Tuffias
SANDBERG

CHARTERED ACCOUNTANTS (SA)
REGISTERED AUDITORS

2013 / 2014

Budget summary & Financial information

Real People. Real Solutions.

CONTENTS

BUDGET PROPOSALS

Tabled by the Minister of Finance on 27 February 2013:

INDIVIDUAL TAX

Tax brackets

The tax brackets have been restructured to increase the tax threshold at which the maximum rate is reached to R638 600 (2013 – R617 000). Tax thresholds have been increased for persons under 65 to R67 111 (2013 – R63 556), for persons 65 to 75 years to R104 611 (2013 – R99 056) and for persons 75 and over to R117 111 (2013 - R110 889).

Tax returns

Individuals whose taxable income is from one employer and is below R250 000 a year are not required to submit a tax return.

Retirement reform

The deductibility of individual contributions to pension and retirement annuity funds, as well as contributions to provident funds and employer contributions will be increased to 27,5% of the greater of remuneration or taxable income, with an annual cap of R350 000. The employer contributions will be subject to fringe benefit tax. The effective date is expected to be 2015. Contributions in excess of the cap may be carried over to future years.

Non-retirement savings

The government intends to proceed with the implementation of tax preferred saving and investment accounts as an alternative to the current tax free interest income, in a bid to encourage higher savings. The account would have an initial annual contribution limit of R30 000 and a lifetime limit of R500 000. These limits will be revised to keep them in line with inflation.

TAXATION OF TRUSTS

New legislative measures are proposed during 2013/14. Discretionary trusts should no longer act as flow-through vehicles. Taxable income and losses should be calculated at trust level with distributions acting as deductible payments to the extent of the current taxable income. Beneficiaries will be eligible to receive tax-free distributions, except where they give rise to deductible payments.

Trading trusts will similarly be taxable at the entity level, with distributions acting as deductible payments.

EMPLOYMENT TAX INCENTIVES

The introduction of a youth employment tax incentive to assist the youth to enter the labour market, gain experience and access career opportunities was proposed. A graduated tax incentive at the entry-level wage, falling to zero when earnings reach the personal income tax threshold will be applied. A similar incentive is proposed for workers of all ages in special economic zones.

SPECIAL ECONOMIC ZONES

In certain special economic zones, certain tax incentives will be authorized. A 15% corporate tax rate, an employment incentive for the employment of workers earning less than R60 000 per year and accelerated depreciation allowance for buildings.

PUBLIC-BENEFIT ORGANISATIONS
It is proposed that donations in excess of 10% of taxable income may be rolled forward as deductions in subsequent years.
The application of the same rate structure as small business organisations to the PBO's trading activities will be explored.

RESTRICTING DEBT
Proposals have been made to limit the interest deduction in structures that utilize artificial and excessive debt.

COMPANIES AND CLOSE CORPORATIONS

Company tax rates apply to years of assessment commencing after 31 March of each year.

	2014	**2013**
Normal tax		
Companies and close corporations	28%	28%
Personal service companies	28%	28%
Foreign companies with South African activities	28%	28%
South African branches of foreign companies	28%	28%

Small business corporations – per table (page 12)
Micro businesses – on turnover per table (page 11)

INDIVIDUALS

TAX TABLES

For the year ended 28 February 2014

R	R	
0 – 165 600		18% of each 1
165 601 – 258 750	29 808 +	25% of income above 165 600
258 751 – 358 110	53 096 +	30% of income above 258 750
358 111 – 500 940	82 904 +	35% of income above 358 110
500 941 – 638 600	132 894 +	38% of income above 500 940
638 601 and above	185 205 +	40% of income above 638 600

For the year ended 28 February 2013

R	R	
0 – 160 000		18% of each 1
160 001 – 250 000	28 800 +	25% of income above 160 000
250 001 – 346 000	51 300 +	30% of income above 250 000
346 001 – 484 000	80 100 +	35% of income above 346 000
484 001 – 617 000	128 400 +	38% of income above 484 000
617 001 and above	178 940 +	40% of income above 617 000

REBATES

	2014	**2013**
Under 65	R12 080	R11 440
65 to 75	R18 830	R17 830
75 and over	R21 080	R19 960

TAX THRESHOLDS

Under 65	R67 111	R63 556
65 to 75	R104 611	R99 056
75 and over	R117 111	R110 889

EXEMPT INCOME

Total interest exemption	**2014**	**2013**
Below 65	R23 800	R22 800
65 and over	R34 500	R33 000
Awards for bravery and long service	R5 000	R5 000

Certain local dividends.

War and certain disability pensions.

Pensions received from sources outside South Africa.

Unemployment and Workmen's Compensation benefits.

Compensation paid by employer on death as a result of employment up to R300 000.

Compensation received from the Road Accident Fund.

Certain insurance payouts where an employer paid the insurance premiums and the premiums were taxed as a fringe benefit to the employee.

Bursaries are exempt from tax where:

- The bursary is granted to an employee who agrees to reimburse the employer for the bursary if the employee fails to complete his studies, or
- The bursary is granted to a relative of an employee who earns less than R200 000 (R100 000 in 2013), in which case it will be exempt up to the following limits

	2014	**2013**
Bursaries for higher education	R30 000	R10 000
Bursaries for basic education	R10 000	R10 000

DEDUCTIONS

Pension fund contributions

Greater of: R1 750, or
7.5% of income from retirement funding employment.

Retirement annuity fund contributions

Greater of: R1 750, or
R3 500 less current pension fund contributions deductible, or
15% of taxable income from non-retirement funding income, before deducting medical aid contributions and expenses, and before deductible donations.

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

Medical, dental and physical disability expenses

Taxpayers 65 and older may claim all qualifying expenses. Taxpayers under 65 may claim all qualifying expenses where the taxpayer, spouse or child is disabled.

Other taxpayers under 65 may claim the following monthly tax credits where contributions are paid to a medical scheme:

	2014	**2013**
Taxpayer	R242	R230
First dependent	R242	R230
Each additional dependent	R162	R154

A dependent includes a dependent recognised under the medical aid rules. Persons under 65 may further deduct medical expenses which exceed 7.5% of taxable income.

Medical expenses include all expenditure incurred not refunded by the medical aid, including non-South African expenses, plus the amount by which medical aid contributions exceed four times the annual tax credit amount.

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

From 1 March 2014 the following changes will apply:

Persons above 65 and other persons where the taxpayer, spouse or child is disabled will also move to the tax credit system and may claim the standard monthly tax credits tabled above.

No deduction for excess medical expenses will be allowed. Instead the amount in excess of 7.5% of taxable income will be converted to a tax credit equal to 25% of the excess for persons under 65.

The tax credit for persons above 65 and other persons where the taxpayer, spouse or child is disabled will equal 33.3% of all medical expenses.

