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TAX GUIDE

2011/2012

PASTEL | ACCOUNTING PAYROLL

INDEX

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& business advisers

BUDGET PROPOSALS

1 **Retirement Funding**
From 1 March 2012, an employer's contribution to retirement funding will be treated as a fringe benefit. Employees will be allowed to deduct up to 22,5% of taxable income for contributions to pension, provident and retirement annuity funds, subject to a minimum of R12 000 and a maximum of R200 000 per year.

2 **Medical Deductions**
From 1 March 2012, monthly contributions to medical schemes and qualifying medical expenses will be converted into tax credits and not treated as deductions.

3 **Foreign Currency Capital Gain**
Due to the cost of compliance and complexity, it is proposed that the capital gain charge for foreign currency be removed for individuals.

4 **Learnership Allowances**
The current learnership tax incentive will expire in September 2011. It has been proposed to extend this for a further five years, subject to an analysis of its effectiveness by all stakeholders.

5 **Youth Employment Subsidy**
A youth employment subsidy in the form of a tax credit to be administered through the PAYE system has been proposed.

6 **Micro Businesses**
From 1 March 2012, micro businesses registered for VAT will no longer be prevented from registering for turnover tax.

7 **Gambling**
From 1 April 2012, all gambling winnings, including the National Lottery, over R25 000 will be subject to a final withholding tax of 15%.

8 **Tax Administration Bill**
This Bill will be introduced in the National Assembly during 2011.

VOLUNTARY DISCLOSURE PROGRAMME

Taxpayers are encouraged to make disclosure and regularise both their tax and exchange control defaults before 31 October 2011.

A default was committed if the taxpayer failed to submit information or returns or has submitted inaccurate information to SARS and/or SARB before 17 February 2010 and 28 February 2010 respectively. Should any uncertainty exist as to whether the applicant qualifies under the tax VDP, an anonymous application may be lodged with SARS. The default may not result in a refund SARS. Furthermore SARS must not have been aware of this default. If the taxpayer is currently being investigated, limited rellef may still be available. The VDP can be withdrawn should it be ascertained that the disclosure was not complete in all material respects.

The capital amount of tax is still payable. Interest (limited to 50% if the applicant is under investigation), penalties (apart from administrative penalties) and additional tax will be waived and no criminal prosecution will be instituted against the taxpayer. For exchange control purposes the applicant may be liable to pay a 10% levy if paid from foreign funds and a 12% levy if paid from local funds.

Dividends tax, applicable to South African resident companies, will come into operation on 1 April 2012.
Dividends tax will be borne by the shareholder at a rate of 10% (subject to any reduction in terms of double taxation agreements).

Exemptions from Dividends Tax

The following shareholders are exempt from dividends tax: South African resident companies, the Government, PBO's, certain exempt bodies, rehabilitation trusts, pension, provident and similar funds, shareholders in a registered micro business, provided the dividend does not exceed R200 000 in a year of assessment, a natural person upon receipt of an interest in a qualifying residence before 31 December 2012 and a non-resident receiving a dividend from a non-resident company which is listed on the JSE, i.e. a dual-listed company.

Withholding Tax Obligations

Dividends tax initially requires the company declaring the dividend to withhold dividends tax on payment. Liability for withholding tax shifts if the dividend is paid to a regulated intermediary which includes central securities depository participants, brokers, collective investment schemes, approved transfer secretaries and listed investment service providers. Dividends tax can be eliminated or reduced upon the timely receipt of a written declaration that the shareholder is entitled to an exemption or to tax treaty relief respectively.

Use of Unutilised STC Credits

Unutilised STC credits must be utilised within five years of the changeover to the dividends tax system. STC credits will be exhausted first.

Revised Dividend Definition

As from 1 January 2011, the definition of a dividend has been simplified and includes all distributions to a shareholder other than a reduction of contributed tax capital (which consists of untainted share premium and share capital of a company), capitilisation issues, a share buy-back of a JSE listed company, or a redemption of a participatory interest in a foreign collective investment scheme.

In order for a distribution of contributed tax capital not to be regarded as a dividend the directors must, immediately prior to the distribution, record in writing that contributed tax capital is being distributed.

Introduction of Value-Extraction Tax (VET)

This is an anti-avoidance measure similar to the deemed dividend provisions which will be introduced when dividends tax is effective. It is a separate tax levied on the company and not the shareholder. VET arises only in respect of South African resident companies seeking to extract value without declaring dividends and is calculated at 10% of the value extracted. It is applicable where a company provides low interest loans or advances to a person who is connected to the company, releases or relieves loans previously made to such connected person, settles a loan owed to a third party by such connected person or ceases to be a South African resident.

Passive Holding Company

To prevent the use of private investment companies avoiding the payment of dividends tax, passive holding companies, which earn more than 80% of their gross income in the form of interest, dividends and other passive income derived from financial instruments and in which more than 50% of the participation rights are held by five or less resident natural persons, will be taxed at 10% on their dividend income and at a rate of 40% on their other taxable income, but will not be required to subject dividends they declare to the dividends tax.

TAX RATES COMPANIES

For years of assessment ending during the following periods:

1 April 1993 - 31 March 1994	40%
1 April 1994 - 31 March 1999	35%
1 April 1999 - 31 March 2005	30%
1 April 2005 - 31 March 2008	29%
1 April 2008 - 31 March 2012	28%

Note: Companies qualifying under the Tax Holiday legislation (Section 37H) were subject to tax at 0%. The Tax Holiday ended on 30 September 1999.

Branch Profits Tax

For years of assessment ending during the following periods:

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

Note: As from years of assessment ending on or after 31 March 2008 these rates apply to the profits of a non-resident company.

STC

Dividend declared on or after	17 March 1993	15%
Dividend declared on or after	22 June 1994	25%
Dividend declared on or after	14 March 1996	12,5%
Dividend declared on or after	1 October 2007	10%

TAX IMPACT COMPANIES

	Tax year			
	2009	2010	2011	2012
	R	R	R	R
Taxable income	100,00	100,00	100,00	100,00
Less: Normal tax	28,00	28,00	28,00	28,00
	72,00	72,00	72,00	72,00
Less: STC	6,55	6,55	6,55	6,55
Available for distribution	65,45	65,45	65,45	65,45
Total tax paid	34,55	34,55	34,55	34,55
Effective rate of tax	34,55%	34,55%	34,55%	34,55%

Assumes all profits are declared as dividends

TAX RATES INDIVIDUALS - 2011

Taxable income	Rates of tax	
R 0 - R140 000	18% of each R1	
R140 001 - R221 000	R 25 200 + 25% of the amount over	R140 000
R221 001 - R305 000	R 45 450 + 30% of the amount over	R221 000
R305 001 - R431 000	R 70 650 + 35% of the amount over	R305 000
R431 001 - R552 000	R114 750 + 38% of the amount over	R431 000
R552 001 +	R160 730 + 40% of the amount over	R552 000

TAX RATES INDIVIDUALS - 2012

Taxable income	Rates of tax	
R 0 - R150 000	18% of each R1	
R150 001 - R235 000	R 27 000 + 25% of the amount over	R150 000
R235 001 - R325 000	R 48 250 + 30% of the amount over	R235 000
R325 001 - R455 000	R 75 250 + 35% of the amount over	R325 000
R455 001 - R580 000	R120 750 + 38% of the amount over	R455 000
R580 001 +	R168 250 + 40% of the amount over	R580 000

TAX THRESHOLDS

	Taxable income 2011	Taxable income 2012
Persons under 65	R57 000	R 59 750
Persons 65 and under 75	R88 528	R 93 150
Persons 75 and over	R88 528	R104 261

TAX REBATES

Amounts deductible from the tax payable	2011	2012
Persons under 65	R10 260	R 10 755
Persons 65 and under 75	R15 935	R 16 767
Persons 75 and over	R15 935	R 18 767

These rebates are not available to either normal or special trusts, and companies.

