PKF International Limited

Doing Business in South Africa



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Doing Business in South Africa

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Contents

Introduction 1

People, politics and economy 1
Language 4
Currency 4
Regulatory environment 5
Constitution 5
Legal systems 5
Financial services 5
Money laundering 5
Competition 5
Consumer protection 6
National Credit Act 6
Protection of Personal Information Act 6
Broad-Based Black Economic Empowerment Act 7
Exchange controls 7
Non-quoted companies and other business entities 8
Directors' fees and non-residents 8
Legal fees for non-residents 8
Payments by other foreign nationals who have taken up temporary residence in SA 8
Borrowing abroad by residents 9
Affected person 9
Foreign bank account 9
International Headquarter Companies 9

Business structures 10

Companies 10
Registration requirements 11
Close corporations 11
Partnerships and sole traders 11
Local branch of a foreign company 12
Local equity participation 12
Trusts 12

Business finance 13

Equity finance 13
Loan funding 13

Financial reporting and accounting 16

Statutory accounting requirements and principles 16
Preparation of accounts 16
Determination of Public Interest Score 16
Reporting and accounting requirements 17
Audit and review requirements 17
Rotation of auditors 18

Taxation 19

Overview of taxes in SA 19
Administration 20
Income tax 20
Normal tax 20
Tax rates 20
Donations tax 21
Withholding taxes 22
Royalties 22
Immovable property 22
Entertainers and sports persons 22
Interest 22
Secondary tax on companies (STC) 23
Dividends tax 23
Branch profit tax 23
PAYE and provisional tax 23
Capital gains tax 24
Value added tax 24
Customs duty and excise duty 24
Estate duty 25
Other taxes 25

Taxation of property / land 27

Sale of property/land 27
Rental income/leasing 27
Building allowances – industrial buildings 27
Building allowances – commercial buildings 28
Taxation of farming income 28
Permanent structures 29

Taxation of non-South African income 30

Individuals 30
Companies 30
CFCs 30
Foreign dividend income 31
Foreign tax rebate 32
Capital gains tax 32

Carrying on business in SA 33

Source 33
SA branches of foreign companies 34
Regional headquarter company 34
Interest 35
Temporary residents 36
Transfer pricing and thin capitalisation 36
Country-by-country reporting 37

Foreign personnel 39

Immigration Act 39
Visitor's visa 39
Study visa 39
Relatives visa 40
Critical skills visa 40
General work visa 40
Intra-company transfer work visa 40
Corporate work visa 40
Spousal work visa 41
Business visa 41
Retired person's visa 42
Permanent residence permit 42
Naturalisation 43
Employees 43
Tax residence 44
Residence 44
Income tax 44
Employee benefits 44
Capital gains tax 45
Donations tax 45

Supplementary information 46

Tax rates – Companies 47
Tax rates – Individuals 49
Tax rates – Trusts 50
Capital gains tax 50
Donations tax 51
Estate duty 51
Value added tax (VAT) 52
Transfer duty 52
Securities transfer tax 52
Capital allowances 53
Wear and tear allowances 57
Examples of individual and company tax calculations 61
Treaty and non-treaty withholding tax rates 63

Useful contacts 66

Accounting bodies 67
Government bodies 67
Regulatory and Supervisory Bodies 67
Stock Market 68

PKF offices in South Africa 69



Introduction

People, politics and economy

SA is home to approximately 52 million people and is a democratic state with one of the most progressive constitutions in the world.

The Republic of South Africa (SA) lies at the southern tip of Africa. Its coastline of more than 2 500 kilometres stretches from the desert border with Namibia on the Atlantic coast, southwards around the tip of Africa, onto the border with Mozambique on the Indian Ocean.

SA has a total land area of just over 1.2 million square kilometres, making it roughly the same size as Niger, Angola, Mali and Colombia. It is four times the size of Germany and one-eighth the size of the United States
of America.

SA is composed of the following nine provinces:

Eastern Cape

Finance, real estate and business services, general government services and manufacturing currently drive this provinces economy. Mining and quarrying also contribute to the economy.

Several of the world's biggest motor manufacturers, such as Volkswagen and Ford and have manufacturing plants in the Eastern Cape. General Motors South Africa and DaimlerChrysler (through its subsidiary Mercedes Benz South Africa) have assembly plants in the province. The main activities of these motor manufacturers are automotive assembly, component manufacturing and tyre manufacturing.

Port Elizabeth also houses a major salt "mine" (Cerebos Salt) where salt is removed from man-made salt pans and a deep-water container port at the Coega IDZ.

Overview	
Area	168 966 square kilometres
Population	6.6 million
Main cities	Bisho (capital), Port Elizabeth, East London and Umtata

Free State

Overview	
Area	129 825 square kilometres
Population	2.8 million
Main cities	Bloemfontein (judicial capital) and Welkom

Agriculture and mining are the driving forces behind this provincial economy. Construction contributes the least to this economy.

The Free State is an important mining province. It has rich natural resources, good labour and access to two main rivers.

The province has 12 gold mines and producing produces high-quality diamonds. The Harmony Gold Refinery and Rand Refinery are the only two gold refineries in South Africa. Petrochemicals company Sasol, which is based in the town of Sasolburg, mines and converts bituminous coal into petrochemicals.

This province's agricultural products range from asparagus, potatoes, and sunflower seeds to soya and sorghum. The Free State also exports approximately 1.2 million tons of cut flowers every year.

Gauteng

Overview	
Area	16 548 square kilometres
Population	14.6 million
Main cities	Johannesburg, Pretoria (executive capital), Soweto and Vereeniging

The major contributors to this province's economy are finance, real estate and business services as well as manufacturing. Agriculture, forestry and fishing also contribute to the economy.

Although Gauteng is the smallest of SA's provinces, it is the most highly populated and generates more than a third of SA's gross domestic product (GDP).

Most of South Africa's research and development takes place in Gauteng, which is home to many of the country's core biotechnology companies. Leading research institutions such as the Council for Scientific and Industrial Research, the Agricultural Research Council and the Onderstepoort Veterinary Institute are based there.

Gauteng is the financial capital of Africa: more than 70 foreign banks have their head offices in the province, and at least that number of South African banks, stockbrokers and insurance giants. The JSE Ltd in Johannesburg is the largest securities exchange in Africa.

Kwazulu-Natal

Overview	
Area	94 361 square kilometres
Population	11.2 million
Main cities	Pietermaritzburg (capital), Durban, Ulundi, Richards Bay and Newcastle

Manufacturing, finance, real estate and business services wholesale and retail trade, leisure and travel are the driving forces in this provincial economy. The electricity, gas and water industry contribute the least to the economy.

Durban is SA's busiest port and one of the 10 largest ports in the world. Richards Bay is the second largest exporter of steam coal in the world with Richards Bay Minerals being the largest sand-mining and mineral-processing operation in the world.

The province's coastal region yields sugar cane, wood, oranges, bananas, mangoes and other tropical fruit.

This province contains the Drakensberg mountain range, which has been awarded World Heritage status for its dramatic natural beauty and the wealth of San Bushman rock art found in its caves.

Limpopo

Overview	
Area	125 755 square kilometres
Population	5.8 million
Main cities	Polokwane (capital), Mokopane, Tzaneen and Phalaborwa

The provincial economy is driven primarily by mining and quarrying, agriculture, general government services, followed by finance, real estate and business services.

Several mineral deposits and reserves can be found in this province such as, platinum group metals, iron ore, chromium high- and middle-grade coking coal, diamonds, antimony, phosphate and copper, as well as gold, emeralds, scheelite, magnetite, vermiculite, silicon and mica.

From an agricultural perspective Limpopo has a wide variety of produce such as maize, cotton, tea, coffee, sunflowers and tropical fruit with approximately 80% of the country's hunting being undertaken in this province.

The province, along with the province of Mpumalanga, is a gateway to the Kruger National Park, the largest game reserve in SA and a popular tourist destination for South African and international tourists.

Mpumalanga

Overview	
Area	76 495 square kilometres
Population	4.5 million
Main cities	Mbombela (capital), eMalahleni, Middelburg and Ermelo

Mpumalanga focuses on mining and manufacturing and produces 85% of the country's coal. The provincial economy is driven by manufacturing, followed by mining and quarrying, then finance, real estate and tourism. Similar to Limpopo, the construction industry contributes the least to the economy.

Mpumalanga houses South Africa's major coal-fired power stations, three of which are the biggest in the southern hemisphere, and the largest paper mill in the country.

Tropical fruit such as mangoes, banana's and citrus are plentiful in this province along with a variety of nuts. In addition, wheat, potatoes, cotton and tobacco is also harvested in this province.

Northern Cape

Overview	
Area	372 889 square kilometres
Population	1.2 million
Main cities	Kimberley (Judical capital) and Upington

Mining and quarrying are the main trading activity in this province. Finance, real estate and business services and general government services also contribute to this province's economy.

The Northern Cape is rich in minerals, with the country's major diamond pipes found in the Kimberley district. Alluvial diamonds are found on the opposite, western, side of the province.

This province also supplies most of the country's iron ore production.

The Northern Cape produces some of the highest-quality agricultural products in South Africa which ranges from grapes, lucerne, cotton, wheat, corn, carrots, potatoes, ground nuts and soya beans. The province is fast becoming a significant exporter of table grapes, raisins and meat as well as a large producer of sheep and goats, with specialist products such as ostrich meat on the rise.

North West

Overview	
Area	106 512 square kilometres
Population	3.2 million
Main cities	Mafikeng (capital), Klerksdorp, Mmabatho, Potchefstroom and Rustenburg

The provincial economy is mainly driven by mining and quarrying followed by finance, real estate and business services and the general government services sector. The electricity, gas and water industry contribute the least to the economy.

This province is commonly referred to as the Platinum Province for the wealth of the metal it has underground. Mining contributes makes up more than a fifth of the South African mining industry as a whole. 94% of the country's platinum is found in the Rustenburg and Brits districts, which produce more platinum than any other single area in the world.

This province has some of the largest cattle herds in the world. Maize and sunflowers are the most important crops as the North West is the major producer of white maize in South Africa. This province boasts international standard casinos such as Sun City and the Lost City, which are favourite destinations for international and national tourists.

Western Cape

Overview	
Area	129 462 square kilometres
Population	6.6 million
Main cities	Cape Town (legislative capital), Stellenbosch, Paarl, Worcester, Georgeg

Finance, real estate and business services are the main drivers of this economy, followed by manufacturing and wholesale and retail trade as well as hotels and restaurants. Mining and quarrying, agriculture, fishing, tourism and information communication technology also contribute to the economy.

This province boasts some of the best wine farms and wine routes in the world. The main insurance companies and banks are based in this province. Most of the country's petroleum companies and the largest segment of the printing and publishing industry are found in Cape Town.

The Western Cape is the second highest per capita contributor towards the country's GDP.

The Western Cape's unmatched natural beauty, famous hospitality, cultural diversity, excellent wine and rich cuisine make it one of the world's greatest tourism attractions.

Language

Under the South African Constitution 11 official languages are recognised which are all guaranteed equal status. The official languages are English, Afrikaans, Ndebele, IsiXhosa, IsiZulu, Sesotho sa Leboa, Sesotho, Setswana, siSwati, Tshivenda and Xitsonga.

Currency

The currency used in SA is the South African Rand (ZAR).

Regulatory environment

SA has three spheres of government namely, the legislature, the executive and the judiciary.

The legislative authority, elected every five years, consists of parliament, which has two houses being the 400 seat National Assembly and the 90 seat National Council of Provinces.

Constitution

SA's constitution is the highest law of the land and is implemented by an independent constitutional court comprising of 11 judges/members. The constitution makes provision for a federal state, governed by a central government and a provincial government for each of the provinces. The Bill of Rights included in the constitution protects equality, freedom of expression and association, property, housing, healthcare, education, access to information and access to courts.

Legal systems

SA's legal system is based on Roman Dutch law with an influence of English common law. The judiciary is independent of the executive and the legislative authority but there is inter-dependence between the three spheres (i.e. the executive, the judiciary and the legislature).

Financial services

Businesses offering financial services are subject to a regulatory system established by the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS). The purpose of FAIS is to regulate the rendering of financial advisory and intermediary services and to provide for matters incidental thereto.

Money laundering

The Financial Intelligence Centre Act, No. 38 of 2001 (FICA) was enacted to establish a Financial Intelligence Centre and a Money Laundering Advisory Council with the aim of combating money laundering activities and the financing of terrorist and related activities, as well as to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities. FICA also served to amend the Prevention of Organised Crime Act, No. 121 of 1998, to introduce the Promotion of Access to Information Act, No. 2 of 2000, and to provide for matters connected therewith. These laws are in line with international laws.