Medical expenses will include all expenditure incurred not refunded by the medical aid plus the amount by which medical aid contributions exceed:

- three times the annual tax credit amount for persons above 65 or persons where the taxpayer, spouse or child is disabled;
- four times the annual tax credit amount for all other taxpayers

Loss of income insurance
Employees are entitled to claim a deduction for premiums paid under a loss of income insurance policy. If such premiums were paid by the employer and the premiums were taxed as a fringe benefit, the employee will be deemed to have paid the premiums and may therefore claim a deduction. The deduction will only be allowed if amounts paid out under the policy will be taxable.

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

Home study expenses

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

EMPLOYEES' TAX

All employees have to be registered for income tax. Taxpayers earning less than R250 000 per year from a single employer do not need to submit a tax return.

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

There must be deducted from the employee's tax payable, the medical aid credit, where the employer pays the medical aid contributions or, at the employer's option, if provided with proof of payment of the medical aid contributions.

Employer's responsibility

SARS can raise an assessment on the employer if the value of a fringe benefit has not been taken into account or undervalued for PAYE purposes. The payment of additional PAYE does not constitute a taxable fringe benefit in the hands of the employee.

Shareholders, company directors (or members of a close corporation) who are involved in the management of the company's financial affairs are personally liable for employees tax, additional taxes, penalties and interest not paid by the company.

FRINGE BENEFITS

Fringe benefits – VAT

Certain fringe benefits may result in a deemed supply of goods or services for VAT purposes. A specific inclusion is the right of use of a motor vehicle. The monthly VAT is calculated as 14/114 x 0.3% of the determined value of the vehicle where the VAT on the vehicle may not be claimed as an input. Where VAT may be claimed as an input the percentage is increased to 0.6%. The determined value is the cost price including VAT less 15% depreciation (on reducing balance method) for each year that the employer owned the vehicle before it was given to the employee to use.

Medical aid

Contributions made by an employer to a medical aid scheme constitute a taxable fringe benefit.

Low interest loans

The benefit arises on the difference in the official rate of interest and that charged to the employee on loans greater than R3 000. Study loans are excluded. Loans to directors and members arising from their shareholding or membership and not from employment are also excluded.

Official interest rate

From 1 March 2011 the official interest rate is linked to the repo rate: 100 basis points above the repo rate.

	Repo rate	Official interest rate
1 March 2011 – 9 July 2012	5.5%	6.5%
9 July 2012 – current	5.0%	6.0%

Long term insurance policies

An insurance premium paid by the employer in respect of an insurance policy that is directly or indirectly for the benefit of an employee or his beneficiary is a taxable fringe benefit.

The value of the fringe benefit is the amount paid by the employer. If the amount relating to a specific employee cannot be determined the value of the fringe benefit is the total contribution divided by the number of employees for whom the contribution is made.

Employer contributions that are taxed as fringe benefits may be claimed as a deduction by the employer.

Right of use of motor vehicle

The monthly fringe benefit on all motor vehicles is 3.5% of the determined value.

The determined value is the cash cost including VAT, or the market value when the employer first obtained right of use in the case of a lease or donation.

If the cost of the motor vehicle includes a maintenance plan the monthly fringe benefit is reduced to 3.25%.

Where the motor vehicle is acquired by the employer under an operating lease the monthly fringe benefit is the actual cost of rental plus any fuel costs paid by the employer.

80% of the fringe benefit is subject to PAYE. This can be reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle will be for business travel. Travel between an employee's home and place of work is private travel.

The fringe benefit can be reduced on assessment if the employee can prove actual business use and/or private expenses incurred on licensing, insurance, maintenance or fuel. The employee would need to keep a logbook for this purpose. A table has been issued to determine the fuel cost per kilometre based on the cost of the vehicle where this cost is borne by the employee.

Should the employee have the right to use more than one vehicle at a time, the taxable benefit is based on the highest determined value, provided it is used primarily for business purposes.

Travelling allowance

The allowance may be paid at a fixed monthly rate or per kilometre.

PAYE on 80% of the allowance is deductible where the allowance is not based on actual business travel costs. This can be reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle will be for business travel.

A logbook must be kept detailing the business and total kilometres travelled.

The fringe benefit can be reduced on assessment for actual business travel expenditure. This is calculated using the ratio of business kilometres to total kilometres travelled and actual costs incurred or deemed costs as per the table below.

Scale for determining the costs of travelling

Value of the vehicle (including VAT)	Fixed Cost (R p.a.)	Fuel Cost (c/km)	Maintenance Cost (c/km)
0 – R60 000	19 310	81.4	26.2
R60 001 – R120 000	38 333	86.1	29.5
R120 001 – R180 000	52 033	90.8	32.8
R180 001 – R240 000	65 667	98.7	39.4
R240 001 – R300 000	78 192	113.6	46.3
R300 001 – R360 000	90 668	130.3	54.4
R360 001 – R420 000	104 374	134.7	67.7
R420 001 – R480 000	118 078	147.7	70.5
exceeding R480 000	118 078	147.7	70.5

Where actual costs are used the employee may include wear and tear in the costs. The wear and tear is calculated over 7 years and for this purpose the value of the vehicle is limited to R480 000.

Where total business travel for the year does not exceed 8 000 km the employee can opt to deduct a fixed rate of R3.24 per km from the travel allowance instead of using the table above, provided no other travel allowance is received.

Subsistence allowance

The allowance relates to expenditure on meals and incidental costs incurred whilst being absent from home for at least one night. It is taxable to the extent that the employee has not spent the required nights away from home by the last day of the following month. No proof is required where allowance is R319 per day for meals and incidental costs or R98 per day for incidental costs in South Africa.

SARS has issued a table listing the daily allowance for meals and incidental costs outside South Africa denominated in the appropriate currency, such as:

Australia	208	AU$
Botswana	518	PULA
Lesotho	750	ZAR
Namibia	835	ZAR
Swaziland	818	ZAR
United Kingdom	124	GBP
USA	160	US$

For the full list go to: the SARS website under Legal & Policy/ Legislation/Regulations and Government Notices/Income Tax Act, 1962.

Equity instruments issued to directors and employees

Regulations are applicable to equity instruments acquired by virtue of employment or office.

Gains or losses are taxed on the vesting of the equity instrument. The gain or loss is calculated as the market value of the instrument on date of vesting less any consideration paid by the employee. Vesting occurs on the acquisition of an unrestricted equity instrument, or in the case of a restricted equity instrument, the earliest of:

- when all restrictions cease to exist
- immediately before the disposal of the instrument
- immediately after an option terminates or a convertible instrument is converted

Gains made on the vesting of equity instruments must be taken into account when calculating employee's tax (PAYE). A tax directive must be obtained from SARS to determine the amount of tax to be withheld.