SKILLS DEVELOPMENT LEVY

The Skills Development Act seeks to restructure the existing training system and upgrade the level of skills and access to skills by workers.

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

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

Employers paying annual remuneration of less than R500 000 are exempt from this levy as from 1 August 2005.

TAX RATES — TRUSTS - 2011 AND 2012

Taxable income	**Rate of tax**
All taxable income	40% of each R1

Special trusts are taxed at the rates applicable to individuals.

A *special trust* is one created solely for the benefit of a person affected by a mental illness or serious physical disability which prevents that person from earning sufficient income to maintain himself, or a testamentary trust established solely for the benefit of minor children who are relatives of the deceased. Where the person for whose benefit the trust was established dies prior to or on the last day of the year of assessment or the youngest beneficiary, in the case of a testamentary trust, turns 21 years of age prior to or on the last day of the year of assessment, the trust will no longer be regarded as a special trust.

TRUSTS — LOSSES

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

TURNOVER TAX — MICRO BUSINESSES

As from 1 March 2009 a simplified turnover-based tax system was implemented for small sole proprietors, partnerships and incorporated businesses with a turnover less than R1 million per year.

This turnover-based presumptive tax system is elective. After joining the system, qualifying businesses are to remain in the system for a minimum of three years (provided they remain within the monetary threshold). Once a business has elected to migrate out of the system, it will not be able to migrate back for a period of three years. Personal services rendered under employment-like conditions and certain professional services are **excluded** from this tax system.

Turnover	**Rates of tax 2011**
R 0 - R 100 000	Nil
R100 001 - R 300 000	1% of the amount over R 100 000
R300 001 - R 500 000	R 2 000 + 3% of the amount over R 300 000
R500 001 - R 750 000	R 8 000 + 5% of the amount over R 500 000
R750 001 - R1 000 000	R 20 500 + 7% of the amount over R 750 000

Turnover	**Rates of tax 2012**
R 0 - R 150 000	Nil
R150 001 - R 300 000	1% of the amount over R 150 000
R300 001 - R 500 000	R 1 500 + 3% of the amount over R 300 000
R500 001 - R 750 000	R 7 500 + 5% of the amount over R 500 000
R750 001 - R1 000 000	R 20 000 + 7% of the amount over R 750 000

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

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

- *A labour broker* is a natural person who, for reward, provides a client with other persons to render a service for the client or procures other persons for the client and remunerates such persons.
- *A personal service provider* is a company (including a close corporation) or trust where any service rendered on behalf of the entity to its client is rendered personally by any person who is a connected person in relation to such entity, and one of the following provisions apply:
  - the person would have been regarded as an employee of the client, if the service was not rendered through an entity; or
  - the person or entity rendering the service must perform such service mainly at the premises of the client and such person or entity is subject to the control or supervision of such client as to the manner in which the duties are performed; or
  - more than 80% of the income derived from services rendered is received from one client or associated person in relation to the client.
- The entity will, however, not be regarded as a *personal service provider* where such entity employs three or more full-time employees throughout the year of assessment, none of whom are connected persons in relation to such entity.

Implications

- A labour broker not in possession of an exemption certificate will be subject to PAYE on income received at the rates applicable to individual taxpayers. Deductions of expenditure will be limited to remuneration paid to employees.
- A personal service provider will be subject to PAYE at the rate of 33% (2008 : 34%) in the case of a company and 40% in the case of a trust.
- No PAYE will be required to be deducted where the entity provides an affidavit confirming that it does not receive more than 80% of its income from one source.
- The deemed employee may apply to SARS for a tax directive for a lower rate of tax.
- Deductions available to personal service providers will be limited to remuneration to employees, contributions to pension, provident and benefit funds, legal expenses, bad debts, expenses in respect of premises, finance charges, insurance, repairs, fuel and maintenance in respect of assets used wholly and exclusively for trade and any amount previously included in taxable income and subsequently refunded by the recipient.

Years of assessment ending between 1 April 2010 and 31 March 2011

Taxable income	Rates of tax
R 0 - R 57 000	Nil
R 57 001 - R300 000	10% of the amount over R 57 000
R300 001 +	R24 300 + 28% of the amount over R300 000

Years of assessment ending between 1 April 2011 and 31 March 2012

Taxable income	Rates of tax
R 0 - R 59 750	Nil
R 59 751 - R300 000	10% of the amount over R 59 750
R300 001 +	R24 025 + 28% of the amount over R300 000

Applies if:

- All shareholders or members throughout the year of assessment are natural persons who hold no shares in any other *private* companies or members' interest in any other close corporations or co-operatives other than those which:
  - are inactive and have assets of less than R5 000; or
  - have taken steps to liquidate, wind up or deregister (effective for years of assessment commencing on or after 1 January 2011).
- Gross income for the year of assessment does not exceed R14 million (2006 : R6 million)
- Not more than 20% of the gross income and all the capital gains consist collectively of **investment income** and income from rendering a **personal service**.

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

  Personal service includes any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, consulting, draughtsmanship, education, engineering, financial service broking, health, information technology, journalism, law, management, real estate broking, research, sport, surveying, translation, valuation or veterinary science, which is performed personally by any person who holds an interest in the company or close corporation, except where such small business corporation employs three or more unconnected full-time employees for core operations.
- The company, co-operative or close corporation is not an employment entity.

Investment incentive

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

EXEMPTIONS INDIVIDUALS

- Dividends received or accrued from South African companies are generally not subject to tax.
- All interest received by or accrued to non-residents is exempt from tax provided the individual is physically absent from South Africa for at least 183 days or did not carry on business in South Africa through a permanent establishment during the year of assessment.
- Interest received by resident natural persons:

Persons under 65 years	R22 800	(2011 : R22 300)
Persons aged 65 years and over	R33 000	(2011 : R32 000)

  Interest includes distributions from property unit trusts and foreign interest and dividends. The foreign interest and dividend exemption is limited to R3 700 (2010 : R3 500).
- Unemployment insurance benefits.

Termination Lump Sum from Employer

As from 1 March 2011 employer provided severance payments for reasons of age, ill health and retrenchment are aligned with the taxation of lump sum benefits, including the R315 000 (2011 : R300 000) exemption. This exemption does not apply to directors of companies or members of close corporations if they at any time held an interest of more than 5% in that entity.

Prior to 1 March 2011 a once off exemption of R30 000 applied where an employee had reached the age of 55 years or the termination of services was due to ill health or the employee was retrenched because the employer had ceased to operate or because of a reduction in personnel.

Compensation

As from 1 March 2007, compensation awards paid by an employer on the death of an employee in the course of employment will be exempt to the extent of R300 000 less any previous retrenchment exemption enjoyed by that employee.

DEDUCTIONS EMPLOYEES

Salaried employees or holders of office are restricted to deducting the following expenditure from their remuneration:

- Bad debts allowance
- Deductions in respect of contributions to a pension fund or retirement annuity fund
- Donations to certain Public Benefit Organisations
- Doubtful debts allowance
- Home office expenses, subject to requirements
- Legal expenses
- Medical expenses and medical aid contributions
- Premiums paid in terms of an allowable insurance policy
  - to the extent that the policy covers the person against loss of income as a result of illness, injury, disability or unemployment, and
  - in respect of which all amounts payable in terms of the policy constitutes income as defined
- Refunded awards for services rendered and refunded restraint of trade awards as from 1 March 2008
- Wear and tear allowance.

Current Pension Fund Contributions

7,5% of remuneration from retirement-funding employment or R1 750, whichever is the greater. Retirement-funding employment refers to income which is taken into account to determine contributions to a pension or provident fund.