The regulated sector requires disclosure of knowledge or suspicion of money laundering to law-enforcement agencies worldwide. Appropriate advice must be sought to understand the provisions of FICA.

Competition

Competition in SA is regulated by the Competition Act, No. 89 of 1998, which provides for the establishment of:

- A Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers;
- A Competition Tribunal responsible for adjudicating such matters; and
- A Competition Appeal Court (for related matters).

Consumer protection

Consumer protection is regulated by the Consumer Protection Act, No. 68 of 2008, which provides consumers with protection against suppliers of certain goods and services. The Consumer Protection Act aims to:

- Promote a fair, accessible and sustainable marketplace for consumer products and services;
- Establish national norms and standards to ensure consumer protection;
- Make provision for improved standards of consumer information, to prohibit certain unfair marketing and business practices;
- Promote responsible consumer behaviour;
- Promote a consistent legislative and enforcement framework, related to consumer transactions and agreements; and
- Establish the National Consumer Commission.

National Credit Act

The National Credit Act, No. 34 of 2005 protects borrowers from over indebtedness. The National Credit Act aims to:

- Promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information;
- Promote black economic empowerment and ownership within the consumer credit industry;
- Prohibit certain unfair credit and credit-marketing practices, to promote responsible credit granting and use and for that purpose to prohibit reckless credit granting;
- Provide for debt re-organisation in cases of over-indebtedness;
- Regulate credit information, to provide for registration of credit bureau, credit providers and debt counselling services;
- Establish national norms and standards relating to consumer credit and to promote a consistent enforcement framework relating to consumer credit;
- Establish the National Credit Regulator and the National Consumer Tribunal and to repeal the Usury Act, 1968, and the Credit Agreements Act, 1980; and
- Provide for related incidental matters.

Protection of Personal Information Act

The Protection of Personal Information Act, No. 4 of 2013 promotes the protection of personal information by public and private bodies.

The Act has been signed into law by the President on 19 November and published in the Government Gazette Notice 37067 on 26 November 2013. This Act came into effect on 1 July 2020, companies will be given a year's grace period to comply with the Act, unless this grace period is extended as allowed by the Act. At present the Information Regulator is currently being established.

The purpose of the Act is to ensure that all South African businesses conduct themselves in an appropriate manner when collecting, processing and storing personal information. The personal information that has been collected by various businesses needs to be adequately protected by themselves. If the business should abuse or compromise this personal information and your personal information is hacked, then you are entitled to hold them accountable under this act.

The Act imposes the ultimate responsibility to the managing director of the business. The managing director is therefore required to ensure that his firm/company complies fully with the Act.

Non-compliance can result in up to R 10 million fines and/or 10 years imprisonment.

Broad-Based Black Economic Empowerment Act

The Broad-Based Black Economic Empowerment Act 53 of 2003 ("BBBEE Act") provides the legislative framework for Broad-Based Black Economic Empowerment in South Africa ("BBBEE"). This act is administered by the Department of Trade and Industry.

The primary purpose of the BBBEE Act and the Codes is to rectify the racist apartheid policies from the past and enhance the participation of Black people in the South African economy.

Exempted Micro-Enterprises (EMEs) are deemed to have a Level 4 BBBEE status and start-up enterprises in their first year of operation are measured as EMEs. The threshold for qualifying as an EME has been increased from R5 million to R10 million of the total revenue. This development is thought to assist smaller enterprises who would not benefit from the Level 4 status.

Exchange controls

The South African Reserve Bank (SARB), which is regulated by the South African Reserve Bank Act, No. 90 of 1989, is responsible, on behalf of the Minister of Finance, for the day-to-day administration of exchange controls in South Africa. Exchange control policy is determined by the Minister of Finance and the SARB, therefore, acts as an adviser to the Minister of Finance and as an implementer of exchange control policy decisions.

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

Remittance of dividends, profits and income from SA quoted companies

- In the case of a non-resident shareholder a dividend is remittable, subject to the provision of documentary evidence.
- In the case of an emigrant shareholder:
  - A dividend declared out of income earned from normal trading activities subsequent to the date of emigration is remittable; and
  - A dividend declared out of capital or out of income earned from normal trading activities prior to the date of emigration remains subject to the blocking procedure.

Non-quoted companies and other business entities

- In the case of a non-resident shareholder, dividend distributions are remittable in proportion to the shareholding percentages.
- An entity in SA wishing to transfer a dividend or income distribution to a non-resident shareholder is required to produce an auditor's report which confirms that the amount to be transferred arises from realised/earned profits on investments owned by non-residents.
- An entity in SA wishing to transfer a dividend, profit or income to an emigrant shareholder is required to produce an auditor's report as well as a representation letter, which must be in the prescribed form. The letter must be signed by a director or senior officer of the paying entity and must state the following:
  - A dividend or income distribution is payable from income of the ordinary trading activities of the entity.
  - No portion of the net income after tax out of which dividends or income distributions have been declared arises from surpluses as a result of the revaluation of assets other than trading assets.
  - The net remittable income has been earned since the date of emigration.

Directors' fees and non-residents

- Authorised dealers may authorise the transfer to a non-resident director, provided:
  - The application is accompanied by a copy of the resolution of the board of the remitting company confirming the amount to be paid to the director.
  - The remitting company shows that the director is permanently domiciled outside the CMA.

Legal fees for non-residents

- Authorised dealers may approve applications for the payment of amounts due by SA residents for solicitors' and counsels' fees and court costs incurred in countries outside the CMA.

Payments by other foreign nationals who have taken up temporary residence in SA

- Foreign nationals are, for exchange control purposes, natural persons from countries outside the CMA who have taken up temporary residence in SA.
- On taking up temporary residence in SA, foreign nationals must declare possession of any foreign assets to an Authorised Dealer.
- Foreign nationals must also provide an undertaking to the effect that such assets will not be placed at the disposal of a third party normally resident in SA.
- A foreign national will also be required to provide an authorised dealer with an original and valid visa issued by the Department of Home Affairs substantiating his/her temporary residence in SA.
- Authorised dealers may visa foreign nationals to:
  - Conduct their banking on a resident basis;
  - Deal with their foreign assets in any manner;

- Conduct resident as well as non-resident banking accounts; and
- Transfer abroad funds accumulated during their stay in SA, provided that the individual can substantiate the source of such funds and that the value of such funds is reasonable in relation to their income generating activities in SA during that period.

Borrowing abroad by residents

- Approval is required for inward foreign loans and foreign trade finance facilities from any non-resident. Approval is subject to specific criteria and loans are recorded via a Loan Recording System.

Affected person

- An “affected person” means an entity in respect of which 75% or more of the voting power and control are directly or indirectly vested in a person who is not resident in SA.
- Authorised Dealers may authorize local financial assistance facilities to affected persons without restriction, except in the case of financial transactions and/or acquisition of residential properties where a 1:1 ratio will apply.
- Non-resident wholly owned subsidiaries may borrow locally up to 100% of total shareholders’ investment. The greater the local participation in non-resident-controlled entities the greater the ability to borrow locally.

Foreign bank account

- Authorised Dealers may approve the opening of foreign bank accounts by SA companies subject to certain conditions.

International Headquarter Companies

- Foreign persons can establish headquarter companies in SA and, once registration is approved by the Financial Surveillance Department of SARB, can raise and deploy capital offshore without restriction. In order to register certain shareholding and asset criteria have to be met. These criteria include:
  - no shareholder in the headquarter company whether alone or together with any other company forming part of the same group of companies as a shareholder may hold less than 10 per cent of the shares and voting rights;
  - no more than 20 per cent of the headquarter company shares may be directly or indirectly held by residents; and
  - at the end of each financial year, at least 80 per cent of the assets of the holding company must consist of foreign assets.



Business structures

Companies

The Companies Act, No. 71 of 2008 replaced the Companies Act, No. 61 of 1973 with effect from 1 May 2011.

Companies may be public or private and are the most common investment vehicles for foreign investors operating in SA. They exist as separate legal entities from their shareholders. No distinction is made in the Companies Act between companies that are locally owned and those that are foreign owned. Once formed, a company has an unlimited lifespan – provided that the annual return is submitted, and the annual duty is paid to the Registrar of Companies. Companies must be incorporated and registered with the Registrar of Companies. Companies incorporated in SA must have a registered office and maintain certain statutory and accounting records in SA. If the accounting records are maintained outside SA, the company must receive such financial information and returns as will enable the statutory financial statements to be prepared. Approval of the name of the company must be obtained from the Registrar of Companies before incorporation (the choice of name is restricted by certain criteria; such as conflicting with existing company names).

Public companies may offer their shares for sale to the public, although they need not be listed on the stock exchange for the public to hold an interest in the business. Their characteristics are that the number of shareholders is unlimited, there are no restrictions on the transfer of their shares, and they must file with the Registrar of Companies, a copy of their annual financial statements which is available for public inspection.

There are a number of stock exchanges in South Africa, with the main being the Johannesburg Stock Exchange. Listing companies on this stock exchange is sometimes cumbersome and as a result, certain amendments were made to the listing requirements in August 2014, one of the key amendments included a quicker and easier listing process for companies listed internationally to secondary list on the JSE Main Board or Alt-X.

Private companies, on the other hand, may not offer their shares for sale to the public. The number of shareholders is unlimited but the right of transfer of their shares is restricted. Private companies are not required to file their annual financial statements with the Registrar of Companies, and they are thus not available to the general public They must however include certain information from the annual financial statements in their annual return. They must include the word “Proprietary” or “(Pty)” at the end of the registered name immediately before the word “Limited” or “Ltd”.

All public companies must be audited by a registered auditor. The audit requirements of private companies are discussed in more detail in the Financial and reporting chapter of this guide.

Registration requirements

A company is incorporated by completing and filing a Memorandum of Incorporation (MOI) and a Notice of Incorporation to the office of the Registrar of Companies in Pretoria.

Standard versions of the MOI are included in the Companies Act. A company may choose to amend the standard versions of the MOI, as allowed under the Companies Act, to cater for its specific circumstances. The MOI replaces the previous Memorandum and Articles of Association that had to be drafted for the formation of a company.

For companies that existed before 1 May 2011, the Memorandum and Articles of Association of such companies will continue to be effective for two years, even if there is a conflict between these documents and the Companies Act. The existing Articles can continue to be effective beyond the two years if there is no conflict between the Articles and the Companies Act.

Close corporations

From 1 May 2011, the effective date of the Companies Act, No. 71 of 2008, no new close corporations can be formed, and companies are no longer permitted to be converted to close corporations. Close corporations may still be converted to companies.

A close corporation is a common form of business entity for smaller businesses and is created under the Close Corporations Act, No. 69 of 1984. A close corporation does not have directors, its business being conducted by the members, who must be natural persons (i.e. individuals) or trustees of qualifying trusts. A close corporation cannot, therefore, be owned by a company, another close corporation or an inter vivos trust in which an artificial person is a beneficiary. In a close corporation, the members have the rights and obligations of both shareholders and directors, and consequently, ownership and management of the corporation are not separated. In general, few formal requirements are imposed on close corporations.

The capital of a close corporation is called a “contribution”. A close corporation is not subject to the stringent capital maintenance rules applicable to share capital in companies. The interest of a member of a close corporation is represented by a percentage, which is established on registration of the founding statement, and which may be changed by the registration of an amended founding statement (CK2).

Members of a close corporation enjoy limited liability, which may be lost if they violate certain provisions of the Close Corporations Act.

Reporting and audit requirements for close corporations are similar to that of private companies as discussed in the financial reporting and accounting section of the guide.

Partnerships and sole traders

Partnerships and sole traders are subject to few statutory requirements. Partners and traders generally do not have the protection of limited liability. However, in an en commandite partnership (in which not all the names of the partners are disclosed), the undisclosed partners may limit their liability to third parties to the amount of their contributions to the partnership.

Registration is not required and there are no statutory reporting requirements, except, that for tax purposes, financial statements must be produced in sufficient detail to enable tax assessments to be made by the South African Revenue Service.

Local branch of a foreign company

With the exception of banking and insurance companies, any foreign company may establish a place of business and carry on its activities in SA without forming a separate, locally incorporated company. The establishment of a branch requires registration with the Registrar of Companies as an "external company" under section 23 of the Companies Act within 20 days after the establishment of a place of business in SA.