Cellphones and computers
No fringe benefit accrues through the private use of cellphones and computers provided by the employer used mainly for business purposes.

Payment of professional fees on behalf of employees
If membership of a body is a condition of employment such payment is not a taxable fringe benefit. Other fees paid by the employer will also be tax free if such payments largely benefit the employer.

Transfer or relocation costs
Where an employee is appointed or transferred at the insistence and expense of the employer, the costs incurred are exempt from tax in the employee's hands. These costs include transportation costs, settling in costs and the hire of temporary residence for less than 183 days. The costs must be reflected appropriately on the IRP5.

Other fringe benefits
Fringe benefits will arise from any free or cheap service, housing or residential allowances.

RING FENCING OF ASSESSED LOSSES

Ring fencing can only be applied to natural persons subject to the maximum marginal tax rate. A trade loss is ring fenced if that trade has incurred a loss in 3 out of the past 5 years, or if it relates to a suspect trade, as listed in the Income Tax Act.

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

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

LUMP SUM BENEFITS

On retirement
Lump sum benefits received from an employer on retirement or retrenchment are added to lump sums received from funds and taxed accordingly.

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

On retirement or death
A benefit received on retirement or death is taxed in terms of the following table:

For the year ended 29 February 2012 and thereafter

R	R	R
0 – 315 000		0%
315 001 – 630 000		18% of the amount above 315 000
630 001 – 945 000	56 700	+ 27% of the amount above 630 000
945 001 – and over	141 750	+ 36% of the amount above 945 000

On withdrawal, resignation or divorce
A benefit received on withdrawal, resignation or divorce is taxed in terms of the following table:

For the years ended 28 February 2009 and thereafter

R	R	R
0 – 22 500		0%
22 501 – 600 000		18% of the amount above 22 500
600 001 – 900 000	103 950	+ 27% of the amount above 600 000
900 001 – and over	184 950	+ 36% of the amount above 900 000

These tax rates are applied cumulatively to lump sum benefits received after 1 October 2007.

Post-retirement annuity payments converted into a lump sum will be treated in the same way as retirement lump sum benefits.

The taxpayer's own contributions which were not previously allowed as a deduction plus amounts transferred to another qualifying fund are deducted from the lump sum received. The net lump sum after these deductions is taxed according to the tables above.

The taxable lump sum cannot be offset against any assessed loss of the taxpayer. Lump sums are independently taxed and the tax cannot be reduced by rebates.

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

Where the person was at date of death the spouse of a previously deceased spouse, the estate duty abatement can be doubled and reduced by the amount of the abatement utilised by the pre-deceased spouse. This amendment applies to the estates of persons dying on or after 1 January 2010.

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

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

TRUSTS OTHER THAN SPECIAL TRUSTS

Normal tax rate

For years ended 28 February 2003 to 2014	40%

No primary rebate or interest exemption.

SPECIAL TRUSTS

Same rate as individuals.

No primary rebate or interest exemption.

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

MICRO BUSINESSES

Turnover tax is an alternative, optional basis, for computing tax payable where the annual turnover is R1 million or less.

In addition to the turnover tax, micro businesses may submit VAT and Employees Tax returns twice yearly, effective 1 March 2012.

Natural persons, companies and close corporations can qualify as micro businesses. Trusts cannot.

From years commencing 1 March 2012, VAT vendors can qualify as micro businesses.

Turnover tax for years of assessment ending on or after 1 April 2012

R	R	R
0 – 150 000		0%
150 001 – 300 000		1% of turnover above 150 000
300 001 – 500 000	1 500	+ 2% of turnover above 300 000
500 001 – 750 000	5 500	+ 4% of turnover above 500 000
750 001 and above	15 500	+ 6% of turnover above 750 000

If elected, the turnover tax will apply for at least 3 years unless the conditions for registration no longer apply.

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

Dividends paid by a micro business will be exempt from dividends tax to the extent that dividends do not exceed R200 000. Any excess will be subject to dividends tax at a rate of 15%.

COMPANIES AND CLOSE CORPORATIONS

NORMAL TAX

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

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

Small business corporations
These entities are entitled to certain allowances and reduced tax rates. They are defined as corporations where all the shareholders or members were natural persons for the entire year, the gross income for the year of assessment does not exceed R14 million, no shareholder holds any interest in any other company during the year and less than 20% of the income is investment income or personal service income. A shareholder's or member's interest in any of the following would not disqualify the entity as a small business corporation:

– Listed company, shareblock company or body corporate
– Company or close corporation that has never traded or owned assets of more than R5 000 in value (dormant entities)

Normal tax rate for years of assessment ending after 31 March 2013

R	R	R
0 – 67 111	0%	
67 112 – 365 000	7% of taxable income above	67 111
365 001 – 550 000	20 852 + 21% of taxable income above	365 000
550 001 and above	59 702 + 28% of taxable income above	550 000

Normal tax rate for years of assessment after 31 March 2012

R	R	R
0 – 63 556	0%	
63 557 – 350 000	7% of taxable income above	63 556
350 000 and above	20 051 + 28% of taxable income above	350 000

LABOUR BROKERS AND PERSONAL SERVICE PROVIDERS

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

The employee tax deduction is: 40% where the personal service provider is a trust and 28% if a company. The employee tax deduction for a labour broker is determined according to the tax tables for individuals.

A labour broker is a natural person who provides a client with other persons to render a service or perform a service and who remunerates such persons.

A labour broker can apply for an exemption certificate.

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

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

Personal service companies cannot qualify as micro businesses.

A labour broker without an exemption certificate cannot deduct any expenses other than salaries/wages paid to employees.

A personal service provider cannot deduct any expenses other than salaries/wages, legal expenses, bad debts, employer contributions to funds and expenses in respect of premises, finance charges, insurance, repairs & maintenance and fuel relating to assets used exclusively for the purposes of trade.

DIVIDENDS AND DIVIDENDS TAX

A dividend means any amount transferred or applied by a company for the benefit of or on behalf of any person in respect of any share in that company. It includes amounts transferred as consideration for a share buy-back and excludes the following:

- A reduction of the company's share capital or share premium
- Issue of capitalisation shares
- Buy back of shares by a listed company

A dividend could be cash or an asset. Assets distributed as dividends are referred to as dividends in specie.

Dividends received from SA companies (local dividends) are generally exempt from tax. The following local dividends are not exempt:

- Dividends from headquarter companies as these are treated as foreign dividends
- Dividends from property unit trusts
- Dividends received by share dealers on a buy-back of shares
- Dividends from share incentive schemes if the dividend relates to an instrument which is not a true equity share
- Dividends received in consequence of a cession
- Dividends on borrowed shares, hybrid equity instruments, or third-party backed shares.