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

Arrear Pension Fund Contributions

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

Current Retirement Annuity Fund Contributions

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

Reinstated Retirement Annuity Fund Contributions

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

Medical Expenses and Medical Aid Deductions

- **65 years and older:** May claim all qualifying expenditure incurred and medical aid contributions paid by the taxpayer or employer.
- **Younger than 65 years:** May claim medical aid contributions, paid by the taxpayer or employer, up to the capped amount and qualifying expenditure to the extent that it exceeds 7,5% of taxable income before this deduction.
- **Younger than 65 years (but with an immediate family member who has a disability):** If the taxpayer, spouse or child (including an adopted child or stepchild) has a disability, the deduction includes all qualifying expenditure and medical aid contributions paid by the taxpayer or employer.
- The capped amount is calculated at R720 (2011 : R670) for each of the first two beneficiaries and R440 (2011 : R410) for each additional beneficiary as defined by the medical aid fund.
- Qualifying expenditure includes:
  - own contributions to medical aid funds in excess of capped amount
  - medical aid fringe benefit determined by the employer in excess of capped amount
  - payments to medical practitioners, nursing homes and hospitals
  - payments to pharmacists for prescribed medicines
  - payments for physical disabilities, including remedial teaching and expenditure incurred for mentally handicapped persons
  - payments for the benefit of any dependents.
- *Disability* means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of physical, sensory, communication, intellectual or mental impairment, if the limitation lasts more than a year and is diagnosed by a registered medical practitioner.
- Recoveries of expenses (including amounts received from medical aid savings account) reduce the claim.
- Expenditure paid by a taxpayer on behalf of a spouse or children must be claimed by the spouse who paid the expense.

RETIREMENT LUMP SUM BENEFITS

As from 1 October 2007, the **taxable portion** of a lump sum from a pension, provident or retirement annuity fund on retirement or death is the lump sum less any contributions that have not been allowed as a tax deduction **plus the taxable portion of all lump sums previously received**. This amount is subject to tax at the following rates l**ess any tax previously paid:**

Taxable portion of lump sum	Rates of tax
R 0 - R315 000	0%
R315 001 - R630 000	18% of the amount over R315 000
R630 001 - R945 000	R 56 700 + 27% of the amount over R630 000
R945 001 +	R141 750 + 36% of the amount over R945 000

The taxable lump sum cannot be set-off against any assessed loss of the taxpayer.

WITHDRAWAL LUMP SUM BENEFITS

As from 1 March 2009, the **taxable portion** of a pre-retirement lump sum from a pension or provident fund is the withdrawal less any transfer to a new fund **plus all withdrawal lump sums previously received**. This amount is subject to tax at the following rates **less any tax previously paid:**

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

RING-FENCED ASSESSED LOSSES

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

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

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

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

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

PROVISIONAL TAX

All provisional taxpayers are required to remit two provisional tax payments a year. A third voluntary payment may be made to avoid interest being charged.

First Year of Assessment

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

First Payment

One half of the total tax in respect of the estimated taxable income for the year is payable six months before the financial year end. The estimate of taxable income may not be less than the basic amount without the consent of SARS.

Second Payment

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

- **Actual taxable income equal to or less than R1 million**
  To avoid any additional tax on the underestimation of taxable income this can be based on the basic amount as defined, or if a lower estimate is used, the estimate must be within 90% of the taxable income finally assessed.
- **Actual taxable income exceeds R1 million**
  To avoid any additional tax on the underestimation the estimate must be within 80% of the taxable income finally assessed.

If the above requirements are not met, additional tax of 20% of the provisional tax underpaid may be imposed.

Third Payment

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

Basic Amount

The basic amount is the taxable income of the latest preceding year of assessment increased by 8% p.a. if that assessment is more than a year old.

Permissable Reductions in the Basic Amount

Capital gains and taxable portions of lump sums are not included in the basic amount for the first period or the second period, where the taxable income is not expected to exceed R1 million. If however an estimate lower than the basic amount is used, such amounts must be included in the estimate. These amounts have to be included in the second provisional tax payments where the taxable income is expected to exceed R1 million.

Estimates

SARS has the right to increase any provisional tax estimate, even if based on the basic amount, to an amount considered reasonable.

Persons over 65

Persons over 65 years, excluding directors of companies and members of close corporations, whose taxable income does not exceed R120 000 (2009 : R80 000) are exempt from provisional tax, provided that such income consists exclusively of remuneration, rental, interest or dividends.

Persons under 65

Persons under 65 years who do not carry on business, and whose taxable income does not exceed the tax threshold or whose interest, foreign dividends and rental income does not exceed R20 000 (2008 : R10 000) are exempt from provisional tax.

PRE–TRADING EXPENDITURE

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

PRE–PRODUCTION INTEREST

Interest and related finance charges incurred on any borrowing for the acquisition, installation, erection or construction of any machinery, plant, building or improvements to a building or other assets, including land, are deductible when the asset is brought into use in the production of income.

BURSARIES AND SCHOLARSHIPS

Bona fide scholarships or bursaries granted to enable any person to study at a recognised educational institution are exempt from tax. Where the benefit is granted to an employee, the exemption will not apply unless the employee agrees to reimburse the employer in the event that the studies are not completed. Where the beneficiary is a relative of the employee, the exemption will only apply if the annual remuneration of the employee is less than R100 000 (2007 : R60 000) and to the extent that the bursary does not exceed R10 000 (2007 : R3 000).

BROAD BASED EMPLOYEE EQUITY

Employer companies may issue qualifying shares up to a cumulative limit of R50 000 (2008 : R9 000) per employee in respect of the current tax year and the immediately preceding four (2008 : two) tax years. A tax deduction limited to a maximum of R10 000 (2008 : R3 000) per year per employee will be allowed in the employer's hands. Provided the employee holds onto the shares for at least five years there will be no tax consequences for the employee, other than CGT.

RESTRAINT OF TRADE

Gross Income

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

Deduction

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

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

No deduction is allowed where the amount did not constitute income in the hands of the recipient.

ADMINISTRATIVE PENALTIES

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

Assessed loss or taxable income for preceding year	Penalty
Assessed loss	R 250
R 0 – R 250 000	R 250
R 250 001 – R 500 000	R 500
R 500 001 – R 1 000 000	R 1 000
R 1 000 001 – R 5 000 000	R 2 000
R 5 000 001 – R10 000 000	R 4 000
R10 000 001 – R50 000 000	R 8 000
Above R50 000 000	R16 000

The penalty will automatically be imposed monthly until the taxpayer remedies the non-compliance.

- **Late payment of PAYE and provisional tax attracts a penalty of 10% of the amount due.**
- **The late submission of the PAYE reconciliation attracts a penalty of 10% of the PAYE deducted for the tax year.**

TRAVEL ALLOWANCES

Fixed Travel Allowances

As from 1 March 2010, 80% (2007 : 60%) of the fixed travel allowance is subject to PAYE. As from 1 March 2011, where the employer is satisfied that at least 80% of the use of the vehicle for the year of assessment will be for businss purposes, the inclusion rates may be limited to 20%. The full allowance is disclosed on the employee's IRP5 certificate, irrespective of the quantum of business travel.

Reimbursive Travel Expenses

Where an employee receives a reimbursement based on the actual business kilometres travelled, no other compensation is paid to the employee and the cost is calculated in accordance with the prescribed rate of 305 cents (2009 : 292 cents) per kilometre, no employees tax need be deducted, provided the business travel does not exceed 8 000 kilometres per year. The reimbursement must be disclosed under code 3703 on the IRP5 certificate. No PAYE is withheld and the amount is not subject to taxation on assessment.

If the business kilometres travelled exceed 8 000 kilometres per year, or if the reimbursive rate per kilometre exceeds the prescribed rate, or if other compensation is paid to the employee the allowance must be disclosed separately under code 3702 on the IRP5 certificate. No PAYE is withheld but the amount is subject to taxation on assessment.