The application requirements to establish a branch include:

- A completed application form;
- A certified copy of the memorandum and articles of association of the company and a certified translation in one of the official languages of SA;
- A notice specifying the registered office and postal address of the company;
- Details of the local manager and secretary of the company as well as details of the other directors and their consent to act in the capacity; and
- A notice of name and address of the person authorised to accept service on behalf of the company.

The legal costs should be less expensive than for incorporation of a South African company.

A registered office must be established in SA and the company must appoint a South African resident to act as its legal representative. The Companies Act and the regulations thereto are not clear as to the requirement for an external company to be audited. In this regard, please refer to the reporting and audit requirements for domestic private companies as discussed in the financial reporting and accounting section of this guide.

Local equity participation

There are no local equity requirements. However, in the case of business entities with non-resident ownership equal to or greater than 75%, restrictions exist with regards to local borrowing and debt: equity ratios.

Trusts

A trust under South African common law is a contract whereby a donor donates assets to a trustee to be held in trust for the benefit of beneficiaries. A trust is effectively a contract between the donor and the trustee for the benefit of third persons.

A trust is not a legal entity but is a person as defined for income tax purposes.

There are basically two types of trusts:

- A testamentary trust, which is created in terms of a will; and
- An inter vivos trust, which is created by contract during the lifetime of the creator.

Each type of trust provides two kinds of rights to its beneficiaries:

- Vested rights, which means that either the income or the capital of the trust must be paid to a particular beneficiary; or
- Discretionary rights, which means that no particular beneficiary is entitled to any income or capital unless the trustees decide to make a distribution to him or her.



Business finance

Businesses must plan properly for any business to succeed. Businesses may require professional assistance in raising funds. The South African government and other organisations have done a considerable amount of work in creating avenues for the development and growth of the country's economy through the development of business.

Equity finance

Private equity

This is capital that is contributed to a new or growing business in return for part ownership of the business, normally a minority stake.

Typically, private equity or venture capital investors do not want permanent ownership of the business. Such investors will want to "exit" the business within five to seven years by selling the shares they acquired and will expect an annual return on investment of at least 2 to 3 times the prime overdraft rate. Although on the face of it this appears expensive, funding a business in this way has advantages, including:

- A private equity investor normally contributes capital by way of equity which has cash flow benefits for the business; and
- Private equity fund managers can often provide the business with experienced management expertise.

Loan funding

Micro financing and micro lending

There are a number of operators active in this field. Their interest rates are often very high and their conditions onerous. A government regulator, known as the National Credit Regulator, offers borrowers some degree of protection from financial exploitation. This is, however, not a viable source of finance other than for the smallest and most informal of businesses.

Loans

In general, banks in SA offer three main loan products – overdrafts, term loans and mortgages, although these products may be given different names for marketing purposes. In addition, SA's banks have subsidiaries or partners who can provide assistance with finance (such as leasing and hire purchase).

Some of the banks also offer factoring as a service, which entails advancing a proportion of the money owed by debtors of a business. There are also special equity funds set up by the banks to invest in small black owned businesses that do not have collateral for a term loan (for instance, First National Bank's Progress Fund and ABSA's Incubator Fund).

Overdraft

An overdraft facility provides a flexible borrowing arrangement up to an agreed maximum, which allows a borrower to spend more money from its current account than the balance. The purpose of this facility is to help the borrower with its working capital needs –for example when the borrower needs to pay salaries but is still waiting for payment from the business' most recent job.

The interest rate charged on an overdraft is normally higher than on a term loan, but in monetary terms it is often cheaper because interest is only payable on the outstanding balance. A borrower will pay interest, an arrangement fee and sometimes an annual renewal fee. The borrower may have to provide personal assets as security.

Term loans

Term loans will include financing agreements such as instalment-sale agreements, also known as hire-purchase agreements, and finance lease agreements. These loans are in general raised through the commercial banks and are used to finance asset acquisitions such as plant and machinery, motor vehicles; office equipment etc. Repayment terms are agreed upfront and are generally repayable over periods of between 24 and 60 months, with 5 years being the generally accepted maximum repayment period applied by the commercial bank. Borrowers generally select a repayment period which is reflective of the expected useful life of the financed asset, subject to maximum periods available from the financier., Whilst it is possible to negotiate fixed interest rates for the whole or part of the finance period, interest rates are generally linked to the ruling local prime overdraft rate, subject to the nature of the asset, the financial strength of the borrower and any upfront deposits that may be made towards the purchase price of the asset. An advantage of structuring such medium-term financing is that so long as the repayment terms are being complied with, the loan agreement cannot be recalled. Borrowers should confirm this with their banks when applying for a term loan, to ensure that there are no surprises in the small print.

It is quite usual for a business to have both a term loan and an overdraft. Even if a borrower does not need a large loan, it makes sense (if the bank is willing) to borrow at least some of the start-up capital from the bank, as this will help build a track record with the bank – provided the loan is paid back in accordance with the agreement. This will assist the borrower the next time it requires funding, perhaps to expand the business.

Mortgage loans

Each commercial bank applies its own policy with regard to granting a mortgage over a commercial property. The factors that are taken into consideration include the value of the property, based on a professional valuation undertaken by the bank. Normally, South African banks lend about 70% of the value of a commercial property based on their valuation, but this can vary from one bank to another, and is also contingent on the bank's assessment of the borrower's ability to service the repayments on a monthly basis.

Unsecured loans

The most common way for a business to finance its working capital is through an overdraft facility. A commercial bank might be prepared to grant this on an unsecured basis depending on the financial standing of the company, taking into account matters such as whether the business has sufficient assets and cash generation ability to service the overdraft. However, it is common practice that a bank will require security for the loan in the form of, for example, personal guarantees by the directors and/or shareholders, physical security such as a bond over an unbonded property, or a cession on the book debts of the company.

Discounting and factoring

South African banks are prepared to discount foreign bills, trade bills, bankers' acceptances or promissory notes. There are also a number of institutions, many of which are associated with the banks that undertake factoring, that will advance money against the borrower's debtors' book. Sometimes factoring gives a better rate than a normal bank cession over a debtors' book, but this depends on the quality of the book.

Corporate finance

The commercial divisions of the major banks offer standard lending products to medium-sized companies. There are also corporate finance divisions in the major banks, or specialised corporate finance institutions, which offer tailor-made solutions for larger or more complex needs, such as the financial requirements of multinationals or listed companies.

Export finance and guarantees

Commercial banks will assist with export credits, guarantees and letters of credit. The Credit Guarantee Insurance Corporation of SA administers an export credit insurance scheme.

Government intervention

The state-owned Industrial Development Corporation (IDC) provides financing to the private sector to facilitate commercially sustainable industrial development and innovation to the benefit of SA and the region. Finance is in the form of equity and medium-term loan finance. Interest rates are competitive and risk-related and are based on the prime bank overdraft rate.

The IDC offers specific financing instruments, including:

- Equity
- Quasi-equity
- Limited recourse finance
- Commercial loans
- Wholesale finance
- Share warehousing
- Export/import finance
- Short-term trade finance
- Guarantees



Financial reporting and accounting

Statutory accounting requirements and principles

South African law requires companies to keep proper accounting records in one of SA's official languages for each financial period.

There is no specific legal requirement for sole proprietors to keep accounting records. However, tax legislation requires the retention of records used in the completion of tax returns. Partnerships must keep records of all receipts and payments and all sales and purchases of goods.

Tax legislation requires that accounting records must be kept for at least 15 years for close corporations and 7 years for companies.

Preparation of accounts

The directors of a company are responsible for preparing the annual financial statements within six months after the end of its financial year. These annual financial statements must include a directors' report.
The Companies Act stipulated which accounting framework financial statements of companies must be prepared. This means that if the company is required to apply IFRS or IFRS for SMEs as its accounting framework and the company has one or more subsidiaries, it will also be required to prepare group annual financial statements.

The Companies Act prescribes the recognised accounting frameworks that can be applied and additional information to be provided by way of notes. The annual financial statements must be prepared in one of SA's official languages and in South African Rand.

Determination of Public Interest Score

Every company must calculate its Public Interest Score (PIS) at the end of each financial year in order to determine the relevant accounting framework that can be applied and to determine whether the annual financial statements will be subject to an audit or a review.

The score is calculated as the sum of the following:

- A number of points equal to the average number of employees in the company during the financial year;
- One point for every R1 million (or portion thereof) in third party liability of the company, at the financial year end;
- One point for every R1 million (or portion thereof) in turnover during the financial year; and
- One point for every individual who, at the end of the financial year, is known by the company to directly or indirectly have a beneficial interest in any of the company's issued securities.

Reporting and accounting requirements

Reporting and accounting requirements are contained in the following:

- All companies
  - The Companies Act and regulations made under it
- Private companies and Public companies not listed on the JSE
  - International Financial Reporting Standards for Small and Medium-sized Entities
  - International Financial Reporting Standards (IFRS)
  - Own basis of accounting (only in very limited circumstances)
- Any company can elect
  - International Financial Reporting Standards (IFRS)
- Listed companies
  - IFRS; and
  - The Listing Requirements issued by the JSE Limited.

Audit and review requirements

All public companies, private companies with a PIS above 350 and private companies with a PIS of between 100 and 350 that compile their annual financial statements internally, must have their annual financial statements audited by a registered auditor.

The auditor must examine the accounts and accounting records of the company and prepare a report for the company's shareholders. The report, included in the published report and accounts, must contain an opinion on whether or not the company's annual accounts have been properly prepared in accordance with the Companies Act and the relevant accounting framework. The auditor will consider whether or not the information contained in any other report, included in the financial statements, is consistent with the annual financial statements and accompanying notes. If, in the auditor's opinion, the accounts or directors' report do not comply with the Companies Act, the auditor will note this in the report.

Private companies with a PIS of between 100 and 350 that have their annual financial statements externally compiled and those with a PIS of less than 100 must have their annual financial statements reviewed in terms of the ISRE 2400 review standard, unless the company can apply the owner managed exemption contained in the Companies Act.

Companies may however elect to have their financial statements voluntary audited.

Who can act as auditor?

The eligibility for acting as auditor is set out in the Companies Act. Eligibility is also governed by ethical considerations as well as the requirements of the Auditing Profession Act.

An auditor must be independent of the company. Therefore, a person cannot be appointed as an auditor if he/she is:

- A director or prescribed officer of the company;
- An employee or consultant of the company who has or has been engaged for more than one year in the maintenance of any of the company's financial records or the preparation of any of its financial statements;
- A director, officer or employee of a person appointed as company secretary;
- A person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant of bookkeeper, or performs related secretarial work, for the company;
- A person who, at any time during the five financial years immediately preceding the date of appointment, was a person contemplated in the above points; and
- A person not qualified to act as such under the Auditing Profession Act.

Rotation of auditors

For statutory audits, the same individual may not serve as the auditor or designated auditor of a company for more than five consecutive financial years. This does not apply to companies that have opted for voluntary audits of their financial statements.

Who can act as independent reviewer?

A company with a PIS between 100 and 350:

- A registered auditor, or
- A Chartered Accountant (S.A.)

A company with a PIS less than 100:

- A registered auditor, or
- A Chartered Accountant (S.A.), or
- A person qualified to be appointed as an accounting officer of a Close Corporation



Taxation

NOTE: THE TAX INFORMATION CONTAINED IN THIS GUIDE IS BASED ON THE RELEVANT LEGISLATION IN FORCE AT THE TIME OF PUBLICATION.

Overview of taxes in SA

The system of taxation in SA is based on a combination of direct and indirect taxation. Direct taxes are imposed on persons (natural and legal "persons", being individuals, trusts, companies, close corporations and deceased estates) and include income tax, donations tax, estate duty, capital gains tax and dividends tax. Indirect taxes are levied on transactions, for example valued added tax which is a tax on sales, customs and excise duties, transfer duty and securities transfer tax. Mining royalties are also payable by mining companies.

SA's income tax is based on residence. This means that residents are subject to certain exclusions, taxed on their worldwide income, irrespective of whether that income was earned outside of SA. Non-residents are taxed on their income from sources within SA. Foreign taxes are credited against SA tax payable on foreign income, and SA has concluded Double Taxation Agreements with many other countries.

A resident is defined in the Income Tax Act as any:

- Natural person who is ordinarily resident in SA; or
- Natural person who is not ordinarily resident but who is physically present in SA during the relevant year of assessment for at least 91 days and who has been physically present for a period of 91 days during each of the preceding five years and for periods exceeding 915 days in aggregate during the five preceding years of assessment (physical presence test); or
- Juristic persons, i.e. a company, corporation or trust that is incorporated, established, or formed in the SA or which has its place of effective management in SA.