Dividends tax
Dividends tax came into effect on 1 April 2012.

Dividends tax is levied at 15% of the amount of dividends paid and is payable by the beneficial owner of the dividend, i.e. the shareholder. The tax is treated as a withholding tax; therefore the shareholder will receive the net amount after dividends tax.

Dividends tax is applicable to:

- A dividend paid by a South African company, or
- A dividend paid by a non-resident company if listed on the JSE.

The dividends tax arises on payment of the dividend.

The dividends tax is payable to SARS by the end of the month following the month in which the dividend was paid.

The dividends tax arises on dividends paid to foreign shareholders can be reduced if permitted by the relevant double tax agreement.

Exemptions
The dividend is exempt from dividends tax if the beneficial owner is:

- South African resident company or close corporation
- Public benefit organisation which is tax exempt
- Pension, provident, retirement annuity or benefit fund
- Shareholder in a registered micro business, if the dividend is from the micro-business. (This exemption applies to the first R200 000 of dividends paid by the micro-business in a year of assessment).

Deemed dividend
A loan or advance to a person that is a SA resident shareholder and not a company, or connected person to such shareholder, is deemed to be a dividend. The deeming provision therefore does not apply to loans between group companies.

The amount that is regarded as a dividend and therefore subject to dividends tax is the interest benefit on the loan, calculated as the market related interest less the amount of interest payable to the company. If the interest payable is higher than market related interest the deemed dividend is nil.

The deemed dividend is treated as having been paid on the last day of the year of assessment.

STC credits
STC credits can be used for up to 3 years after 1 April 2012.

If a dividend is paid after 1 April 2012 and no dividends tax needs to be withheld as a result of a STC credit the company must notify the shareholders how much of the STC credit has been used. If the company fails to give this written notice the dividend will be subject to the 15% dividends tax.

RESIDENCE BASED TAXATION

A resident is:

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

There may be dual residency issues resulting from the effective management rule. It is proposed that the issue be removed where the tax rate is approximately the same as the South African corporate rate.

The physical presence test is applied when a person is not ordinarily resident in South Africa, and must be performed each year. In terms of this test a person is a resident for tax purposes if he or she was present in South Africa for:

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

A person who is deemed to be a resident due to the physical presence test ceases to be a resident if physically absent from South Africa for 330 continuous days.

FOREIGN INCOME

All foreign income must be included in taxable income.

SARS has the discretion to impose a deemed amount as foreign income on assets taking into account any information it may have relative to assets held, transferred or disposed of during the period. The income is attributed at the official interest rate – currently 6%.

Investments
Interest, net rental income and income from unit trusts must be included in income.

Losses incurred on rental property may not be set off against South African income but may be carried forward to be offset against future foreign income.

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

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

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

Foreign dividends
A foreign dividend is any amount received from a foreign company if the amount is treated as a dividend under the laws of that country.

Foreign dividends are taxable, except where:

- taxpayer holds more than 10% of the equity in the foreign entity
- the taxpayer is a CFC and is situated in the same country as the company declaring the dividend
- the company holds a listing in South Africa as well (a dual listed company)
- the taxpayer is a controlled foreign company (CFC) and the dividends do not exceed amounts deemed to be the resident shareholder's income under the CFC rules

Foreign dividends not included in the exceptions above are taxed at a reduced rate of 15%, effectively determined by exempting part of a foreign dividend in terms of the following formula:

A = B x C
Where:
A = The exempt amount
B = 25/40 if the taxpayer is a natural person, estate or special trust, or
B= 13/28 for all other taxpayers
C = total foreign dividends received that are not otherwise exempt.

Withholding tax paid on foreign dividends received is allowed as a credit against tax payable in South Africa.

Controlled foreign companies (CFC)
A CFC is a non-resident entity that is not listed in which South African residents (excluding South African headquarter companies) hold more than 50% of the participation rights or voting control.

The net income of the CFC is imputed as income of the taxpayer in the ratio of the participation share if the taxpayer holds more than 10% of the participation rights. Any loss must be carried forward for set off against future income.

This does not apply if the taxpayer is a headquarter company in SA. The net income of a CFC is determined in the functional currency of the CFC, and translated to Rands using the average exchange rate for the SA resident's year of assessment.

The proportionate share of foreign tax payable by the CFC will be allowed as a tax rebate against tax payable by the South African resident shareholder.

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

Headquarter companies
A company can elect to be a headquarter company if it is a South African company of which:

- each shareholder holds at least 10% of equity,
- at least 80% of assets are represented by interests in equity shares, loans and advances and intellectual property licensed to any foreign company of which at least 10% of the equity is held by the headquarter company, and
- at least 50% of income is derived from foreign companies in which at least 10% of equity is held, or the income is derived from dividends, interest or royalties.

Dividends declared by headquarter companies will not be subject to dividends tax.

Dividends received from a headquarter company are treated the same as foreign dividends and will be exempt from normal tax as the shareholder will hold at least 10% of the equity in the headquarter company.

Interest paid on a loan from a non-resident is deductible, but the deduction is limited to interest earned from non-resident entities in which the headquarter company holds at least 20% of equity.

NON-RESIDENTS

Non-residents are taxed on all income from a South African source.

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

From 1 March 2014 a 15% withholding tax will be levied on interest paid to non-residents, subject to the double tax agreement in force.

Dividends
Dividends paid to non-residents are subject to the 15% dividends withholding tax, subject to the double tax agreement in force.

Royalties
A withholding tax of 12% is levied on royalty payments subject to the double tax agreement in force. This rate will increase to 15% on 1 March 2014.

Service fees
A withholding tax on service fees paid to non-residents will apply from 1 March 2014, subject to the double tax agreement in force.

Sale of immovable property
Non-residents are subject to CGT on the disposal of immovable property or the assets of a permanent establishment, branch or agency through which a trade is carried on situated in South Africa.

The purchaser of the property is required to withhold the following amounts from the price paid on the sale of immovable property unless a directive is provided by the seller:

5%	where the seller is a natural person
7.5%	where the seller is a company
10%	where the seller is a trust.

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

PUBLIC BENEFIT ORGANISATIONS (PBO)

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

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

Trading income is exempt up to the greater of 5% of total receipts of accruals or R200 000.

Donations to public benefit organisations are deductible as follows:

Company donations limited to 10% of taxable income

Individual donations limited to 10% of taxable income before the deduction of medical expenses, excluding any retirement benefit lump sum.

CAPITAL GAINS TAX (CGT)

Residents are taxed on capital profits on world-wide assets, whilst non-residents are taxed on capital profits arising on the disposal of fixed property, an interest or right in fixed property or the assets of South African permanent establishment. A capital gain or loss is calculated as the difference between the proceeds received on disposal and the base cost of the asset disposed.