DEDUCTIONS TRAVEL EXPENSES

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

Prior to 1 March 2010, in the absence of accurate travel records, the first 18 000 kilometres travelled were deemed private travel and the maximum business kilometres which were claimable was limited to 14 000 kilometres.

As from 1 March 2010, the claim must be based on the actual distance travelled as supported by a log book and the deemed kilometres method may no longer be used.

DEEMED EXPENDITURE - 2011

Cost of vehicle	**Fixed R**	**Fuel c**	**Repairs c**
Does not exceed R40 000	14 672	58,6	21,7
Exceeds R 40 000 but not R 80 000	29 106	58,6	21,7
Exceeds R 80 000 but not R120 000	39 928	62,5	24,2
Exceeds R120 000 but not R160 000	50 749	68,6	28,0
Exceeds R160 000 but not R200 000	63 424	68,8	41,1
Exceeds R200 000 but not R240 000	76 041	81,5	46,4
Exceeds R240 000 but not R280 000	86 211	81,5	46,4
Exceeds R280 000 but not R320 000	96 260	85,7	49,4
Exceeds R320 000 but not R360 000	106 367	94,6	56,2
Exceeds R360 000 but not R400 000	116 012	110,3	75,2
Exceeds R400 000	116 012	110,3	75,2

DEEMED EXPENDITURE - 2012

Cost of vehicle	**Fixed R**	**Fuel c**	**Repairs c**
Does not exceed R60 000	19 492	64,6	26,4
Exceeds R 60 001 but not R120 000	38 726	68,0	29,2
Exceeds R120 001 but not R180 000	52 594	71,3	31,9
Exceeds R180 001 but not R240 000	66 440	77,7	35,0
Exceeds R240 001 but not R300 000	79 185	87,0	44,7
Exceeds R300 001 but not R360 000	91 873	93,9	54,2
Exceeds R360 001 but not R420 000	105 809	100,9	65,8
Exceeds R420 001 but not R480 000	119 683	113,1	67,6
Exceeding R480 000	119 683	113,1	67,6

DEDUCTIONS DONATIONS

Donations to certain designated PBO's will qualify for a tax deduction
Individuals - limited to 10% (2007 : 5%) of taxable income before the deduction of donations and medical expenses
Companies - limited to 10% (2007 : 5%) of taxable income before the deduction of donations.

The cash equivalent of taxable benefits granted to employees is taxable.

Use of Company Owned Motor Vehicle

The determined value for the fringe benefit is the cash cost including VAT but excluding finance charges and interest. The employee will be taxed on 3.5% (2011 : 2.5%) per month of the determined value of the motor vehicle less any consideration paid by the employee towards the cost of the vehicle.
The fringe benefit is reduced to 3.25% if, at the time acquired, it is subject to a maintenance plan for no less than three years and/or 60 000 kilometres.
Where an employee is given the use of more than one motor vehicle and can show that each vehicle is used primarily for business purposes, the value placed on the private use of all the vehicles is determined according to the value attributed to the vehicle carrying the highest value for private use.
For PAYE purposes the employer is required to include in the employee's monthly remuneration 80% of the fringe benefit. The inclusion rate may be limited to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for a year of assessment will be for business purposes.
On assessment the Commissioner must, provided he is satisfied that accurate records have been kept in respect of distances travelled for:

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

No value is placed on the private use of a company owned vehicle if:

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

The provision of a company owned vehicle constitutes a deemed supply which attracts output VAT for the vendor employer.
The deemed consideration is as follows:

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

Medical Aid Contributions

As from 1 March 2010, the full contribution by an employer is a fringe benefit.

The amount by which an employer's contribution to a medical aid fund exceeds R720 (2011 : R670) for each of the first two beneficiaries as defined by the medical aid fund and R440 (2011 : R410) for each additional beneficiary is subject to PAYE. If the employer makes a lump sum payment for all employees, the effective benefit is determined in accordance with a formula, which will have the effect of apportionment amongst all employees concerned.

Subsistence Allowances

If an employee is obliged to spend at least one night away from his usual residence in South Africa on business, the employer may pay an allowance for personal subsistence and incidental costs without such amounts being included in the employee's taxable income, subject to the employee travelling for business by no later than the end of the following month.

If such allowance is paid to an employee and that employee does not travel for business purposes by the end of the following month, the allowance becomes subject to PAYE in that month.
If the allowances do not exceed the amounts or periods detailed below, the total allowance must be reflected under code 3714 on the IRP5 certificate. Where the allowances exceed the amounts or periods detailed below, the total allowance must be reflected under code 3704 (local) or 3715 (foreign) on the IRP5 certificate. The following amounts are deemed to have been expended by an employee in respect of a subsistence allowance:

Local travel

- R88 (2011 : R85) per day or part of a day for incidental costs; or
- R286 (2011 : R276) per day or part of a day for meals and incidental costs.

Where an allowance is paid to an employee to cover the cost of accommodation, meals or other incidental costs, the employee has to prove how much was spent while away on business. This claim is limited to the allowance received.

Overseas travel

Actual accommodation costs plus an allowance per country as set out on www.sars.gov.za (2009 : $215) per day for meals and incidental costs incurred outside South Africa. The deemed expenditure will not apply where the absence is for a continuous period in excess of six weeks.

Low Interest/Interest-Free Loans

- As from 1 March 2011 the amount taxed is the difference between interest payable on the loan by the employee and the repo-rate + 1% (2010 : official interest rate).
- Short-term loans, which are below R3 000, are not taxable benefits
- A loan to the employee to enable him to further his own studies is not a taxable benefit.

Holiday Accommodation

The employee is taxed on the prevailing market rate if the property is owned by the employer or rented from an associated entity; or the actual rental if the employer rented the accommodation.

Long Service and Bravery Awards

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

Use of Business Cellphones and Computers

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

Residential Accommodation Supplied by Employer

As from 1 March 1999, where accommodation is provided to an employee and is not owned by the employer or associated entity, the value of the fringe benefit to be taxed shall be the greater of the formula value or the rental and other expenses paid by the employer.
If housing is provided for a *bona fide* business purpose where it is customary to provide free or subsidised accommodation to employees and it is necessary for the particular employer to provide free accommodation for proper performance of the employee's duties or as a result of frequent movement of employees or lack of existing accommodation the formula may be used.
As from 1 March 2008, no rental value will be placed on the:

- supply of accommodation to an employee away from his usual place of residence in South Africa for the performing of duties
- supply of accommodation in South Africa to an employee away from his usual place of residence outside South Africa for a two year period. This concession does not apply if the employee was present in South Africa for more than 90 days in the tax year prior to the date of arrival for the purpose of his duties. There is a monthly monetary cap of R25 000.

RELOCATION OF AN EMPLOYEE

The following items of expenditure borne by the employer for relocation, appointment or termination are exempt from tax:

- transportation of the employee, members of his household and personal possessions
- hiring temporary residential accommodation for the employee and members of his household for up to 183 days after transfer
- such costs as SARS may allow, e.g. new school uniforms, replacement of curtains, bond registration and legal fees, transfer duty, motor vehicle registration fees, cancellation of bond and agent's fee on sale of previous residence

Expenses which do not qualify are loss on sale of the previous residence and architect's fees for design of or alterations to a new residence.

PUBLIC BENEFIT ORGANISATIONS

An organisation qualifies as a PBO if it carries out public benefit activities in a non-profit manner substantially in South Africa.

The annual trading income exemption for Public Benefit Organisations is R200 000 (2010 : R150 000).

RECREATIONAL CLUBS

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

The annual trading income exemption for recreational clubs is R120 000 (2010 : R100 000).

