | 5 years    |
| Paid cheques and bills of exchange                     | 6 years    |
| Invoices – sales and purchases                         | 5 years    |
| Bank statements and vouchers                           | 5 years    |
| Stock sheets                                           | 5 years    |
| Documentary proof of zero rated supplies               | 5 years    |
| Year-end working papers                                | 5 years    |
| VAT records                                            | 5 years    |
| Other vouchers and general correspondence              | 5 years    |

*The above list is not comprehensive*

## OUR SERVICES

### **Audit and corporate services**

#### **Auditing - external and internal**

- Accounting
- Company secretarial services
- Management consulting services
- IT risk services

### **Tax planning and compliance**

- Corporate and personal taxation
- International tax
- Indirect tax

### **Integrated reporting**

- Preparation and strategic alignment
- Data gathering, synthesis and writing
- Report review and assurance

### **Corporate finance**

- Mergers, acquisitions and disposals
- Financial and tax due diligence
- Listings
- Valuations
- Regulatory support
- Management buy-outs
- Corporate restructuring
- New business formations

### **Corporate governance**

- Compliance appraisal and manuals
- Corporate governance review

### **Wealth management**

- Personal financial planning
- Estate planning and administration
- Wills and trusts

### **International and other services**

- Exchange control
- BEE consulting and training
- BEE verification
- IT support
- Recruitment
- Liquidations

right people  
right size  
right solutions

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