Exclusions for natural persons and special trusts
An annual exclusion of R30 000 applies to both gains and losses during the person's lifetime whilst R300 000 applies in the year the person dies.

Effective rate of tax

Taxpayer	*Capital gain included*	*Tax rate*	*Effective rate*
Natural person	33.3%	0 – 40%	0 – 13.3%
Special trust	33.3%	0 – 40%	0 – 13.3%
Other trusts	66.6%	40%	26.7%
Companies	66.6%	28%	18.6%
Small business corporation	66.6%	0 – 28%	0 – 18.6%
Employment companies	66.6%	28%	18.6%

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

Deemed disposals or acquisitions

Change of residence

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

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

Trading stock

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

Personal use assets

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

Proceeds on disposal of an asset

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

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

Base cost

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

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

The base cost of assets acquired before 1 October 2001 is calculated by determining a value as at 1 October 2001 and adding qualifying costs incurred after that date. The 1 October 2001 value may be determined at the option of the taxpayer on one of the following bases:

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

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

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

Where:
Y = Value as at 1 October 2001
B = expenditure before 1 October 2001
P = proceeds on disposal (or per adjustment formula)
N = number of years held before 1 October 2001
T = number of years held after 1 October 2001

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

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

Where:
R = actual proceeds
A = expenditure incurred after 1 October 2001
B = expenditure incurred before 1 October 2001

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

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

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

- Primary residence (applicable to natural persons and special trusts only)
  If the proceeds on the sale of a person's primary residence is less than R2 million any capital gain is disregarded, but any capital loss may be carried forward.
  If the proceeds exceed R2 million the first R2 million of the capital gain or loss calculated is disregarded.
- most personal use assets excluding gold or platinum coins, immovable property, aircraft exceeding 450kg, boat exceeding 10 metres in length, financial instrument, usufructuary or fiduciary interest which decreases over time
- lump sum benefits from pension, provident or retirement annuity funds
- long term assurance paid to original beneficiary, spouse, dependent or deceased estate
- the first R1.8 million of a gain realised on the sale of an interest in a small business if sold by an individual who is at least 55 or as a result of ill health. The exclusion only applies if the market value of the small business assets does not exceed R10 million.
- micro business assets to the extent that the proceeds from such disposals do not exceed R1.5 million over a period of 3 years
- compensation for personal injury, illness or defamation
- gains from gambling, competitions or games by natural persons
- gains or losses made by PBO

- gains and losses made by unit trust funds
- donations or bequests to PBO
- assets used to produce exempt income.

Trusts
Capital gains retained in a trust are taxed in the trust's hands whilst those distributed to SA resident beneficiaries in the same year are taxed in the beneficiary's hands. Gains distributed to non-resident beneficiaries are taxed in the trust's hands.

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

DONATIONS

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

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

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

PROVISIONAL TAX

The following taxpayers are required to register as provisional taxpayers:
- Companies and close corporations
- Natural persons who earn income that is not remuneration as defined, unless such income is derived from interest, dividends or rentals and does not exceed R20 000, or if the total taxable income of the person will be below the tax threshold.

Natural persons over 65 years old, other than a director of a private company whose taxable income is less than R120 000 and who do not carry on business are exempt from provisional tax.

Basic amount
The basic amount is computed as:
- the taxable income according to the last assessment issued not less than 60 days before due date,
- less any capital gain included in the income,
- less (in the case of individuals) the taxable portion of any lump sum payments on termination of service or retirement fund benefit.

Should the last year of assessment be more than one year prior to the current tax period, an increase of 8% per annum must be included in the basic amount.

First provisional payment
The first payment is due six months before the end of the tax year. The payment must be based on the greater of an estimate of taxable income for the year, or the basic amount. If the estimate of taxable income is lower than the basic amount the lower estimate may be used if approved by SARS.

Second provisional payment
The second payment is due on the last day of the tax year. The payment must be based on an estimate of the taxable income for the year. A two tier model is in force.

- income less than R1 million – the estimate must be equal to the lesser of the basic amount or 90% of the actual taxable income, or
- income greater than R1 million – the estimate must be equal to 80% of the actual taxable income.

The penalty may be 20% of the difference between the income disclosed and the actual taxable income if SARS is not satisfied that the estimate was seriously calculated or was not deliberately or negligently understated.

Additional provisional payment
Where the taxable income of an individual exceeds R50 000 and of a company exceeds R20 000, additional payments of tax are required six months after the year end (February year end by end of September) to obviate interest being levied on the amounts due.

Penalties and interest
Penalties may be imposed as follows:

- 10% of amount not paid by due date for the late payment of provisional tax, or
- 20% of the under-payment on under-estimation of income, or
- 20% of the actual assessed tax less amounts paid on due date on late submission of the second provisional.

Interest will be charged from the end of the period within which payment is required at the prescribed rate.

Penalties and interest paid to SARS are not tax deductible.

Interest will be paid where the taxable income of an individual exceeds R50 000 and of company exceeds R20 000 calculated from six months after the year end at the prescribed rate. Interest is taxable in the year the assessment is raised.

PRESCRIBED INTEREST RATES

Period			Payable to taxpayer (taxable)	Payable by taxpayer (non-deductible)
1 Mar 2008	to	31 Aug 2008	10.0%	14.0%
1 Sep 2008	to	30 Apr 2009	11.0%	15.0%
1 May 2009	to	30 Jun 2009	9.5%	13.5%
1 Jul 2009	to	31 Jul 2009	8.5%	12.5%
1 Aug 2009	to	31 Aug 2009	7.5%	11.5%
1 Sep 2009	to	30 Jun 2010	6.5%	10.5%
1 Jul 2010	to	28 Feb 2011	5.5%	9.5%
1 May 2011	to	current	4.5%	8.5%

BONUSES AND OTHER VARIABLE REMUNERATION

From 1 March 2013 the tax treatment of bonuses, leave pay, over time, commissions and other variable remuneration is as follows:

- The employer may only deduct the expense in the year in which the amount is paid to the employee.

- The employee is taxed on the amount in the year that it is received and employees' tax is deducted in the month received.

Directors' normal salary is not seen as variable remuneration, even though it may change from year to year.

REDUCTION OR CANCELLATION OF DEBT

The tax treatment of a debt that has been reduced or cancelled will be determined in terms of a new set of ordering rules which apply to debts cancelled or or after 1 January 2013.