RESIDENTIAL BUILDING ALLOWANCES

Asset type	Conditions for annual allowance	Annual allowance
Residential buildings	Building projects 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 South Africa and owned by the tax-payer 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 R200 000 for a stand alone unit or R250 000 in the case of an apartment
Employee housing	50% of the costs incurred or funds advanced or donated to finance the erection 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

Asset type	Conditions for annual allowance	Annual allowance
Industrial buildings or improvements	Construction of buildings or improvements on or after 1 January 1989, provided building is used wholly or mainly for carrying on process of manufacture or similar process Construction of buildings or improvements on or after 1 July 1996 to 30 September 1999 and the buildings or the improvements are brought into use before 31 March 2000 and used in a process of manufacture or similar process	5% of cost (previously 2%) (note 3) 10% of cost (note 3)
New commercial buildings (other than residential accommodation) (note 1)	Any cost incurred in erecting any new and unused building, or improving an existiing 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 1)	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 Improvements to existing buildings	20% in first year 8% in each of the 10 subsequent years 20% of cost
Hotel buildings	Construction of buildings or improvements, provided used in trade as hotelkeeper or used by lessee in trade as hotelkeeper Refurbishments (note 2) which commenced on or after 17 March 1993	5% of cost 20% of cost
Hotel equipment	Machinery, implements, utensils or articles brought into use on or after 16 December 1989	20% of cost
Aircraft	Acquired on or after 1 April 1995	20% of cost (note 3)
Farming equipment	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 ship, acquired on or after 1 April 1995	20% of cost (note 3)
Plant and machinery	New or unused manufacturing assets acquired on or after 1 March 2002 will be subject to wear and tear allowances over four years	40% in 1st year 20% in each of the 3 subsequent years (note 4)
Plant and machinery (small business corporations only)	New and unused 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 licence from a goverment 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 Allowances available to owners as users of the building or as lessors/financiers
2 Refurbishment is defined as any work undertaken within the existing building framework
3 Recoupments of allowances can be deducted from the cost of the replacement asset
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 allowances and not the wear and tear rates

WEAR AND TEAR ALLOWANCES

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

Type of asset	No. of years for write-off
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
Artefacts	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
Cheque-writing machines	6
Cinema equipment	5
Cold drink dispensers	6
Communication systems	5
Compressors	4
Computers	
mainframe	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
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
Other	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

Type of asset	No. of years for write-off
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
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
Passenger cars	5
Patterns, tooling and dies	3
Pellet mills	4
Perforating equipment	6
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

Type of asset	No. of years for write-off
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
Staff training equipment	5
Surge bins	4
Surveyors:	
Field equipment	10
Instruments	5
Tape-recorders	5
Telephone 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
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

Notes

1 Wear and tear may be claimed on either a diminishing value method or on a straight-line basis, in which case certain requirements apply

2 Removal 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 llife of the assets

3 When an asset is acquired for no consideration, a wear and tear deduction may be claimed on its market value at date of acquisition

4 Where an asset is acquired from a connected person, wear and tear may only be claimed on the original cost to the seller less allowances claimed by the connected person plus recoupments and CGT included in the seller's income

5 The acquisition of "small" items at a cost of less than R7 000 (2009 : R5 000) per item may be written off in full during the year of acquisition

STRATEGIC ALLOWANCES

Asset type	Conditions for annual allowance	Annual allowance
Strategic projects (note)	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 Any other qualifying strategic projects	100% of cost 50% of cost
Pipelines	New and unused structures contracted for and construction commenced on or after 23 February 2000	10% of cost
Electricity and telephone transmission lines and railway tracks	New and unused structures contracted for and construction commenced on or after 23 February 2000	5% of cost
Airport hangars and runways	Construction commenced on or after 1 April 2001	5% of cost
Rolling stock	Brought into use on or after 1 January 2008	20% of cost
Port assets	Brought into use for the first time by the taxpayer on or after 1 January 2008	5% of cost
Environmental assets	As from 8 January 2008 for new and unused assets Environmental treatment and recycling assets Environmental waste disposal assets of a permanent nature	40% in 1st year 20% in each of the 3 subsequent years 5% of cost
Energy efficiency savings	All forms of energy efficiency savings as reflected on an energy savings certificate in any year of assessment ending before 1 January 2020	Determined in accordance with a formula

Note:
- The allowance is limited to the income derived from the industrial project and the excess is deductible in the immediately succeeding year of assessment, subject to certain other limits

CAPITAL GAINS TAX

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

Disposals

CGT is triggered on disposal of an asset.

- ***Important disposals include:***
  - abandonment, scrapping, loss, donation
  - vesting of an interest in an asset of a trust in the beneficiary
  - distribution of an asset by a company to a shareholder
  - granting, renewal, extension or excercise of an option
- ***Deemed disposals include:***
  - termination of South African residency
  - a change in the use of assets
  - the transfer of an asset by a permanent establishment
  - the reduction or waiver of a debt by a creditor without full consideration, subject to certain exclusions
- ***Disposals exclude:***
  - the transfer of an asset as security for a debt or the release of such security
  - issue of, or grant of an option to acquire, a share, debenture or unit trust
  - loans and the transfer or release of asset securing debt

Calculation of a Capital Gain/Loss

- A capital gain or loss is the difference between the proceeds and the base cost. A capital loss is carried forward and is available for setoff in the following tax year

Base Cost

- ***Expenditure included in the base cost:***
  - cost of acquisition, transfer, stamp duty, STT and similar costs
  - remuneration of advisors, consultants and agents
  - costs of moving an asset and improvement costs
- ***Expenditure excluded from the base cost:***
  - expenses deductible for income tax purposes
  - interest paid, raising fees (except in the case of listed shares and business assets)
  - expenses initially recorded and subsequently recovered
- ***Methods for asset acquired before 1 October 2001:***
  - Time apportionment base cost

    Example:

    If an asset cost R250 000 on 1 October 1998 and was sold on 30 September 2010 for R450 000, as CGT was implemented on 1 October 2001, the base cost is:

Original cost expenditure	R250 000	
Add:	R 50 000*	
*Proceeds from disposal	R450 000	x $^{3}/_{12}$
Less: Base cost expenditure	(R250 000)	
Time apportionment base cost	R300 000	

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

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

  - Valuation as at 1 October 2001
  - 20% of the proceeds
- ***Part disposals:***
  - Base cost to be apportioned

Proceeds

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

Inclusion Rates And Effective Rates

	Inclusion rate	Max effective rate
Individuals and special trusts	25%	10%
Companies	50%	14%
Trusts	50%	20%

Unit Trusts (CIS): the unitholder is taxable

Retirement Funds: not taxable

Exclusions and Rebates

- *Annual exclusion*
  Natural persons and special trusts R20 000 (2010 : R17 500).
  Natural persons in the year of death R200 000 (2010 : R120 000)
- *Exclusions*
  - A primary residence, owned by a natural person or a special trust, used for domestic residential purposes, where the proceeds do not exceed R2 milllion. Where the proceeds exceed R2 million, the exclusion is R1,5 million (2006 : R1 million) of the calculated capital gain.
  - Personal use assets, not used for the carrying on of a trade
  - Lump sums from insurance and retirement benefits. This exclusion does not apply to second-hand policies
  - Small business assets or an interest in a small business, limited to R900 000 (2010 : R750 000) if certain requirements are met, including:
    - the gross asset value of the business is less than R5 million
    - the natural person was a sole proprietor, partner or at least 10% shareholder for at least five years, is at least 55 years old, or suffers from ill-health, is infirm or deceased
  - Compensation, prizes and donations to certain PBO's
  - Assets used by registered micro businesses for business purposes

Rollover Relief

Gain is disregarded until ultimate disposal of the assets or in the case of a replacement asset it is recognised over a five year period commencing when the replacement asset is brought into use unless disposed of earlier