A resident excludes:

- A natural person, who was previously regarded as a resident in terms of the physical presence test, if physically absent from SA for a continuous period of at least 330 days from the date of departure; and
- A person who is deemed to be exclusively a resident of another country for the purposes of the application of any Double Taxation Agreement.

Due to the fact that tax systems differ between countries, it is possible that double taxation may occur in the collection of taxes between two countries. The result of double taxation would be negative on any economy as it would result in a deterrent to investment and business. To encourage trading between countries, SA has entered into a number of Double Taxation Agreements to prevent the double taxation of income of South Africans as well as foreign taxpayers.

Administration

The Minister of Finance releases an annual budget for SA during February each year. In the budget, the expenditure of government for the following year is outlined as well as any changes to the tax system, or tax breaks.

The assessment and collection of taxes is administered by the South African Revenue Service (SARS), which was established by legislation to collect revenue and to ensure compliance with tax laws. SARS is an administratively autonomous organ of state, which is outside the public service, but which falls within the public administration.

Therefore, although the National Treasury outlines the tax regime, it is actually managed by SARS. The main functions of SARS are to:

- Collect and administer all national taxes, duties and levies;
- Collect revenue that may be imposed under any other obligation;
- Protect against illegal importation of goods; and
- Facilitate trade.

Income tax

The tax system in SA is governed in terms of the Income Tax Act, No. 58 of 1962. Tax is levied on taxable income, which is gross income less exempt income and allowable deductions. There are four forms of tax regulated in terms of the Income Tax Act namely, normal tax, dividends tax, donations tax and other withholding taxes. Other forms of taxes are discussed below:

Normal tax

Every year, normal tax for individuals is calculated for the period known as “the year of assessment” which commences on 1 March each year and concludes on the last day of February of the following year. For a company, the year of assessment will be the same as its financial year-end.

Tax rates

The rate of tax applicable to an individual depends on the taxable income of the person. An individual’s taxable income is the gross income, less any exempt income. Deductions and allowances are also subtracted from income while any taxable capital gains are added to taxable income. The final sum is the taxable income of the person concerned. The table of prevailing rates is set out in the supplementary information appended to this guide.

For income tax purposes, a company is treated as a person. Normal tax is payable by South African companies on their worldwide taxable income, at 28%. This tax is payable by public and private companies and close corporations.

- Prior to 31 March 2012, secondary tax on companies (STC) was levied on companies at a rate of 10% on all income distributed by way of dividends. STC has been replaced with a withholding tax on dividends (i.e. dividends tax) that came into operation on 1 April 2012.

Small-business corporations (a close corporation or a private company, with only natural persons as members or shareholders) whose gross income does not exceed ZAR 20 million in a year of assessment, subject to certain conditions, benefit from a graduated tax rate of 0% to 28. The table of prevailing rates is set out in the supplementary information appended to this guide.

Donations tax

Donations tax is levied on the transfer of assets and is aimed at imposing a tax on persons who donate their assets to others so as to avoid liability for income tax or estate duty. Donations tax is levied at 20% of the value of any property disposed of gratuitously by a South African resident or domestic company, excluding donations exempt from the tax. As from 1 March 2018, where a donation or the cumulative donations exceed ZAR 30 million, the excess is taxed at a rate of 25%. Donations made prior to 1 March 2018 are excluded from the determination of the ZAR 30 million threshold. The tax is payable by the end of the month following the month in which the donation takes effect.

Exempt donations include:

- Donations by natural persons up to ZAR 100,000 per annum after 1 March 2007;
- Donations by companies not considered as public companies up to ZAR 10,000 per annum;
- Donations between spouses not separated;
- Bona fide maintenance payments;
- Donations to Public Benefit Organisations and qualifying traditional councils and committees;
- Donations where the donee will not benefit until the death of the donor;
- Donations cancelled within 6 (six) months of the effective date;
- Property disposed of under and in pursuance of any trust;
- Donations between companies forming part of the same group of companies;
- Donation of property or a right in property situated outside RSA if acquired by the donor:
  - Before becoming a SA resident for the first time; or
  - By inheritance on donation from a non-resident.

Withholding taxes

Certain payments made by South African residents to non-residents are subject to withholding taxes. There are five main withholding taxes, namely, withholding tax on royalties, withholding tax on interest, withholding tax on dividends, withholding tax on payments for fixed property disposed of by non-residents, and withholding tax on non-resident entertainers and sports persons.

Royalties

Royalties paid to non-residents are subject to a withholding tax of 15%. The amount of tax may be reduced where Double Taxation Agreements exist between SA and the non-resident's country of residence. Double Taxation Agreements provide relief in respect of royalties and know-how withholding taxes. Residents require the approval of both the Department of Trade and Industry and exchange control for payments of a royalty to a non-resident.

Immovable property

Where a person acquires immovable/fixed property situated within SA from a non-resident, the purchaser must withhold an amount, to be determined in relation to the property sold, which must be paid over to SARS.

For a natural person, the withholding tax is 7.5%.

For a company, the withholding tax is 10%.

For a trust, the withholding tax is 15%.

No withholding tax needs to be withheld if the purchase price of the immovable property acquired in aggregate does not exceed ZAR 2 million.

Entertainers and sports persons

There is a withholding tax of 15% on any amount received by or accruing to a non-resident entertainer or sports person. The tax is a final tax. It does not apply to a person who is an employer of a South African resident, or any person who is physically present in SA for periods exceeding 183 days in any twelve-month period.

Interest

With effect from 1 March 2015 a withholding tax of 15% is applicable to interest received by or accrued to foreign residents. The withholding tax obligation will be on any resident paying an amount of interest to a non-resident, other than a controlled foreign company. The withholding tax will be regarded as a final tax on such interest.

The withholding tax will not apply to interest:

- Arising on any government debt instrument;
- Arising on any listed debt instrument;
- Arising on any debt owed by any bank or the South African Reserve Bank;
- Payable by a local stockbroker to a non-resident

- Payable to a headquarter company; or
- Accruing to a natural person who was physically present in SA for a period exceeding 183 days in aggregate during that year, or carried on a business through a permanent establishment in SA.

Secondary tax on companies (STC)

STC was levied at a rate of 10% on dividends declared by companies. STC was, until 31 March 2012, payable by the company declaring the dividend in addition to the normal tax imposed on companies.

STC was replaced with a withholding tax on dividends from 1 April 2012.

Dividends tax

Dividends tax, which is a withholding tax on dividends, became effective from 1 April 2012. Dividends tax is borne by the shareholder on dividends declared by a South African company at a rate of 20% (subject to any reduction in terms of a Double Taxation Agreement). The liability for dividends tax in respect of dividends in kind is borne by the company declaring the dividend.

The dividends tax is required to be withheld by the company declaring the dividend when the dividend is paid. Liability for the withholding of dividends tax shifts if the dividend is paid to a regulated intermediary which includes central securities depository participants, collective investments schemes, etc. In such instances the regulated intermediary is required to withhold the dividends tax.

Dividends tax will not be required to be withheld from dividends received by South African resident companies, the Government, Public Benefit Organisations, certain tax exempt bodies, rehabilitation trusts, pension, provident and similar funds, shareholders in a registered micro business (provided the dividend does not exceed ZAR 200,000 in a year of assessment) and a non-resident receiving a dividend from a non-resident company which is listed on the JSE Securities Exchange, i.e. a dual listed company.

Dividends tax can be eliminated or reduced upon the timely receipt by the declaring company of a written declaration that the shareholder is entitled to an exemption or to Double Tax Agreement relief and an undertaking that the shareholder will inform the company should there be a change in circumstances. As from 1 July 2020, the written declaration and undertaking must be renewed every five years from the date of the original declaration. In the case of a dividend in specie there is no withholding obligation as the tax is the liability of the company declaring the dividend.

Branch profit tax

Where a non-SA resident company has a branch in SA through which it trades, that branch will be regarded as a South African company for tax purposes. The SA branch will be subject to tax in SA on the income of the branch. This branch profits tax is currently 28%.

PAYE and provisional tax

Employers are required to withhold employees' tax (PAYE) from remuneration paid to their employees (including directors) and to pay such employees' tax over to SARS on behalf of the employee. The amount of tax payable by each employee is calculated in terms of tables provided by SARS (related to income received by the employee). These payments are considered to be advance payments of normal tax payable by an employee and are usually deducted on a monthly basis.

Where a taxpayer earns income other than that due to him as remuneration, he may be liable for advance payments of normal tax, known as provisional tax. Provisional tax is generally applicable to companies, directors of private companies (being residents), members of close corporations (being residents) and persons who derive income that is not remuneration.

Capital gains tax

Capital gains tax (CGT) has been applicable in SA since October 2001 when it was introduced into the Income Tax Act. CGT is a tax on capital gains made on the disposal (or deemed disposal) of assets and applies to a resident's worldwide assets and to immovable property or assets of a permanent establishment of a non-resident in SA. Disposal for the purposes of CGT includes, but is not limited, to any event, act, forbearance or operation of law that results in the creation, variation, transfer or extinction of an asset. An example of a deemed disposal is emigration.

CGT also affects assets acquired prior to October 2001 and disposed of after 1 October 2001. In such a case, the gain is calculated as the gain after this date. Refer to the supplementary information to this guide for the applicable rates.

Value added tax

Value added tax (VAT), introduced by the Value Added Tax Act, No. 89 of 1991, is a tax levied on the supply of goods and services and on all imports of goods, unless specifically excluded by the VAT Act.

The VAT system distinguishes between three types of supplies:

- Standard rated supplies – supplies of goods and services subject to the VAT rate at the time of supply (currently 15%, prior to 1 April 2018 – 14%);
- Exempt supplies – supplies of certain services not subject to VAT; and
- Zero-rated supplies – supplies of certain goods or services subject to VAT at zero percent.

Any person (individual, company, trust, partnership or an estate of a deceased or insolvent person) who carries on an enterprise must register as a vendor if its turnover (value of taxable supplies which are standard- and zero-rated) during a twelve-month period are expected to exceed ZAR 1,000,000. Where turnover is less than ZAR 1,000,000 in a 12-month period but exceeds ZAR 50,000 or ZAR 120,000 in the case of commercial rental establishments, a vendor can register voluntarily. A vendor is able to claim a deduction of input tax levied on him from output tax charged by him when he submits a VAT return. Input tax is defined in the VAT Act as a tax charged and payable by:

- A supplier on the supply of goods or services made by that supplier to the vendor; or
- The vendor on importation of goods by him.

Customs duty and excise duty

Where goods are imported into or exported from SA, Customs duties are levied on the importer or exporter. Both Customs duties and VAT are payable on all goods purchased abroad and brought into SA.

The Southern African Customs Union (SACU) agreement was entered into so as to facilitate trade between SA and its neighbours – Botswana, Lesotho, Namibia and Swaziland. These five countries apply the same customs and excise legislation and duties on imported and locally manufactured goods, as well as the same import duties on imported goods.

Certain locally manufactured goods and their imported equivalents are subject to Excise duty – notably tobacco and liquor, and there is an ad valorem duty on cosmetics, televisions, audio equipment and motor vehicles. Relief is available on specific farming, forestry and manufacturing activities.

Estate duty

Estate duty is a duty on the transfer of wealth, payable on the death of a person and is based on the value of the deceased's assets at his/her date of death.

The duty is levied at a rate of 20% on the first ZAR 30 million and 25% on the excess above ZAR 30 million. The duty is calculated on the dutiable amount of the estate after deducting the exemption from Estate duty (currently ZAR 3,500,000) of the net value of the deceased's estate.

The estate consists of all property including deemed property (e.g. life insurance policies and pension fund payments). Bequests to a surviving spouse are exempt from Estate duty. Where the deceased is a South African resident, Estate duty is applicable to property regardless of its source. Non-residents are only liable for Estate duty in respect of property located in SA.

Other taxes

Transfer duty

Transfer duty is imposed on the transfer of immovable property. Graduated rates, as set out in the supplementary information section, apply irrespective of whether a natural person or legal entity purchases the property.

No Transfer duty is chargeable if the transaction is subject to VAT. Where a registered vendor purchases property from a non-vendor, a notional input tax credit is allowed equal to the tax fraction (i.e. 15/115) calculated on the market value of the property. A notional input tax credit is only claimable to the extent to which the purchase price has been paid.