If the debt reduction or cancellation:

1. Qualifies as a donation it will be subject to donations tax;
2. Constitutes property of an estate and the debt is reduced or cancelled in favour of an heir or legatee by virtue of a bequest it will be subject to estate duty;
3. Stems from an employer / employee relationship it will be regarded as a taxable fringe benefit and will be subject to PAYE;
4. Falls outside the above three areas and it was used to fund expenditure which qualified for a tax deduction or allowance it will be treated as a recoupment subject to normal tax, unless the debt was used to fund trading stock still on hand in which case the cost of the stock that will be allowed as a deduction must be reduced;
5. Falls outside all of the above it will have capital gains tax (CGT) consequences:
    - If the debt funded an capital asset the reduction amount must be used to reduce the base cost of that asset.
    - If the asset funded by the debt is no longer on hand, or if the debt did not relate to any specific asset, the reduction amount must be used to reduce any assessed capital loss the taxpayer may have.
    - If the taxpayer does not have an assessed capital loss the reduction of the debt will have no further tax implications.
    - If the debt relates to an capital loan due between companies of the same group the above rules do not apply and there will be no CGT.

LEARNERSHIP ALLOWANCES

A learnership allowance will be granted to employers who enter into a registered Learnership agreement prior to 1 October 2016 as follows:

- R30 000 (or R50 000 for learners with disabilities) for each year that the learner is registered for a learnership linked to the employer's trade. The allowance is apportioned for a part of the year if the learnership was not in place for the full 12 months, and
- in the year that the learnership is successfully completed, R30 000 (or R50 000 for learners with disabilities) for each completed year of the learnership if the learnership is for a period of more than 24 months, or
- in the year that the learnership is successfully completed, R30 000 (or R50 000 for learners with disabilities) if the learnership is for a period of less than 24 months.

RESEARCH AND DEVELOPMENT

A company can qualify for an additional 50% deduction over and above the normal tax deduction in respect of research and development expenditure incurred if the research and development relates to:

- discovering new non-obvious scientific or technical knowledge; or
- creating an invention, patent, design or computer copyright or knowledge that is essential to the use of these; or
- developing or significantly improving any of the above.

The company must apply for approval from the Minister of Science and Technology before the additional 50% deduction may be claimed.

From 1 April 2012 plant and machinery acquired and brought into use for the first time for purposes of research and development qualify for a capital allowance on a 40:20:20:20 basis, and buildings used wholly or mainly for research and development qualify for a 5% annual allowance.

WEAR AND TEAR ALLOWANCES

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

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

An updated Interpretation Note 47, together with a Binding General Ruling No 7, was issued on 2 November 2012. These set out write-off periods that are acceptable to SARS. The most common of which are:

Item	**No of years**
Air-conditioners (window type, moving parts only)	6
Aircraft (light passenger, commercial and helicopters)	4
Bulldozers, concrete mixers	3
Cellular telephones	2
Cinema equipment	5
Compressors	4
Computers (mainframe or servers)	5
Computers (personal computers)	3
Computer software (mainframes)	
• purchased	3
• self-developed	1
Computer software (personal computers)	2
Containers	5
Containers (stainless steel – transport of freight)	5
Crop sprayers, fertilizer spreaders, harvesters, ploughs, seed separators	6

Item	**No of years**
Curtains	5
Delivery vehicles	4
Demountable partitions	6
Dental and doctors’ equipment	5
Drilling equipment (water)	5
Drills, electric saws	6
Electrostatic copiers	6
Excavators	4
Fax machines	3
Fishing vessels	12
Fitted carpets	6
Fork-lift trucks, front-end loaders	4
Furniture & fittings	6
Gantry cranes	6
Graders	4
Grinding machines	6
Gymnasium equipment	10
Hairdressers’ equipment	5
Heating equipment	6
Laboratory research equipment	5
Lathes	6
Laundromat equipment	5
Lift installations (goods and passengers)	12
Mobile caravans	5
Mobile cranes	4
Motorcycles	4
Musical instruments	5
Office equipment – mechanical	5
Office equipment – electronic	3
Ovens and heating devices	6
Paintings (valuable)	25
Pallets	4
Passenger cars	5
Photocopying equipment	5
Racehorses	4
Refrigerated milk tankers	4
Refrigeration equipment	6
Security systems	5
Shop fittings	6
Telephone equipment	5
Television and advertising films	4
Textbooks	3
Tractors	4
Trailers	5
Trucks (heavy-duty)	3
Trucks (other)	4
Workshop equipment	5
X-ray equipment	5

“Small” assets costing R7 000 or less can be written off in full in the year of acquisition.

The allowance must be apportioned where the asset is used for only a part of the year.

Urban development zone allowance
The capital allowances will apply to buildings in an urban development zone, brought into use before 31 March 2020.

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

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

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

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

- plant and machinery used directly in a process of manufacture
- machinery, implements and utensils used by a hotelkeeper
- aircraft and ships brought into use after 1 April 1995.
- Research and development plant and machinery brought into use after 1 April 2012

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

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

Industrial buildings
Buildings erected after 30 September 1999 used mainly for manufacture qualify for a 5% annual allowance. The allowance can be claimed by a purchaser of a qualifying building.
From 1 April 2012 buildings used wholly or mainly for research and development purposes also qualify for a 5% annual allowance.

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

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

ASSET REINVESTMENT RELIEF

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

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

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

RESTRAINT OF TRADE

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

LEASEHOLD IMPROVEMENTS

Improvements made to leasehold property in terms of a lease agreement by the lessee must be included in the income of the lessor. Either the stipulated amount or a fair and reasonable value will be included. The lessor may be entitled to discount the value of the improvements over the period of the lease or 25 years whichever is the shorter.

The lessee may deduct leasehold improvement expenditure over the period of the lease only if it was effected in terms of the lease agreement and if the lessor is taxed thereon.

PRE-TRADE EXPENDITURE

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

VALUE ADDED TAX (VAT)

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

Registration
An enterprise whose turnover has exceeded R1 million in any twelve month period or if there are reasonable grounds to believe that turnover will exceed R1 million, is required to register as a VAT vendor.

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

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

SKILLS DEVELOPMENT LEVY (SDL)

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

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

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

TAX ADMINISTRATION ACT

The Tax Administration Act (TAA) came into effect on 1 October 2012 and regulates the administrative provisions applicable to all taxes except customs and excise. The TAA deals with the powers of SARS and the rights of taxpayers as well as dispute resolution procedures, interest and penalties.

The TAA gives SARS the power to conduct search-and-seizure operations without a warrant. It also provides a framework to create a Tax Ombud. Once in place, the Tax Ombud will be responsible for reviewing and addressing complaints by taxpayers and to resolve them by using informal, fair and cost-effective procedures.

Taxpayers' rights
SARS must advise taxpayers of the status of any audit being conducted, and keep the taxpayer up to date with the progress of the audit at regular intervals. Where SARS identifies issues that lead to an additional assessment they must provide reasons for the assessment to the taxpayer within 21 business days of the date of the additional assessment.