- Certain involuntary disposals and the replacement of qualifying business assets
- Transfer of assets between spouses
- Shareblock conversions to sectional title
- Transfer of residence from a qualifying corporate entity or trust between 11 February 2009 and 31 December 2012. If transfer occurred after 1 October 2010 transferring entity to be terminated

Corporate Transactions

Income tax and CGT relief exists for certain transactions. These are:

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

Valuations

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

- Where the market value of any intangible asset exceeds R1 million
- Where the market value of any unlisted investment exceeds R10 million
- Where the market value of any other asset exceeds R10 million

Non-resident Sellers of Immovable Property

As from 1 September 2007, where a non-resident disposes of immovable property in South Africa for R2 million or more, the purchaser will be obliged to withhold the following taxes from the proceeds:

Seller's status	*Withholding tax*
Natural person	5,0%
Company	7,5%
Trust	10,0%

PRE-PAID EXPENDITURE

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

This does not apply:

- where the goods, services or benefits, in respect of which the expenditure was incurred, are supplied or rendered within six months after the end of the year of assessment
- where the total pre-paid expenditure does not exceed R80 000 (2008 : R50 000)
- to expenditure, the timing and accrual of which is specifically determined
- to pre-paid expenditure payable in terms of a legislative obligation.

RESEARCH AND DEVELOPMENT

Where expenditure is incurred in respect of qualifying scientific and technological research and development on or after 2 November 2006, the following deductions will be allowed:

- 150% of operating research and development costs in respect of activities undertaken in South Africa for the purposes of the discovery of novel, practical and non-obvious information; or devising, developing or creating any invention, design or computer program as defined in their applicable acts, or knowledge essential to the use of such research property.
- Research and development capital costs (including the cost of any building or part thereof, machinery, plant, implements, utensil or article or improvements thereto of a capital nature) on a 50:30:20 basis.

PATENT / INTELLECTUAL PROPERTY

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

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

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

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

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

REINVESTMENT RELIEF

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

RESIDENCE BASED TAXATION

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

Resident means

- A natural person who is ordinarily resident in South Africa; or
- As from 1 March 2005, a natural person who is physically present in South Africa for at least 91 days in the current and each of the preceding five tax years and at least 915 days during the five preceding tax years; or
- A company or trust that is incorporated, established, formed or which has its place of effective management in South Africa.

Resident excludes

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

Exemptions

- Remuneration for services rendered outside South Africa during the tax year if such person was outside South Africa for periods in aggregate of at least 183 days, of which 60 days were continuous
- Non-South African pension and social security payments.

Foreign Dividends

Foreign dividends received from a non-resident company, including deemed dividends, are taxable, except if:

- The shareholder holds at least 20% of the equity and voting rights of the distributing company
- The distributing company is listed on both the JSE and a recognised foreign exchange
- The distributing company is a controlled foreign company (CFC) and the dividends do not exceed amounts deemed to be the resident shareholder's income under the CFC rules
- The dividend is declared from amounts already taxable in South Africa.

Interest is deductible where it is incurred in the production of foreign dividends to the extent that they are included in gross income. Excess interest paid may be carried forward to the next tax year.

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

Controlled Foreign Companies

A CFC is a non-resident company in which residents, other than a head-quarter company, directly or indirectly own or control more than 50% of the participation or voting rights. A resident, alone or with connected persons, holding at least 10%, but not more than 20% of the participation rights, may elect that the foreign company is deemed to be a CFC.

- A resident must include in his income:

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

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

Exemptions

- The net income (including capital gains) of the CFC that is derived from an active *bona fide* foreign business establishment situated outside South Africa (subject to certain exclusions)
- Income of the CFC otherwise taxed in South Africa at normal rates
- Foreign dividends received by the CFC from another CFC to the extent that the income from which the dividend is declared has already been included in the resident's taxable income under the CFC rules
- Net income attributable to interest, royalties or similar income payable to the CFC by other foreign companies forming part of the same group of companies.

Tax Rebates

- Where a resident has to include in his taxable income any foreign sourced income or capital gain, proportionate amount of the net income of a 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:

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

- If the foreign tax paid exceeds the limit set out above, the excess foreign tax may be carried forward for a maximum of seven years

General

- A loss incurred in carrying on a business outside South Africa may not be set off against income in South Africa
- The amount of foreign tax payable must be translated to South African currency at the last day of the tax year by applying the average exchange rate for that tax year
- Foreign income is converted to Rands by applying the spot exchange rate at the date the income accrues. Natural persons and non-trading trusts may elect to apply the average exchange rate for that tax year
- Where foreign income may not be remitted because of restrictions imposed by the source country, such income is included in the resident's gross income in the tax year during which that amount may be remitted to South Africa
- Tax withheld in a foreign country in respect of South African sourced income is recognised as a deduction against such income rather than as a rebate against South African tax payable on that income.

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 are not subject to STC or the proposed dividend withholding 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 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.

TAXATION OF NON-RESIDENTS

Interest

All interest received by or accrued to non-residents is exempt from tax unless that person:

- at any time during that year carried on business through a permanent establishment in South Africa; or
- is a natural person who was physically present in South Africa for more than 183 days in aggregate during that year.

Dividends

A new dividends tax has been introduced with an effective date still to be announced. This dividends tax will be borne by the shareholder at a rate of 10% (subject to any reduction in terms of double taxation agreements).

Royalties

Subject to the double taxation agreements, royalties paid to non-residents are subject to a final withholding tax of 12%.

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

Other Income

Non-residents will continue to be taxed on South African source and deemed source income only.

Payment to Non-resident Entertainers

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

WITHHOLDING TAX ON INTEREST

As from 1 January 2013, interest accruing to a non-resident, excluding a controlled foreign company, will be subject to a 10% withholding tax on payment, except interest:

- arising on any government debt instrument
- arising on any listed debt instrument
- arising on any debt owed by a Bank or SARB
- arising from a bill of exchange or letter of credit where goods are imported into South Africa and where an authorised dealer has certified such on the instrument
- payable to a headquarter company
- accruing to a foreign natural person who was physically present in South Africa for a period exceeding 183 days in aggregate, during that year, or carried on a business through a permanent establishment in South Africa.

DOUBLE TAXATION AGREEMENTS

AND WITHHOLDING TAXES

Double Taxation Agreements provide for relief in respect of royalties and know-how withholding taxes.

	Royalties %		Royalties %
Non-Treaty Countries	**12**		
Treaty Countries			
Algeria	10	Mauritius	0
Australia	5	Mexico	10
Austria	0	Mozambique	5
Belarus	5/10	Namibia	10
Belgium	0	Netherlands	0
Botswana	10	New Zealand	10
Brazil	10/15	Nigeria	7.5
Bulgaria	5	Norway	0
Canada	10	Oman	8
Croatia	5	Pakistan	10
Cyprus	0	Peoples Republic of China	7/10
Czech Republic	10	Poland	10
Denmark	0	Portugal	10
Egypt	12	Romania	12
Ethiopia	20	Russian Federation	0
Finland	0	Rwanda	10
France	12	Saudi Arabia	10
Germany	12	Seychelles	0
Ghana	10	Sierra Leone*	12
Greece	5/7	Singapore	5
Grenada*	12	Slovak Republic	10
Hungary	0	Spain	5
India	10	Swaziland	10
Indonesia	10	Sweden	12
Iran	10	Switzerland	0
Ireland	0	Taiwan	10
Israel	12	Tanzania	10
Italy	6	Thailand	12
Japan	10	Tunisia	10
Korea	10	Turkey	10
Kuwait	10	Uganda	10
Lesotho	10	Ukraine	10
Luxembourg	0	United Kingdom	0
Malawi	12	USA	0
Malaysia	5	Zambia	12
Malta	10	Zimbabwe	12

* Part of the DTA with the United Kingdom

Notes

1 If the royalty is subject to tax in the recipient's country of residence there is no withholding tax.

2 The above rates are provided as a guide only. A number of the above DTA's provide for alternative rates, including zero, to be applied in specific circumstances. To view the complete Double Tax Agreements refer to www.sars.gov.za.