Securities transfer tax

As from 1 July 2008 stamp duty on the transfer of unlisted shares and the uncertificated securities tax on listed shares was abolished and replaced with the securities transfer tax at a rate of 0.25% of the consideration, closing price or market value (whichever is greater) on the transfer, cancellation or redemption of any listed or unlisted share, members' interest in a Close Corporation (CC) or cession of a right to receive distributions from a company or CC.

Tax on fringe benefits

This is a tax on fringe benefits granted to employees. The value of the fringe benefit is the cash cost excluding VAT. Examples of taxable fringe benefits are the use of company-owned vehicles, medical aid contributions, holiday accommodation, low interest/interest-free loans, subsistence allowances, long-service awards and residential accommodation supplied by the employer. The tax is calculated as part of the liability for normal income tax and subject to PAYE.

Mining royalty tax

Any person who transfers a mineral resource (whether through sale or the consumption, theft, destruction or loss of a mineral resource, other than by way of flaring or other liberation into the atmosphere during exploration or production) extracted from within SA will be liable to pay a royalty to the state. This does not apply where the mineral resource has previously been disposed of, consumed, stolen, destroyed or lost.

Every person who holds a prospecting right, a retention permit, exploration right, mining right, mining permit, production right or wins or recovers a mineral resource extracted from SA, is required to register for the mining royalty tax.

The determination of the royalty is based on a formula and depends on whether the person transfers a refined or unrefined mineral resource. For refined mineral resources the royalty can range from 0.5% to 5% and for unrefined mineral resources from 0.5% to 7%. The royalty is calculated on the gross sales of the transferor, as per a defined formula.

Royalties should be paid at the same time as the corporate provisional tax cycle.



Taxation of property / land

Sale of property/land

Where a resident's property is sold, the sale is subject to Transfer duty. Should the seller be a VAT vendor, the sale will be subject to VAT at the standard rate. Where a property is sold as a going concern, VAT is levied at a rate of zero percent. If the seller deals in property, he/she will be subject to income tax on the profit as opposed to CGT.

Rental income/leasing

In terms of the Income Tax Act, certain assets which are subject to a finance lease or an operating lease are treated as the assets of the lessor, and therefore, the lessor, where appropriate, will claim applicable tax allowances.

The rental derived from the use of the asset will be included in the lessor's gross income and the lessee would be entitled to a deduction of the rental paid provided the asset is used in the production of its income.

Building allowances – industrial buildings

There are certain allowances granted in respect of the cost or improvements (other than repairs) of certain buildings that are used in the course of the taxpayer's trade. The allowance differs according to the year of commencement of building improvements and the use to which the building is put.

The building must be used wholly or mainly for the purpose of carrying on the taxpayer's trade during the year. Where the property is leased, the lessor may claim the allowance if the tenant uses the building wholly or mainly for the purpose of carrying on its trade during that year.

Improvements or building construction that is affected within specified urban development zones may entitle the taxpayer to accelerated allowances, subject to compliance with certain requirements.

As from 1 April 2012, new or unused buildings used for the purpose of research and development will also qualify for the allowances.

Building allowances – commercial buildings

Any cost incurred in erecting any new and unused commercial building or improving an existing building (other than residential accommodation), on or after 1 April 2007, which is wholly or mainly used for the purposes of producing income in the course of trade, will qualify for an annual allowance of 5% of the cost incurred.

The accelerated allowances for improvements or building construction that is affected within specified urban development zones also apply to commercial buildings.

Taxation of farming income

The Income Tax Act does not define farming income. However, there are several cases supporting the interpretation that farming should include an intention to farm and a reasonable prospect of profit.

Farming income is that which is derived from pastoral, agricultural or other farming activities. Farmers who are not companies are also allowed to average their farming income in determining their tax liability.

A farmer may elect to be taxed in terms of a rating formula as his/her income may fluctuate from year to year. Should the farmer make an election, he/she will be taxed on his/her average taxable income in the current and preceding four years. It must be borne in mind that this formula will be binding in future years and he/she will not be permitted to make use of the provisions relating to government livestock reduction schemes, the rating formula for plantation farmers and provisions relating to sugar cane farmers.

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

- Eradication of noxious plants and prevention of soil erosion;
- Dipping tanks, building of roads and bridges for farming operations;
- Dams, irrigation schemes, boreholes, pumping, plants and fences;
- Additions, erections of, extensions and improvements to farm buildings;
- Planting of trees, shrubs or perennial plants for specific farming purposes; and
- Carrying of electrical power from main power lines to farm apparatus.

To the extent that the capital expenditure exceeds the farming income, such excess may be carried forward to the next year of assessment.

Machinery, implements, utensils and articles for farming purposes are written off over a three-year period on a 50:30:20 basis, subject to certain limitations.

Permanent structures

An allowance is granted in respect of the cost actually incurred by the owner in respect of new or unused pipelines, electricity and telephone transmission lines and railway tracks. The allowance depends on the use to which the relevant asset is put.

Allowances for plant, machinery and equipment used in manufacture

Where a taxpayer uses plant, machinery and equipment in a process of manufacture, such equipment may be written off in terms of stipulated periods.

In the case of new and unused plant and machinery, accelerated allowances are allowed.

As from 1 April 2012, new or unused assets used for the purpose of research and development will also qualify for the allowances.



Taxation of non-South African income

Individuals

A resident of SA is subject to tax on all income received or accrued, regardless of its source. A person is considered a resident for tax purposes where he/she is ordinarily resident in SA or where he/she is physically present in SA for a certain period. Non-residents are subject to tax in SA on their SA sourced income.

Companies

A company is considered a tax resident if it is incorporated in SA, or if its place of effective management is in SA (i.e. the day-to-day activities are conducted in SA by senior management of the company). Companies may earn income from their subsidiary companies or branches. Where a foreign incorporated subsidiary company is effectively managed in SA it may be subject to tax in SA, despite being incorporated outside SA (subject to the provisions of a Double Tax Agreement). In the alternative, the net income a foreign incorporated subsidiary that constitutes a controlled foreign company (CFC) may also be taxed in the hands of the SA resident shareholder. Where a South African resident company carries on trading through a foreign branch, the SA company is considered to be trading in the foreign country and will therefore be subject to tax in SA, subject to the provision of a Double Tax Agreement.

CFCs

A CFC is a foreign company where one or more SA residents hold more than 50% of the total participation rights or are entitled to exercise more than 50% of the voting rights in that foreign company, whether directly or indirectly. Where a resident together with any other resident connected persons holds at least 10%, but not more than 20% of the participation and voting rights, they may elect that the foreign company is deemed a CFC.

Where a company is a CFC, its income earned is treated as being attributed to the SA resident shareholder in proportion to his/her participation rights in the company. Dividends distributed out of such profits of the foreign company will constitute gross income of the SA resident. In certain instances, this receipt may be exempt.

A resident need not attribute the following CFC income:

- The net income of a CFC that is derived from an active bona fide foreign business establishment situated outside SA;

- Income otherwise taxed in the hands of the CFC in SA;
- 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 SA resident's taxable income; and
- Net income attributable to interest, royalties or similar income payable to the CFC by other CFCs forming part of the same group of companies.
- Where the high tax exemption is applicable. The high tax exemption is applicable where the amount of foreign tax payable is at least 67.5% (for years of assessment ending prior to 1 January 2020 – 75%) of the SA tax that would have been payable had the CFC been regarded as a SA tax resident and applied the tax rules applicable in SA.

The capital gains tax provisions do not apply to gains where a CFC has made a capital gain (not on a financial instrument or intangible asset) and the gain relates to an asset of a foreign business establishment of the CFC. These provisions also do not apply to capital gains included in the income of the CFC that relate to gains made by other CFCs forming part of the same group of companies as the CFC.

Foreign dividend income

Foreign dividends received from non-resident companies and headquarter companies are taxable to the extent that the foreign dividend exceeds the amount contemplated in "A" of the following formula:

$$A = B \times C$$

In which formula:

"A" represents the amount to be determined.

"B" represents the ratio of the number 25 to the number 45, in the case of a natural person, trusts, special trust or insolvent estate, or the ratio of the number 8 to the number 28, in the case of a person other than natural person, deceased estate or insolvent estate.

"C" represents the aggregate of foreign dividends received that is not exempt.

The following foreign dividends are exempt from SA normal tax:

- Foreign dividends received by a shareholder which holds more than 10% of the equity and voting rights of the distributing company;
- The foreign dividends are received by a company from a foreign company that is resident in the same country as the recipient company;
- The dividend is a dividend in kind and is paid in respect of a listed share; and
- The foreign dividends are received from a CFC and the dividends do not exceed amounts deemed to be the resident shareholder's income under the CFC rules.

A resident is entitled to a credit or deduction for any withholding tax paid in respect of a foreign dividend that is included in gross income.

Foreign tax rebate

Where a resident has to include in his/her taxable income any foreign sourced income or capital gain, a proportionate amount of the net income of the CFC, foreign dividends or other amounts attributed in terms of the Income Tax Act, 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:

$$\textit{Total SA Normal Tax} \times \frac{\textit{Taxable Foreign Income}}{\textit{Total Taxable Income}}$$

To the extent that a resident does not qualify for the foreign tax rebate contemplated above, he/she would qualify for a deduction of such foreign taxes paid against his/her taxable income. This deduction is limited to the foreign income included in his/her taxable income.

No relief is granted in terms of the abovementioned rebate or deduction where a Double Taxation Agreement has been concluded between SA and the country imposing the tax and in terms of which the agreement itself provides for relief from double taxation.

However, if a South African resident has suffered a withholding tax in a foreign country on income earned for services rendered in SA, despite SA having concluded a Double Taxation Agreement with that foreign country, on the basis that the income is sourced in SA, but where such resident does not qualify for the rebate or deduction discussed above, a third relief measure is available to that South African resident in the form of an alternative rebate. This rebate is equal to the lesser of the South African normal tax paid on the relevant service income or the amount of the foreign tax paid.

Capital gains tax

All capital gains of a resident are subject to CGT in SA, subject to the provisions of an applicable Double Taxation Agreement. Non-residents are only subject to capital gains tax on:

- Immovable property or an interest in immovable property situated in SA; and
- Assets of a permanent establishment of the non-resident situated in SA.



Carrying on business in SA

Source

A non-resident who carries on business in SA is subject to South African taxation on the profits (from SA sources) of such business. Certain types of income are regarded to be from a South African source. Where the income is not regarded to be from a South African source the originating cause of the income and where such originating cause is situated will determine the source of the income. Income is regarded as being derived from a South African source in the following instances:

- Dividends
  - If it is received from a South African resident company.
- Royalties
  - If the royalty is incurred by a South African resident;
  - If the royalty is received or accrued in respect of the use or right of use in SA, or permission to use in SA certain intellectual property;
  - If the royalty is attributable to an amount incurred by a person who is a South African resident, and is received or accrued in respect of the imparting of, or the undertaking to impart knowledge or information (wherever the knowledge or information is used); or
  - If the payment is to a non-resident and deals with payments for the imparting or undertaking to impart knowledge or information for use in SA.

This does not include any royalties attributable to a permanent establishment outside SA.

Royalties paid to a non-resident are subject to a 15% withholding tax unless a Double Taxation Agreement limits the withholding tax to a lesser amount or prevents SA from levying any withholding tax.

- Mining – proceeds of the disposal of minerals
  - If the mineral is sold by a South African resident or is attributable to a permanent establishment of a foreign person in SA.

- Government employees' salary
  - If the person receiving the salary works at the South African embassy in a country overseas; or
  - If the person receiving the salary is employed by the South African government.
- Pensions or annuity
  - Received or accrued in respect of services rendered in SA.
- Amounts received from the disposal of immovable property or any rights in immovable property
  - If the immovable property is situated in SA.
- Amounts received from the disposal of moveable property by a South African resident
  - If the moveable property is not attributable to a permanent establishment which is situated outside SA and the proceeds from the disposal of that asset are not subject to any taxes on income payable to any government other than SA.
- Amounts received from the disposal of movable property by non-residents
  - If the asset is attributable to a permanent establishment of the resident in SA.
- Interest
  - Received from a South African resident (unless the interest is attributable to a permanent establishment that is situated outside SA); or
  - Received as a result of the utilisation of any funds or credit in SA.

Where a Double Taxation Agreement applies, the income will only be taxable in SA where it is earned by a permanent establishment of the non-resident situated in SA.

SA branches of foreign companies

An external company is a foreign company that has a branch in SA, but its effective place of management is located outside of SA. A company will be required to register as an external company and will be bound by the provisions relating to external companies contained in the Companies Act. An external company is subject to tax in SA at a rate of 28%.