Dispute resolution
If a taxpayer disagrees with any tax assessment, an objection may be lodged followed by an appeal to the Tax Board or the Tax Court. A matter can also be dealt with by way of an alternative dispute resolution (ADR) process.

The process is as follows:
Receive assessment and lodge objection thereto within 30 days by way of ADR1 form (or NOO1 form on e-filing), including the grounds for the objection. The Commissioner may condone a "late" objection in certain circumstances.

The Commissioner then has 60 days to request any additional information if required, and 90 days from the date of the objection (or another 60 days after receiving the additional information) to respond. He may allow, partially allow or disallow the objection.

The taxpayer may lodge an appeal against the decision by way of an ADR2 document within 30 days of the notice of disallowance.

The lodging of an appeal does not take away the obligation to pay the assessed tax.

The matter can then be heard by the Tax Board and possibly followed by the Tax Court, or
- proceed directly to the Tax Court, or
- go to ADR and thereafter the Tax Board or Tax Court, if necessary.

Penalties
Penalties are divided between non-compliance and understatement penalties.

A fixed amount non-compliance penalty will apply when a taxpayer fails to comply with administrative provisions, e.g. not submitting a return on time. The penalty is calculated as follows and will be applied for each month that the non-compliance exists:

Assessed loss or taxable income for preceding year	**Penalty**
Assessed loss	R250
R0 – R250 000	R250
R250 001 – R500 000	R500
R500 001 – R1 000 000	R1 000
R1 000 001 – R5 000 000	R2 000
R5 000 001 – R10 000 000	R4 000
R10 000 001 – R50 000 000	R8 000
R50 000 001 – and over	R16 000

A percentage based penalty will apply when a taxpayer has not paid tax as and when required. These penalties vary between 10% and 20% depending on the type of tax involved.

An understatement penalty will apply where the incorrect amount of tax was paid due to a default, omission or incorrect statement in a return or failure to pay the correct amount of tax where no return is required. The understatement penalty will be a percentage of the shortfall of the tax paid, according to the following table:

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

Voluntary disclosure
A taxpayer who approaches SARS to rectify any previous defaults will qualify for relief against penalties as per the table above.

ADVANCE TAX RULINGS

A taxpayer may apply for an advance tax ruling from SARS to obtain certainty and clarity on the Commissioner's interpretation and application of the tax laws on proposed transactions. This ruling will be binding provided full and accurate disclosure has been made. It is proposed that this service will only be available to compliant taxpayers i.e. all tax returns must be submitted up to date and all outstanding taxes paid.

GENERAL ANTI-AVOIDANCE PROVISIONS

The anti-avoidance provisions apply to schemes or arrangements entered into on or after 2 November 2006.

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

TRANSFER DUTIES

Transfer duty on immovable property
Natural persons and all legal persons (including companies, close corporations and trusts) on or after 23 February 2011

0	–	R600 000		0%
R600 001	–	R1 000 000		3% of value over R600 000
R1 000 001	–	R1 500 000	R12 000	+ 5% of value over R1 000 000
R1 500 000 and above			R37 000	+ 8% of value over R1 500 000

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

SECURITIES TRANSFER TAX (STT)

This tax is imposed at a rate of 0.25% on the transfer of listed or unlisted securities. The STT is calculated on the higher of the consideration paid or the market value of the security, and is payable by the purchaser. Securities consist of shares in companies or member's interests in close corporations.

ANNUAL RETURNS FOR COMPANIES AND CLOSE CORPORATIONS

Public and External Companies, Private and Incorporated Companies and Close Corporations are required to lodge annual returns. The due date is 30 business days after the anniversary date of incorporation.

These returns are lodged on the CIPC website. Failure to comply will lead to deregistration which can only be reversed by lodging of the applicable return prior to the final deregistration notice.

FOREIGN EXCHANGE

The regulations and restrictions discussed are in force as at 27 February 2013.

The Financial Surveillance Department (FSD) has delegated authority to the Authorised Dealers to approve certain payments.

Single discretionary allowance
Natural persons older than 18 years

Residents may avail themselves of a single discretionary allowance of R1 million per calendar year without requiring a Tax Clearance Certificate.

This allowance may be apportioned as follows:
- monetary gifts and loans to non-residents or residents temporarily abroad as defined;
- donations to missionaries abroad provided suitable evidence is viewed that the person is a missionary abroad;
- maintenance transfers to mother, father, brother and sister in necessitous circumstances, provided that evidence is supplied on an annual basis for as long as the transfer is made;
- alimony and child support payments provided these are terms of a court order;
- wedding expenses or other special occasions;
- foreign capital allowance;
- travel allowance;
- study allowance subject to evidence of enrolment and expenses incurred.

This allowance may not be used to fund investments.

Natural persons younger than 18
Such persons are entitled to a R200 000 travel allowance.

Temporary export of personal effects and jewellery
A form NEP (declaration of goods leaving the common monetary area (CMA) without accrual of foreign exchange proceeds) must be approved:

- by an Authorised Dealer where the value is greater than R50 000, and
- by the FSD where the value is greater than R200 000.

South Africans going abroad on a temporary basis
- Such persons may utilise the single discretionary allowance set out above and
- Export household and personal effects, motor vehicles, caravans to the overall insured value of R1 million without FSD approval.

Capital transactions
Natural persons
Taxpayers in good standing over the age of 18 may make foreign investments of R4 million per calendar year provided a duly electronically completed “Tax clearance certificate (in respect of foreign investments)” is submitted.

In addition the FSD will consider applications to invest in fixed property for investment purposes.

Companies
Foreign direct investments of up to R500 million per calendar year no longer require approval from the FSD. This applies to new foreign direct investments whereby a minimum of 10% voting right is obtained.

The Authorised Dealers are required to ensure that the investments are bona fide and to report the investments to the FSD. The investments are no longer required to be in the same line of business as the applicant, though passive real estate investments are still excluded from this dispensation. Companies are required to state how the investment is to be funded.

The following conditions will apply:
- Audited financial statements of the target company and its subsidiaries are to be submitted annually to the FSD.
- In the event of the disposal of the investment the funds are to be repatriated to South Africa.
- Any expansion is permitted but must be made without recourse to South African sources.
- South African companies are permitted to acquire 10% to 20% equity and/or voting rights, whichever is the higher, in a foreign entity, which holds investments in a South African company. This dispensation does not apply to foreign direct investments where the South African company holds an equity interest and/or voting rights in excess of 20%.
- South African owned Intellectual Property may not be sold or disposed of without FSD consent.
- Any change in the nature of the foreign entity’s business must be reported to the FSD.
- No reduction or dilution in the voting rights is permitted without prior approval of the FSD.
- Profits earned by foreign branches and offices must be repatriated annually.
- Dividends declared must be repatriated or a report issued to the FSD on how the funds are being utilised offshore, on an annual basis.