3 Currently South Africa has no withholding tax on dividends or interest. A new dividend withholding tax is to replace STC with effect from 1 April 2012. A withholding tax on interest paid to non-residents will be introduced from 1 January 2013.

ROYALTIES TO NON-RESIDENTS

As from 1 January 2009, no deduction will be allowed in respect of royalty payments if:

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

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

VENTURE CAPITAL INVESTMENTS

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

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

LEARNERSHIP ALLOWANCE

Employers are allowed to claim learnership allowances in respect of registered learnerships over and above the normal remuneration deduction. For years of assessment ending on or after 1 January 2010:

- Where an employer is party to a learnership, the learnership allowance consists of two basic thresholds, namely a recurring annual commencement allowance of R30 000 and a completion allowance claimable at the end of the learnership of R30 000. The completion allowance is claimable cumulatively for every completed year where the learnership exceeds 24 months
- For learners with disabilities the relevant allowances are increased to R50 000
- Learnerships of less than 12 full months will be eligible for a pro-rata amount of the commencement allowance (regardless of the reason that the learnership falls short of the 12 month period). If a learnership falls over two years of assessment, the commencement allowance is allocated pro-rata between both years based on the calendar months applicable to each year by multiplying the commencement amount by the total calendar months of the learnership over 12.

DIRECTORS PAYE

Directors of private companies and members of close corporations are deemed to have received a monthly remuneration, subject to PAYE, calculated in accordance with a formula.

The formula calculated remuneration does not apply to directors of private companies and members of close corporations who earn at least 75% of their remuneration in the form of fixed monthly payments.

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

Summary Of The First Schedule's Main Paragraphs

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

Rating Formula Applicable To Farmers

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

Capital Development Expenditure (Paragraph 12)

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

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

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

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

Non-farming Income

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

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

BOND / INSTALMENT SALE REPAYMENTS

The following table reflects repayments on every R1 000 borrowed.
Example: A bond of R80 000 at 10,5% over 20 years
R80 000 ÷ R1 000 x 09,98 = R798.40 a month over a 20 year period.

	Mortgage Bonds				Short Term Financing		
Rate	10 Yrs	20 Yrs	25 Yrs	30 Yrs	36 Months	48 Months	60 Months
07,0%	11,61	07,75	07,07	06,65	30,88	23,95	19,08
07,5%	11,87	08,06	07,39	06,99	31,11	24,18	20,04
08,0%	12,13	08,36	07,72	07,34	31,34	24,41	20,28
08,5%	12,40	08,68	08,05	07,69	31,57	24,65	20,52
09,0%	12,67	09,00	08,39	08,05	31,80	24,89	20,76
09,5%	12,94	09,32	08,74	08,41	32,03	25,12	21,00
10,0%	13,22	09,65	09,09	08,78	32,27	25,36	21,25
10,5%	13,49	09,98	09,44	09,15	32,50	25,60	21,49
11,0%	13,78	10,32	09,80	09,52	32,74	25,85	21,74
11,5%	14,06	10,66	10,16	09,90	32,98	26,09	21,99
12,0%	14,35	11,01	10,53	10.29	33,21	26,33	22,24
12,5%	14,64	11,36	10,90	10,67	33,45	26,58	22,50
13,0%	14,93	11,72	11,28	11,06	33,69	26,83	22,75
13,5%	15,23	12,07	11,66	11,45	33,94	27,08	23,01
14,0%	15,53	12,44	12,04	11,85	34,18	27,33	23,27
14,5%	15,83	12,80	12,42	12,25	34,42	27,58	23,53
15,0%	16,13	13,17	12,81	12,64	34,67	27,83	23,79
15,5%	16,44	13,54	13,20	13,05	34,91	28,08	24,05
16,0%	16,75	13,91	13,59	13,45	35,16	28,34	24,32
16,5%	17,60	14,29	13,98	13,85	35,40	28,60	24,58

OFFICIAL INTEREST RATES AND PENALTIES

Type	Reason	Basis of charge
Provisional tax	1st and 2nd payment late	10% penalty plus interest charged daily from due date to date of payment
Provisional tax	3rd payment late	Interest charged daily from effective date to earlier of payment date or assessment date. Effective date is six months after year-end, except in the case of February year-ends, where the effective date is 30 September
Provisional tax	Overpayment	Credited daily from effective date to date of refund
Assessment	Late payment	Interest charged on each completed month from first due date to date of payment
Loan to employee	Deemed fringe benefit	Official rate for fringe benefit less actual rate x loan x actual months divided by 12
VAT	Late payment	10% penalty plus interest at the prescribed rate
VAT	Refund	Calculated monthly, starting 21 business days after receipt of return to date of payment. Period is suspended when vendor denies SARS access to books if requested
Employees tax	Late payment	10% penalty plus interest charged daily from due date to date of payment
Skills Development Levy	Late payment	10% penalty plus interest charged daily from due date to date of payment

PRIME OVERDRAFT RATES

Date of change	Rate %	Date of change	Rate %
07 December 2007	14,50	04 May 2009	12,00
11 April 2008	15,00	29 May 2009	11,00
13 June 2008	15,50	14 August 2009	10,50
12 December 2008	15,00	26 March 2010	10,00
06 February 2009	14,00	10 September 2010	09,50
25 March 2009	13,00	19 November 2010	09,00

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

INTEREST RATES CHANGES

Prescribed rate - Late payment of assessed and provisional tax and under-payment of provisional tax

Date of change	Rate %
1 August 2009	11,5
1 September 2009	10,5
1 July 2010	9,5
1 March 2011	8,5

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

Prescribed rate - Late payment of VAT

Date of change	Rate %
1 September 2009	10,5
1 July 2010	9,5
1 March 2011	8,5

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

Prescribed rate - Refund of overpayment of provisional tax

Date of change	Rate %
1 July 2009	8,5
1 August 2009	7,5
1 September 2009	6,5
1 July 2010	5,5
1 March 2011	4,5

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

Prescribed rate - Refund of VAT after prescribed period

Date of change	Rate %
1 September 2009	10,5
1 July 2010	9,5
1 March 2011	8,5

Prescribed rate - Refund on successful objection, appeal or conceded appeal

Date of change	Rate %
1 March 2011	8,5

Official rate - Fringe benefits

Date of change	Rate %
1 July 2009	8,5
1 September 2009	8,0
1 October 2010	7,0

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

TRANSFER DUTY

On Immovable Property (on or after 23 February 2011)
Payable by natural persons and legal entities:

Property value	Rates of tax
R 0 - R 600 000	0%
R 600 001 - R1 000 000	3% on the value above R600 000
R1 000 001 - R1 500 000	R12 000 plus 5% on the value above R1 000 000
R1 500 001 and above	R37 000 plus 8% on the value above R1 500 000

- No transfer duty is payable if the transaction is subject to VAT
- If a registered vendor purchases property from a non-vendor, the VAT notional input tax credit is limited to the VAT fraction (14/114) of the lower of the sellling price, open market value, current municipal value or the VAT inclusive purchase price (including improvements) paid by the non-vendor seller.
  A notional input tax credit is only claimable to the extent to which the purchase price has been paid
- Certain exemptions apply to corporate restructuring
- The acquisition of a contingent right in a trust that holds a residential property or the shares in a company or the member's interest in a close corporation, which owns residential property, comprising more than 50% of its CGT assets, is subject to transfer duty at the applicable rate
- Liabilities of the entity are to be disregarded when calculating the fair value of the contingent right in the trust, the shares in the company or the member's interest in the close corporation
- Residential property includes dwellings, holiday homes, apartments and similar abodes, improved and unimproved, zoned for residential purposes. It excludes a structure of five or more units, rented by five or more unconnected persons. It also excludes fixed property forming part of the enterprise of a VAT vendor
- Any person who does or omits to do anything with the intent to evade transfer duty may be charged with additional duty up to twice the amount of duty payable. Such a person is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 60 months
- No transfer duty is payable in respect of the acquisition by a qualifying natural person of a primary residence from a qualifying corporate entity or trust between 11 February 2009 and 30 September 2010. From 1 October 2010 to 31 December 2012 this exemption is extended to include multi-tiered structures. After the transfer of the residence, all the entities must be wound up or terminated.