Regional headquarter company

As from years of assessment commencing on or after 1 January 2011, a new headquarter company regime provides the following benefits:

- Its subsidiaries are not treated as controlled foreign corporations;
- Dividends declared by the headquarter company are not subject to dividends tax;
- No application of thin capitalisation rules merely because of the existence of back-to-back cross border loans; and
- Exemption from the pending withholding tax on interest in respect of back-to-back loans.

A headquarter company, is any company that is a resident if:

- For the duration of that year of assessment and of all previous years of assessment of that company, each shareholder (whether alone or together with any other company forming part of the same group of companies as the shareholder) held 10% or more of the equity shares and voting rights in that company;
- At the end of that year of assessment and of all previous years of assessment of that company, 80% or more of the cost of the total assets of the company was attributable to one or more of the following:
  - Any interest in equity shares;
  - Any amount loaned or advanced to; or
  - Any intellectual property that is licensed by that company to any foreign company in which that company (whether alone or together with any other company forming part of the same group of companies as that company) held at least 10% of the equity shares and voting rights (a qualifying foreign company);
- Where the gross income of the headquarter company exceeds ZAR 5 million for the year of assessment, 50% or more of that gross income must consist of amounts in the form of one or both of the following:
  - Any rental, dividend, interest, royalty or service fee paid or payable by a foreign company in which the headquarter company holds at least 10% of the equity shares and voting rights; or
  - Proceeds from the disposal of
  - Equity shares and voting rights; or
  - Intellectual property licensed to a foreign company in which the headquarter company held at least 10% of the equity shares and voting rights.

A regional investment fund regime also applies from years of assessment commencing on or after 1 January 2011. Qualifying foreign investors will be regarded as passive investors with no exposure to South African tax because of the use of a South African portfolio manager.

Interest

Interest received by or accrued to any company managed or controlled outside SA is exempt from tax unless such company carries on business in SA (i.e. branches of foreign companies). This exemption fell away with effect from 1 January 2015 when a withholding tax of 15% on interest received by or accrued to non-residents was introduced.

Where a headquarter company has during any year of assessment incurred any interest in respect of any financial assistance (i.e. loans, credit, etc.) granted to that headquarter company by a person that is not a resident, the amount of the interest in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of the amount of interest received by or accrued to the headquarter company as relates to any portion of that financial assistance that is directly applied as financial assistance to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10% of the equity shares and voting rights.

Any excess interest incurred must be carried forward to the succeeding year of assessment and may be claimed as a deduction, subject to the above limitation, in such year.

Temporary residents

A foreign national who temporarily resides and works in SA will be taxed on his/her remuneration from an SA source. Double Taxation Agreements may exempt the foreign national's remuneration from SA taxation. The foreign national should not be present in SA for a period exceeding 183 days in a year of assessment and a foreign employer should pay his/her remuneration.

Transfer pricing and thin capitalisation

Transfer pricing is the term used to refer to arrangements where goods or services are transferred between connected persons at an artificial price or on artificial terms as a means of effectively transferring income or an expense from one person to another.

The SA transfer pricing provisions allow the Commissioner to adjust the prices or terms of transactions conducted between SA residents and connected non-resident persons where he considers that the prices or terms are artificial and do not reflect arm's length prices or terms.

Transfer pricing adjustments (generally referred to as "primary adjustments") aim to ensure an arm's length allocation of the taxable profits. However, the primary adjustment under current rules does not place the financial position of the parties to the transaction onto an arm's length basis because this primary adjustment only adjusts taxable profit without adjusting the actual income received. In order to address this non-arm's length financial position of the parties, some countries require secondary adjustments. The current law has been modified to directly cater for secondary adjustments arising from transfer pricing primary adjustments.

As from 1 January 2015, the secondary adjustment deems the difference to be dividend (in the case of the lender being a company) and a donation (in the case of the lender not being a company) subject to Dividends Tax and Donations Tax respectively.

SA's transfer pricing rules are now largely aligned with OECD guidelines and principles. On 28 October 2016, SARS released a Final Notice, setting out the documents required to be kept specifically for transfer pricing purposes.

In terms of the Final Notice, a person is required to keep records where the person has entered into a "potentially affected transaction" and the aggregate of the potentially affected transactions for the year of assessment exceeds or is reasonably expected to exceed ZAR 100 million.

Transfer pricing policy documentation as required by SARS includes:

- A description of the entity's ownership structure
- Detailed particulars (name, address, legal form and tax jurisdiction) of each connected person with which potentially affected transactions have been entered into
- A summary of the entity's business operations including the nature of its business, specific business and external market conditions, business strategy
- Details of senior management including organogram of title and location of persons
- Major economic and legal issues affecting the profitability of the entity and/or industry

- 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 person/s in the group's supply chain

Where a specific transaction exceeds ZAR 5 million detailed records of such transaction must be maintained which includes:

- nature and terms of the transaction
- copies of the relevant contracts or agreements
- relevant SARB 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 keeps the abovementioned documents in the ordinary course of business, the company will be deemed to comply with the requirement to keep such documentation. Where the volume of transactions are high SARS may agree to alternative records that the company must keep in order to satisfy the arm's-length requirement.

Country-by-country reporting

For years of assessment commencing 1 January 2016, the ultimate parent company of a multinational enterprise (MNE) group that is tax resident in South Africa will be required to file a country-by-country (CbC) report to SARS. The threshold for reporting to SARS is a consolidated MNE group turnover of at least ZAR 10 billion in the fiscal year prior to the year in which the CbC report must be submitted.

Where the ultimate parent company is not tax resident in South Africa, the SA 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. In certain instances, the SA company may still be required to submit a CbC report to SARS.

Upon receipt of the CbC report the revenue authority in that tax jurisdiction will then automatically exchange such information with the other tax jurisdictions in which the MNE group operates in terms of the automatic exchange of information agreements signed with the relevant country.

The CbC report will contain extensive information in respect of transactions between the group entities and is detailed on a country-by-country basis which 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 CbC report will be utilised by SARS to assess high-level transfer pricing risks and other base erosion profit shifting related risks in SA. The CbC report is due within 12 months of the last day of the reporting fiscal year of the MNE group.



Foreign personnel

Immigration Act

The Immigration Act, No. 13 of 2002 (amended by the Immigration Amendment Act 13, of 2011 which was promulgated on 22 May 2014) covers all relevant Temporary and Permanent Residence Visas/Permits for foreigners wanting to reside in SA. There are numerous different kinds of visas/permits in this regard.

Visitor's visa

Persons entering SA will either be coming from a visa exempt country or a country that requires a visa to enter SA. Persons that are coming into SA from visa exempt countries will automatically be stamped in with a visitor's visa at the relevant port of entry. Persons who are coming from countries that are not visa exempt will have to obtain a visitor's visa from the South African Embassy or High Commission closest to where they reside.

It is important to take note that the holder of a visitor's visa may not conduct work. There are only certain instances where the holder of a visitor's visa may acquire a visitor's visa to be appropriately endorsed in order to allow them to conduct "work related activities". This is only where such a person is entering SA for a specific purpose and a very short duration. Such visitor's visa does not allow a person to take up formal employment in SA.

It is also important to take note that one's true intention must be reported to the Immigration Officials when entering SA as, if this is not done and such person wants to for example, change status to a work visa, once in SA, the Department of Home Affairs will refuse such change of status unless exceptional circumstances exist.

Study visa

A study visa can be applied for where the applicant has been accepted to the relevant Educational Institution in SA and such Institution has confirmed this acceptance. It is important to take note that the holder of a study visa is entitled to take up part time employment so long as this does not amount to more than 20 hours per week and not during vacations. Where a student is required to study and work more than 20 hours per week such student would need to apply for a visa that embodies both a study and a work visa. Study visas are issued for the full duration of study or course.

Relatives visa

Where a foreigner is related to a South African Citizen or permanent resident within the first or second degree of kinship, such person is entitled to apply for a relative's visa. This would obviously then include a parent, child, grandparent, grandchild and sibling. It is important to take note that the holder of a relative's visa may not conduct work.

It is also important to take note that where a foreigner is in SA on a work or business visa and wishes to have his family accompany him to SA then such persons would be entitled to apply for accompanying family visas. Once again, the holder of such visa may not conduct work or study, without an appropriate work or study visa in their own right.

In respect of both of the above circumstances if such person wanted to work or study in SA, they would need to qualify for a work or study visa.

Critical skills visa

A new critical skills visa has replaced the "work permit", "exceptional skills work permit" and "quota work permit". This new visa has been introduced to facilitate the application for foreigners who meet the minimum qualifications and experience list on the critical skills list which is intended to identify skills shortages in South Africa. It is important to note that an evaluation of the applicant's foreign qualifications onto a South African level is required. This is generally done by the South African Qualifications Authority (SAQA).

General work visa

Most persons will fall into this category of work visa if they do not fall within any of the other categories. This category of general work visa places the most burden on the employer. Here the employer needs to motivate why a South African citizen or permanent resident could not fill the position, demonstrate that he/she has make efforts to obtain the services of a South African citizen or permanent resident and provide a list of unsuccessful candidates. A confirmation from the Department of Labour is required provide a confirming that despite a diligent search the employer was unable to find a suitable candidate in South Africa, the foreigner in question is suitably qualified and would not be remunerated any less favourably that a South African would have been remunerated in such position, the contract of employment is in line with labour standards in South Africa, proof of qualifications evaluated by SAQA.

Intra-company transfer work visa

This refers to a secondment type situation where a company in SA also has a branch, affiliate or subsidiary of that company abroad. The relevant applicant in question would need to be working for such company abroad and would be entitled to be transferred to the South African branch on this type of visa. This kind of work visa is limited to a period of four (4) years and is not extendable. The applicant must submit an employment contract (from the foreign employer) that is in force for not less than six (6) months.

Corporate work visa

This kind of work visa is utilised where a company needs to bring a large number of persons into SA in certain specific skills sets over a specified period of time. The reason this kind of visa is only used for large numbers is because it is also reasonably difficult to obtain. To qualify for this corporate work visa a company must demonstrate that at least 60% of it its employees are South African citizens or permanent residents.

An “Umbrella Visa” needs to be obtained first from the Department of Home Affairs and in order to do so, application needs to be made to the Department of Labour and to the Department of Trade and Industry for approval of such application. Once this “Umbrella Visa” has been issued by the Department of Home Affairs then for every applicant that falls within the realm of this “Umbrella Visa”, an individual corporate worker authorisation certificate is granted. This then authorises the relevant Home Affairs Department or South African Embassy or High Commission abroad to issue a corporate work visa to the relevant individual identified, upon application for their work visa. A corporate worker cannot renew his visa or apply for a change of status. The corporate work visa is limited to a period of three (3) years.

Spousal work visa

Where a foreigner is in a life partner relationship, married to, or in a customary union with a South African Citizen, it is possible that they, in addition to obtaining a relative’s visa, can also apply for a work visa. The additional advantage here is that due to the fact that they are involved with a South African Citizen, the relevant employer would not have to advertise the position to prove they could not find a South African to fill such position. There are numerous requirements that are discarded here as a direct result of the applicant’s relationship with a South African Citizen.

Business visa

In order to start a business in SA, as a foreigner, you will be required to bring in at least R5 million capital investments into SA originating from abroad to invest into such business. This capital amount may only be reduced if the relevant business is in one of the following industries:



INFORMATION AND COMMUNICATION TECHNOLOGY



CLOTHING AND TEXTILE MANUFACTURING



CHEMICALS AND BIOTECHNOLOGY



AGRO-PROCESSING



METALS AND MINERAL REFINEMENT



AUTOMOTIVE MANUFACTURING



TOURISM



CRAFTS

In respect of any business visas, it is a requirement that the Department of Trade and Industry be approached first in order to approve such business and, in this regard, a solid business plan indicating sustainability, viability and feasibility of the business must be filed with every application. It is important to note here that such business would indeed need to prove that at least 60% of the business total staff compliment are South African Citizens or permanent residents. No visa's will be issued or renewed to a foreigner who intends to establish or invest in an undesirable business undertaking.

Retired person's visa

This visa is issued to a foreigner who intends to retire in SA and will be considered only where such applicant has the right to a pension or an irrevocable annuity or retirement account which will gives such foreigner a minimum income of R37 000 per month and minimum net worth of R37 000. This kind of visa is also applicable in respect of persons who do not necessarily wish to retire but have a prescribed minimum income of at least R37 000 per month, originating from abroad. The retired person may conduct work under specified terms and conditions imposed by the Department. This visa is applicable for a minimum period of 3 months and a maximum period of 4 years. Thereafter the visa may be renewed by the retired person.