- The dividends can be utilised to acquire between 10% and 20% interest in a target entity. This dispensation does not apply where the interest is in excess of 20%.
- Original share certificates must be lodged with the Authorised Dealer unless required for collateral.

Foreign investments in excess of R500 million per investment require FSD approval and have stringent reporting requirements. The FSD also reserves the right to stagger the capital outflows so as to manage any potential impact on the foreign exchange market.

Borrowings
Authorised Dealers of the FSD must approve foreign loans prior to the loans being made. Full details relating to the loans are to be furnished, including denomination, interest rate, repayment terms, relationship between the parties, security and confirmation that there is no South African interest in the lender.

Maximum interest rates:

- Foreign denominated loans may not exceed the base rate + 2% or, in the case of shareholders, the base rate as set by the commercial banks in the foreign country;
- South African Rand denominated loans may not exceed prime overdraft rate + 3% or, in the case of shareholders, prime overdraft rate.

The loans may not be funded from a South African's foreign capital allowance, foreign earnings retained abroad, funds for which amnesty has been granted and / or foreign inheritances.

The combined fees, including raising, administrative and commitment fees may not exceed 5% of the borrowings.

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

Exports of merchandise
Receipts of foreign currency must be sold to an Authorised Dealer within 30 days of accrual. The receipt of the proceeds of exports is monitored through the Electronic Export Monitoring System and the recipients are no longer required to confirm the receipt of export proceeds, unless directed to do so by the FSD. The proceeds of exports must be remitted by no later than 6 months from the date of shipment, unless permission has been obtained from an Authorised Dealer to extend to 12 months, or the FSD for longer periods.

Emigration
Emigrants should apply for emigration facilities from the Authorised Dealer before emigration. They are required to disclose all assets and liabilities (local and foreign) as well as any donations or distributions from inter-vivos trusts received within the last 3 years.

Emigrants qualify for:

- Single discretionary allowance in the normal course;
- Travel allowance of R200 000 if younger than 18;
- Annual foreign capital allowance of R8 million per family unit or R4 million for single person.

Household and personal effects, motor vehicles, caravans, trailers, motor cycles, stamps and coins with an insured value up to R2 million may be exported.

All remaining assets are classified as blocked and documents giving title to such assets must be lodged with the Authorised Dealer.

Most income is eligible for remittance to an emigrant, except in the following cases which requires approval from the FSD:

- Income from an inter-vivos trust;
- a donation or gift received by emigrants within the last three years or a capital distribution from an inter-vivos trust received within the last three years prior to date of departure. All assets are classified as blocked and all documents giving title to such assets must be lodged with the Authorised Dealer.

Inheritances

Estate of South African resident

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

Securities inherited by non-resident are to be endorsed "Non-resident" and the proceeds on disposal are remittable.

Estate of non-resident

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

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

Immigrants

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

Immigrants may freely deal with their foreign assets and income.

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

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

RETENTION OF RECORDS

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

Statutory Records	**Originals**
Memorandum and Articles of association, certificate to commence business, certificate of incorporation and change of name, founding statement, amended founding statement, minute books and notice of minutes.	Indefinite
Share registers, directors' attendance registers, directors' interests	15 years
Cancelled share certificates	12 years
Accounting records	
Books of prime entry, including cash books, creditors' ledgers, debtors' ledgers, fixed asset registers, general ledgers, journals, purchase and sales journals, subsidiary journals and ledgers	15 years
Vouchers, working papers, bank statements, costing records, creditors' invoices and statements, debtors' invoices and statements, goods received notes, journal vouchers, payrolls, purchase orders and invoices, salary and wage registers, VAT records, tax returns and assessments	5 years
Employee records	
Personnel records, payrolls, tax records	5 years
Capital gains tax	
All records to date of sale including base costs and valuations, thereafter from date return lodged	5 years

Records may be retained electronically provided they can be reprinted.

DTI INCENTIVES AND DEVELOPMENT FINANCE

The DTI offer various types of incentives to encourage investment. These include:

- S12i Income Tax allowance incentive introduced to support Greenfield projects (new projects, new manufacturing assets) and Brownfield projects (expansion of existing industrial projects). The support is for capital investment and training.
- The Automotive investment scheme provides a cash grant as an incentive to grow investment in technologically-advanced production.
- Enterprise Investment Programme which encompasses the Manufacturing Investment Programme and Tourism Support Programme.
- Export Marketing and Investment Assistance to assist with costs incurred to develop export markets and develop new foreign direct investment in South Africa.

More information about these and other incentives is available from the DTI website at http://www.dti.gov.za

FOREX RATES

Monthly average rates as published by SARS:

	US$	UK£	€	AUS$
January 2012	8.0106	12.4281	10.3436	8.3402
February 2012	7.6552	12.0965	10.1274	8.2119
March 2012	7.5998	12.0242	10.0356	8.0090
April 2012	7.8275	12.5332	10.3123	8.0995
May 2012	8.1524	12.9780	10.4356	8.1292
June 2012	8.3662	13.0408	10.5202	8.3718
July 2012	8.2466	12.8484	10.1439	8.4886
August 2012	8.2752	12.9984	10.2622	8.6670
September 2012	8.2784	13.3291	10.6378	8.6009
October 2012	8.6444	13.8997	11.2094	8.9013
November 2012	8.7944	14.0445	11.2740	9.1535

Weighted average daily rates as published by the South African Reserve Bank:

	US$	UK£	€	AUS$
31 January 2013	9.0582	14.3300	12.2842	9.4251
31 December 2012	8.4838	13.7112	11.1902	8.8028
30 November 2012	8.7732	14.0827	11.4188	9.1491
31 October 2012	8.6235	13.8916	11.2088	8.9606
28 September 2012	8.2222	13.3438	10.6350	8.5911
31 August 2012	8.4314	13.3195	10.5574	8.6957
31 July 2012	8.2074	12.8774	10.0692	8.6281
29 June 2012	8.3075	12.9775	10.4375	8.4459
31 May 2012	8.5206	13.2154	10.5727	8.2988
30 April 2012	7.7422	12.6131	10.2502	8.0841
30 March 2012	7.6820	12.2835	10.2432	7.9872
29 February 2012	7.4777	11.9060	10.0684	8.0841
31 January 2012	7.8034	12.2852	10.2895	8.3195

PRIME OVERDRAFT RATES

Date of change		**Rate %**
2008	11 April	15.00
	13 June	15.50
	12 December	15.00
2009	6 February	14.00
	25 March	13.00
	4 May	12.00
	29 May	11.00
	14 August	10.50
2010	26 March	10.00
	10 September	9.50
	19 November	9.00
2012	19 July	8.50

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