The spouse and dependent children accompanying the holder of a retired person visa may be issued with an appropriate visa issued in terms of this Act.

Permanent residence permit

There are numerous different categories of permanent residence and the requirements as to when a foreigner may apply for permanent residence for SA.

In respect of a general work visa holder, permanent residence can only be applied for once such foreigner has been in SA and on a work visa for a continuous period of no less than five (5) years and he or she has received an offer for permanent employment.

In respect of the exceptional skills work permit category (now incorporated under the critical skills visa category), a foreigner is entitled to immediately apply for permanent residence where such foreigner qualifies as an exceptional skilled individual in the eyes of the Department of Home Affairs.

A corporate work visa is seen in the same light as a general work visa, and as such, the holder of a corporate worker visa must have a continuous work visa history in SA of five (5) years before he can apply for permanent residence.

Where a foreigner is a child of a South African Citizen or Permanent Resident they are immediately entitled to apply for permanent residence. A child is under the age of 21 must an application for its confirmation within two (2) years of turning 18 years of age.

Where a foreigner is married or in a life partner relationship with a South African Citizen or Permanent Resident, then they are entitled to apply for permanent residence five (5) years from the date on which they were married or, in the case of a life partner, five (5) years from the date on which they entered into a Deed of Cohabitation and signed the necessary Spousal Affidavits as required by the Department of Home Affairs. It is important to note here that where a South African Citizen and a foreigner are involved in a Life Partner relationship, and they get married with in the five (5) year period, then the five (5) years will start to run all over again as from the date of marriage.

In the retired persons category, which has already been discussed above, if a person qualifies in either of these categories, they are immediately entitled to apply for permanent residence.

In respect of the business visa, which has also been discussed above, if a person qualifies in respect of the application for a business visa, he is immediately entitled to apply for permanent residence, provided proof can

be given showing viability and sustainability of the business in the short and medium term.

Where a foreigner can prove a prescribed minimum net worth of R12 million and is also willing to pay over a prescribed amount of R120 000 to the Department of Home Affairs then such foreigner would also be entitled to apply immediately for permanent residence in the financial net worth category. Always consider the fact there may be adverse tax and exchange controls.

It is important to take note that in respect of all of the above instances of permanent residence applications, it is currently taking the Department of Home Affairs between one (1) and two (2) years to finalise applications for permanent residence.

Naturalisation

In respect of all categories of permanent residence, apart from the spousal category, the holder of a permanent residence permit can only apply to naturalise as a South African Citizen once they have been in SA and on a permanent residence permit for no less than five (5) years. In respect of the case where a foreigner is married to a South African Citizen, they are entitled to apply to naturalise as a South African Citizen once they have been on a permanent residence permit in SA for a period of no less than two (2) years, provided that the marriage relationship still subsists.

It is important to note that such foreigner must have been continuously resident in SA for one (1) year proceeding the date of the application for naturalisation.

This naturalisation application generally takes between six (6) months and a year to finalise and, once the application has indeed been finalised, the applicant is then required to take a prescribed Oath of Allegiance to the Republic of SA and thereafter becomes a South African Citizen. Such applicant is now entitled to apply for a South African Identity Document and passport.

Employees

An employee's rights are protected under the Constitution of the Republic of SA. The Labour Relations Act, No. 66 of 1995 and the Basic Conditions of Employment Act, No. 75 of 1997 apply. Legislation places a burden on employers to comply with the provisions therein. The following are some of the important aspects of an employee's rights:

- Individual and Collective Bargaining
  - Employment contracts;
  - Dismissals; and
  - Discrimination.
- Basic conditions of employment
  - Working conditions;
  - Leave; and
  - Working hours.
  - Employees are also protected by the Occupational Health and Safety Act (OHSA), which details protection to be provided for workers in the workplace as well as the Employment Equity Act No.55 of 1998. All of these Acts must be displayed in the workplace.

Tax residence

Taxation in SA is based on residence. Therefore, an individual's liability to tax in SA is largely dependent on his/her residence. The tests that are applied to determine whether or not a taxpayer is resident in SA are the ordinarily residence test and the physical presence test.

Residence

A resident is defined as:

- A natural person who is:
  - Ordinarily resident in SA; or
  - Physically present in SA for a period or periods exceeding:
    - 91 days in aggregate during the year of assessment under consideration;
    - 91 days in aggregate during each of the five years of assessment preceding the year of assessment under consideration; and
    - 915 days in aggregate during the five preceding years of assessment.
- A company or trust that is incorporated, established, formed or which has its place of effective management in SA.

Income tax

The term "non-resident" refers to any person who is not resident in SA as defined. In the case of a person who is not resident in SA, gross income includes all income which is from a South African source or which is deemed to be from a South African source. The provisions of Double Taxation Agreements must be taken into account and appropriate advice must be obtained when dealing with these matters.

Employee benefits

Any benefits provided by an employer in connection with employment are usually taxed in the same way as fringe benefits, although the taxable values vary, according to the benefit provided.

Certain benefits constitute tax-free benefits for inbound expatriate employees:

- Residential accommodation provided by an employer – where the expatriate is in SA for the purposes of performing his/her duties of employment:
  - For a two year period and to the extent that the value of the benefit does not exceed R25 000 per month multiplied by number of months of such accommodation is provided, (this exemption will not apply if the expatriate was in SA for more than 90 days in the year preceding his/her date of arrival); or
  - If the expatriate is in SA for less than 90 days in the year of assessment in which the accommodation is provided.
- Relocation/ transfer costs – where the employer has borne certain expenses in consequence of relocating the expatriate and members of his/ her household such benefit could be tax-free.

Capital gains tax

CGT applies to disposals of assets on or after 1 October 2001 and therefore is only applicable from that date forward.

Individuals, special trusts and deceased and insolvent estates pay normal income tax on 40% of the capital gains they make, whereas companies, close corporations and ordinary trusts pay normal income tax on 80% of the capital gains they make.

Residents and non-residents are treated differently for CGT purposes. A resident is subject to CGT on the disposal of assets that he/she owns, wherever they are situated. On the other hand, only the disposal of the following assets by a non-resident is subject to CGT:

- Fixed property situated in SA;
- Shares in a fixed property company in SA; or
- Assets of a permanent establishment in SA.

Donations tax

Donations tax is a tax on the transfer of assets or wealth for no consideration or inadequate consideration. Donations tax is payable on the value of property disposed of under any donations by a South African resident at a flat rate of 20%, excluding donations exempt from the tax. As from 1 March 2018, where a donation or the cumulative donations exceed R30 million, the excess is taxed at a rate of 25%. Donations made prior to 1 March 2018 are excluded from the determination of the R30 million threshold.

Supplementary information

1. Tax rates – Companies
2. Tax rates – Individuals
3. Tax rates – Trusts
4. Capital gains tax
5. Donations tax
6. Estate duty
7. Value added tax (VAT)
8. Transfer duty
9. Securities transfer tax
10. Capital allowances
11. Wear and tear allowances
12. Examples of individual and company tax calculations
13. Treaty and non-treaty withholding tax rates

Tax rates – Companies

Normal tax

Year of assessment	Rate (%)
1 April 1992 to 31 March 1993	48
1 April 1993 to 31 March 1994	40
1 April 1994 to 31 March 1999	35
1 April 1999 to 31 March 2005	30
1 April 2005 to 31 March 2008	29
1 April 2008 to date	28

Branch profits

Financial year ending on or after	Rate (%)
1 April 1996	40
1 April 1999	35
1 April 2005	34
1 April 2008	33
1 April 2012 to date	28

Secondary tax on companies

Dividends declared on or after	Rate (%)
17 March 1993	15
22 June 1994	25
14 March 1996	12.5
1 October 2017 to 31 March 2012	10

Dividends tax

Dividends declared on or after	Rate (%)
1 April 2012	15
22 February 2017	20

Small business corporations

Years of assessment from 1 April 2019 to 31 March 2020

Taxable income	Rate of tax
R0 - R79 000	Nil
R79 000 - R365 000	7% of the amount over R79 000
R365 001 - R550 000	R20 020 + 21% of the amount over R365 000
R550 001 and above	R58 870 + 28% of the amount over R550 000

Years of assessment from 1 April 2020 to 31 March 20210

Taxable income	Rate of tax
R0 – R83 100	Nil
R83 101 – R365 000	7% of the amount over R 83 100
R365 001 – R550 000	R19 733 + 21% of the amount over R365 000
R550 001 and above	R58 583 + 28% of the amount over R550 000

Turnover tax – Micro Businesses

Years of assessment from 1 April 2014 to 31 March 2015

Turnover	Rate of tax
R0 – R150 000	Nil
R150 001 – R300 000	1% of the amount over R150 000
R300 001 – R500 000	R1 500 + 2% of the amount over R300 000
R500 001 – R750 000	R5 500 + 4% of the amount over R500 000
R750 001 – R1 000 000	R15 500 + 6% of the amount over R750 000

Years of assessment from 1 April 2015 to 31 March 2021

Turnover	Rate of tax
R0 – R335 000	Nil
R 335 001 – R 500 000	1% of the amount over R335 000
R 500 001 – R750 000	R1 650 + 2% of the amount over R500 000
R 750 001 – R1 000 000	R6 650 + 3% of the amount over R750 000

Employment entities

Financial years ending in the following periods	Rate (%)
1 April 2001 to 31 March 2002	35
1 April 2002 to 31 March 2003	35
1 April 2003 to 31 March 2004	35
1 April 2004 to 31 March 2005	35
1 April 2005 to 31 March 2008	34
1 April 2008 to 31 March 2012	33
After 1 April 2012	28

Tax rates – Individuals

Year of assessment ending 29 February 2020

Taxable income	Rate of tax
R0 to R195 850	18% of each R1
R195 851 to R305 850	R35 253 plus 26% of the amount over R195 850
R305 851 to R423 300	R63 853 plus 31% of the amount over R305 850
R423 301 to R555 600	R100 263 plus 36% of the amount over R423 300
R555 601 to R708 310	R147 891 plus 39% of the amount over R555 600
R708 311 to R1 500 000	R207 448 plus 41% of the amount over R708 310
R1 500 001 and above	R532 041 plus 45% of the amount over R1 500 000

Year of assessment ending 28 February 2021

Taxable income	Rate of tax
R0 to R205 900	18% of each R1
R205 901 to R321 600	R37 062 plus 26% of the amount over R205 900
R321 601 to R445 100	R67 144 plus 31% of the amount over R321 600
R445 101 to R584 200	R105 429 plus 36% of the amount over R445 100
R584 201 to R744 800	R155 505 plus 39% of the amount over R584 200
R744 801 to R1 577 300	R218 139 plus 41% of the amount over R744 800
R1 577 301 and above	R559 464 plus 45% of the amount over R1 577 300

Tax rebates – Individuals

Amounts deductible from the tax payable	2020	2021
Person under 65	R14 220	R14 958
Persons over 65	R22 014	R23 157
Persons 75 and over	R24 615	R25 893

Tax rates – Trusts

Years of assessment ending on and after 28 February 2006

Taxable income	Rate of tax		
	2015	2016 - 2017	2018 - 2021
All taxable income	40%	41%	45%

Capital gains tax

Years of assessment ending between 1 March 2019 and 29 February 2020

	Inclusion rate (%)	Max. effective rate (%)
Individuals and special trusts	40	18
Companies	80	22.4
Trusts	80	36

Collective investment schemes/ unit trusts: the unit holder is taxable

Retirement funds: not taxable

Years of assessment ending on or after 1 March 2021

	Inclusion rate (%)	Max. effective rate (%)
Individuals and special trusts	40	18.0
Companies	80	22.4
Trusts	80	36.0

Collective investment schemes/ unit trusts are the unit holders are taxable whereas retirement funds are not taxable.

Annual exclusions:

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

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

Donations tax

Donations tax is levied at 20% of the value of the property disposed of gratuitously on or after 1 October 2001 (previously 25%) by a South African resident and domestic company, excluding donations exempt from the tax. 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 donation takes effect.

Estate duty

Rates

Date of death	Rate (%)
Prior to 1 October 2001	25
After 1 October 2001	20
On or after 1 March 2018:	20% - first R30 million 25% - on excess above R30 million

Exemptions

- Persons deceased prior to 1 March 2006, the first R1 500 000
- Persons deceased after 1 March 2006, the first R2 500 000
- Persons deceased after 1 March 2007 the first R3 500 000
- Any bequest to a surviving spouse or a public benefit organisation
- Where a surviving spouse dies on or after 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

Value added tax (VAT)

As from 1 April 2018, VAT is payable at 15% (previously 14%).

Types of supplies	
Standard rated	Supplies of goods and services subject to the standard rate in force at that time of supply – 15%
Exempt	Supplies of certain services not subject to VAT. Vendors making exempt supplies are not entitled to claim input credits.
Zero-rated	Supplies of certain goods or services are subject to VAT at zero percent. Vendors making zero-rated supplies are entitled to claim input credits. Exports sales and services are zero-rated, subject to specific requirements. Supplies from SA to an Industrial Development Zone will be treated as exports

Transfer duty

On immovable property (on or after 1 March 2020)

Property value	Rates of tax
R 0 to R1 000 000	0%
R1 000 001 to R1 375 000	3% on the value above R1 000 000
R 1 375 001 to R 1 925 000	R11 250 plus 6% on the value above R1 375 000
R 1 925 001 to R 2 475 000	R44 250 plus 8% on the value above R1 925 000
R2 475 001 to R 11 000 000	R88 250 plus 11% on the value above R2 475 000
R11 000 001 and above	R1 026 000 + 13% of the value above R11 000 000

Securities transfer tax

Securities transfer tax is payable at a rate of 0.25% of the consideration, closing price or market value (whichever is greater) on the transfer, cancellation or redemption of any listed or unlisted share, members' interest in a close corporation or cession of a right to receive distributions from a company or close corporation.

- On listed securities, this must be paid by the 14th of the month following the month during which the transfer occurred.
- On unlisted securities, this must be paid by the end of the 2nd month following the end of the month during which the transfer occurred.
- If not paid in full within the prescribed period interest will be imposed at the prescribed rate and a 10% penalty will be payable.
- No securities transfer is payable if the consideration, closing price or market value is less than R 40 000.
- No securities transfer is levied on the issue of shares.

Capital allowances

Capital incentive 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 bona fide 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 SA 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 standalone 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 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
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.	5% of cost (previously 2%) (note 2)
	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	10% of cost (note 2

continuation...

Asset Type	Conditions for annual allowance	Annual allowance
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 or extending a building in respect of demolishing, excavating the land, or to provide water, power or parking, drainage or security, waste disposal or access to the building	20% in first year 8% in each of the 10 subsequent years
	Improvements to existing buildings	20% of cost
Hotel buildings	Construction of buildings or improvements, provided used in trade as hotelkeeper or used by lessee in trade as hotelkeeper	5% of cost
	Refurbishments (note 5) which commenced on or after 17 March 1993	20% of cost
Hotel equipment	Machinery, implements, utensils or articles brought into use on or after 16 December 1989	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. Biodiesel plant and machinery brought into use after 1 April 2003	50% in first year 30% in second year 20% in third year
Ships	South African registered ships used for prospecting, mining or as a foreign-going ships, 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 will be subject to allowances over four years	40 % in first year 20% in each of the 3 subsequent years (note 4)
	Used manufacturing assets	20% of cost

continuation...

Asset Type	Conditions for annual allowance	Annual allowance
Plant and machinery (small business corporations only)	Plant or machinery brought into use on or after 1 April 2001 and used by the taxpayer 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 30% in second year 20% in third year
Licences	Expenditure, other than for infrastructure, to acquire a license 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:

1. As from 1 April 2012, new or unused assets or buildings used for the purposes of research and development will also qualify for the allowances.
2. Recoupments of allowances can be deducted from the cost of the replacement asset.
3. Allowances available to owners as users of the building or as lessors/financiers.
4. Where plant and machinery is used in a process of manufacture or a similar process, the taxpayer is obliged to make use of the allowance and not the wear and tear rates.
5. Refurbishment is defined as any work undertaken with the existing building framework.

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	100% of cost
	Any other qualifying strategic projects	50% of cost
Pipelines Electricity cables Railway tracks	New and unused structures contracted for and construction commenced on or after 23 February 2000	10% of cost (oil pipelines) 5% of cost (other)

continuation...

Asset Type	Conditions for annual allowance	Annual allowance
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
	As from 1 April 2019, new and used structures	10% 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 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 first year 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 2023	Determined in accordance with a formula
Solar PV Renewable energy	Generation capacity not exceeding 1 000 kW or 1 MW	50% in 1st year 3% in 2nd year 20% in 3rd year
	For years of assessment on or after 1 January 2016	100% of cost

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
Adding machines	6
Air-conditioners	
• Window	6
• Mobile	5
• Room unit	10
Air-conditioning assets	
• Absorption type chillers	25
• Air handling units	20
• Centrifugal chillers	20
• Cooling towers	15
• Condensing sets	15
Aircraft (light passenger or commercial helicopters)	4
Arc welding equipment	6
Artifacts	25
Balers	6
Battery chargers	5
Bicycles	4
Boilers	4
Bulldozers	3
Bumping flaking	4
Carports	5
Cash registers	5
Cell phone antennae	6
Cell phone masts	10
Cellular telephones	2

Type of Asset	No. of years for write-off
Cheque-writing machines	6
Cinema equipment	5
Cold drink dispensers	6
Communication systems	5
Compressors	4
Computers	
• Mainframe/server	5
• Personal	3
Computer software (Mainframes)	
• Purchased	3
• Self-developed	1
Computer software (personal computers)	2
Concrete mixers portable	4
Concrete transit mixers	3
Containers	10
Crop sprayers	6
Curtains	5
Debarking equipment	4
Delivery vehicles	4
Demountable partitions	6
Dental and doctors equipment	5
Dictaphones	3
Drilling equipment (water)	5
Drills	6

continuation...

Type of Asset	No. of years for write-off
Electric saws	6
Electrostatic copiers	6
Engraving equipment	5
Escalators	20
Excavators	4
Fax machines	3
Fertiliser spreaders	6
Fire arms	6
Fire extinguishers (loose units)	5
Fire detections systems	3
Fishing vessels	12
Fitted carpets	6
Food bins	4
Food-conveying systems	4
Fork-lift trucks	4
Front-end loaders	4
Furniture and fittings	6
Gantry cranes	6
Garden irrigation equipment (movable)	5
Gas cutting equipment	6
Gas heaters and cookers	6
Gear boxes	4
Gear shapers	6
Generators (portable)	5
Generators (standby)	15
Graders	4
Grinding machines	6
Guillotines	6
Gymnasium equipment	
• Cardiovascular	2
• Health testing	5
• Weights and strength	4
• Spinning	1
• Others	10
Hairdressers equipment	5
Harvesters	6
Heat dryers	6
Heating equipment	6
Hot water systems	5
Incubators	6
Ironing and pressing equipment	6
Kitchen equipment	6
Knitting machines	6
Laboratory research equipment	5
Lathes	6
Laundromat equipment	5
Law reports	5
Passenger cars	5
Patterns, tooling and dies	3
Pellet mills	4
Perforating equipment	6

continuation...

Type of Asset	No. of years for write-off
Photocopying equipment	5
Photographic equipment	6
Planers	6
Pleasure craft, etc.	12
Ploughs	6
Portable safes	25
Power tools (hand-operated)	5
Power supply	5
Public address systems	5
Pumps	4
Racehorses	4
Radar systems	5
Radio communication	5
Refrigerated milk tankers	4
Refrigeration equipment	6
Refrigerators	6
Lift installations	12
Medical theatre equipment	6
Milling machines	6
Mobile caravans	5
Mobile cranes	4
Mobile refrigeration units	4
Motors	4
Motorcycles	4
Motorised chain saws	4
Motorised concrete mixers	3

Type of Asset	No. of years for write-off
Motor mowers	5
Musical instruments	5
Navigation systems	10
Neon signs and advertising boards	10
Office equipment – electronic	3
Office equipment – mechanical	5
Oxygen concentrators	3
Ovens and heating devices	6
Ovens for heating food	6
Packaging equipment	4
Paintings (valuable)	25
Pallets	4
Runway lights	5
Sanders	6
Scales	5
Security systems removable	5
Seed separators	6
Sewing machines	6
Shakers	4
Shop fittings	6
Solar energy units	5
Special patterns and tooling	2
Spin dryers	6
Spot welding equipment	6

continuation...

Type of Asset	No. of years for write-off
Staff training equipment	5
Surge bins	4
Surveyors:	
• Field equipment	5
• Instruments	10
Tape-recorders	5
Telephonic equipment	5
Television and advertising films	4
Television sets, video machines and decoders	6
Textbooks	3
Tractors	4
Trailers	5
Traxcavators	4
Trollies	3
Trucks (heavy-duty)	3

Type of Asset	No. of years for write-off
Trucks (other)	4
Truck-mounted cranes	4
Typewriters	6
Vending machines (including video game machines)	6
Video cassettes	2
Warehouse racking	10
Washing machines	5
Water distillation and purification plant	12
Water tankers	4
Water tanks	6
Weighbridges (movable parts)	10
Wire line rods	1
Workshop equipment	5
X-ray equipment	5

Note:

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 asset.
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: R5000) per item may be written off in full during the year of acquisition.

Examples of individual and company tax calculations

Individual

Example

Mr. A, who is a South African resident aged 67, received and paid the following amounts during the year of assessment ended 28 February 2021:

	R
Salary	180 000
Interest received (from a source within SA)	35 000
Dividends received (from South African companies)	12 000
Deductible expenditure	3 000
Taxable capital gain (40% of net capital gain of R20 000)	8 000

Calculate the normal tax liability of Mr. A for the year of assessment ended 28 February 2021.

Solution

	R
Salary	180 000
Interest received	35 000
Dividends received from South African companies	12 000
Gross income	227 000
Less: Exempt Income - Basic interest exemption	34 500
- Local dividend exemption	12 000
Income	180 500
Less: deductions	3 000
	177 500
Add: Taxable capital gain	8 000
Taxable income	185 500
Tax payable:	
On R185 500 @ 18%	33 390
Normal tax payable	33 390
Less: Rebates - Primary	14 958
- Secondary	8 199
Normal tax liability	10 233

Company

Example

A Ltd, a South African registered company, showed the following results for the financial year ended 31 March 2021:

	R
Trading profits	300 000
Rental income	50 000
Dividends received (from South African companies)	72 000
Deductible expenditure	230 000
Taxable capital gain (80% of net capital gain of R50 000)	40 000

Calculate the tax payable by A Ltd for the financial year ended 31 March 2021.

Solution

	R
Trading profits	300 000
Rental income	50 000
Dividends from South African companies	72 000
Gross income	422 000
Less: Exempt Income - local dividend exemption	72 000
Income	350 000
Less: deductions	230 000
	120 000
Add: Taxable gain tax	40 000
Taxable income	160 000
Normal tax payable at 28% on taxable income	44 800

Treaty and non-treaty withholding tax rates

There are a number of Double Taxation Agreements (DTAs), which provide relief in respect of royalties and know-how withholding taxes as well as dividends and interest withholding taxes.

	Royalties (%)	Dividends (%)	Interest (%)
Non treaty countries	15	20	15
Treaty Countries			
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
Democratic Republic of Congo	10	5/15	10
Czech Republic	10	5/15	0
Denmark	0	5/15	0
Egypt	15	15	12
Eswatini (formerly Swaziland)	10	10/15	10
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

continuation...

	Royalties (%)	Dividends (%)	Interest (%)
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	0/15	15	10
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
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	10/15	10

continuation...

	Royalties (%)	Dividends (%)	Interest (%)
Saudi Arabia	10	5/10	5
Seychelles	0	5/10	0
Sierra Leone	15	15	0
Singapore	5	0/5/15	7.5
Slovak Republic	10	5/15	0
Spain	5	5/15	5
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
USA	0	5/15	0
Zambia	0/15	15	0/15
Zimbabwe	10	5/10	5

Notes:

1. The above rates are provided as a guide only. 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
2. As from 1 January 2015, the withholding tax 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 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 negotiation with Cuba, Gabon, Isle of Man, Morocco, Senegal, Sudan, Syria and Vietnam.
6. Existing comprehensive double taxation agreement 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, Monaco, Samoa, San Marino, St Kitts and Nevis, Turks and Caicos Islands and Uruguay.
8. New tax information exchange agreements are in the process of negotiation with Andorra, Brunei Darussalam, Isle of Man, Jamaica, Macao SAR, Maldives, Marshall Islands, Panama and St Lucia.

Useful contacts

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