NATIONAL CREDIT ACT

The maximum lending rates of interest are calculated as follows:

Mortgage agreements	{(Repo rate x 2.2) + 5%} per year
Credit facilities	{(Repo rate x 2.2) + 10%} per year
Unsecured credit transactions	{(Repo rate x 2.2) + 20%} per year
Short term credit transactions	5% per month
Other credit agreements	{(Repo rate x 2.2) + 10%} per year
Incidental credit agreements	2% per month

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

STAMP DUTY

No stamp duty is payable on leases of immovable property entered into after 1 April 2009.

INDUSTRIAL POLICY PROJECTS

An additional investment allowance for an approved project is available to brownfield project expansion or upgrade or a greenfield project in respect of new and unused manufacturing items. The additional investment allowance, subject to limitations, is 55% of the cost of the assets or 35% if no preferred status applies. There is also an additional project related training allowance of R36 000 per employee limited to R30 million or R20 million if no preferred status applies.

SECURITIES TRANSFER TAX

As from 1 July 2008 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 second 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
- Duty of 0,5% is payable on the creation or increase in authorised share capital in terms of the Companies Act
- No STT is payable if the consideration, closing price or market value is less than R40 000.

CONNECTED PERSONS

Where a depreciable asset is acquired by a taxpayer and it was held by a connected person within a period of two years before that acquisition, the purchaser may claim capital allowances on the lower of the purchase price or the following deemed cost:

- the net tax value of the asset to the seller, plus
- the recoupment on the disposal by the seller, plus
- the taxable capital gain on the disposal by the seller.

DEEMED CAPITAL DISPOSAL OF SHARES

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

- a share in a shareblock company
- a share in a non-resident company
- a hybrid equity instrument.

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

DONATIONS TAX

Donations tax is payable at a rate of 20% on the value of any property disposed of gratuitously by a South African resident (natural person, corporate entity or trust) excluding donations exempt from the tax. The tax is payable within three months of the donation taking effect.

Exempt donations include:

- Donations by natural persons up to R100 000 per year after 1 March 2007 (2006 : R50 000)
- Donations by corporate entities not considered to be public companies up to R10 000 per year
- Donations between spouses not separated
- Bona fide maintenance payments
- Donations to Public Benefit Organisations and qualifying traditional councils and communities
- Donations where the donee will not benefit until the death of the donor
- Donations made by companies which are recognised as public companies for tax purposes
- Donations cancelled within six months of the effective date
- Property disposed of under and in pursuance of any trust
- Donation of property or a right in property situated outside South Africa if acquired by the donor:
  - before becoming resident in South Africa for the first time, or
  - by inheritance or donation from a non-resident
- Donations between companies forming part of the same group of companies.

ESTATE DUTY

Rates of Estate Duty

- Persons deceased prior to 1 October 2001 - 25%
- Persons deceased on or after 1 October 2001 - 20%

Exemptions from Estate Duty include:

- Persons deceased prior to 1 March 2006, the first R1 500 000
- Persons deceased on or after 1 March 2006, the first R2 500 000
- Persons deceased on or 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.

EXECUTORS REMUNERATION

An executor is entitled to the following remuneration:

- the remuneration fixed by deceased in the will, or
- 3,5% on gross assets and 6% on income accrued and collected from date of death

Executors remuneration is subject to VAT where the executor is registered as a vendor.

VALUE-ADDED TAX (VAT)

VAT was introduced on 30 September 1991 at 10% and increased to 14% on 7 April 1993. The VAT system comprises three types of supplies:

- **Standard-rated supplies** – supplies of goods and services subject to the VAT rate in force at the time of supply
- **Exempt supplies** – supplies of certain services not subject to VAT. Vendors making exempt supplies are not entitled to input credits
- **Zero-rated supplies** – supplies of certain goods or services subject to VAT at zero percent. The following are, amongst others, specifically zero-rated: brown bread, maize meal, samp, mealie rice, dried maize, dried beans, lentils, pilchards (excluding pet food or sardines supplied in tins), milk powder (unflavoured), dairy powder blend, rice, fresh vegetables (excluding canned, bottled and dehydrated), fresh fruit, vegetable oil used for cooking (excluding olive oil), milk including long-life milk (excluding condensed, flavoured, sweetened and evaporated milk), cultured milk, brown wheaten flour, raw eggs, pod vegetables, diesel, petrol and illuminating paraffin. Export sales and services are zero-rated, subject to specific requirements. Supplies from South Africa to an Industrial Development Zone will be treated as exports.

VAT input tax credits may in general not be claimed in respect of entertainment and sedan and double-cab type motor vehicles.

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

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

Registration Requirements

As from 1 March 2009 a vendor is required to register for VAT if turnover in a 12 month period is likely to exceed R1 million (previously R300 000). Where turnover is less than R1 million, but exceeds R50 000 (2009 : R20 000) and R60 000 in the case of commercial rental establishments in a 12 month period, a vendor can register voluntarily. All vendors that deregister from the VAT system in light of the increase in the VAT registration threshold to R1 million will be allowed to pay the exit VAT over a period of six months.

A registered micro business may not be registered for VAT.

Where turnover is less than R1,5 million (previously R1,2 million) in a 12 month period, VAT returns may be rendered every four months. Where turnover is less than R30 million in a 12 month period, VAT returns may be rendered every two months. Turnover in excess of R30 million results in VAT returns having to be rendered every month. Farmers, with a turnover of less than R1,5 million (previously R1,2 million), may render VAT returns every six months.

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

A tax invoice must reflect the purchaser’s trade name and VAT registration number, if the value is in excess of R3 000.

Foreign Capital Allowance
Individuals, older than 18 years, in good standing with SARS, can invest R4 million per calendar year (prior to 5 November 2010 : R4 million per lifetime) abroad. Income accruing thereon may also be retained abroad.

Single Discretionary Allowance
Individuals, older than 18 years, have a single discretionary allowance of R1 million (2010 : R750 000) per calendar year for maintenance, gifts, travel and study. Individuals, younger than 18 years, have a travel allowance of R200 000 (2010 : R160 000) per calendar year.

Miscellaneous Transfers
Application, supported by the necessary documents, can be made for the remittance of alimony and child support, legal fees, fees for examinations held in South Africa, wedding expenses and Bar or Bat Mitzvah ceremonies, seminar fees, subscriptions and sporting events, subject to certain monetary limitations.

Specialised Medical/Dental Expenses Abroad
No limit, provided supported by original documentary evidence of expenses.

Full-time Students
Travel and maintenance costs are included in the single discretionary allowance. Tuition and academic fees may be paid directly to the institution concerned against original documentary evidence, without any limit.

Philatelic and Numismatic Imports
No limit applicable, excluding South African gold coins minted after 1961.

Directors Fees
No limit is applicable to directors fees paid to non-residents including emigrants. Applications to be supported by a copy of the directors resolution confirming the amount paid together with proof of non-resident status.

Guarantees
No limit is applicable to guarantees given by non-residents for financial assistance to South African residents who are not affected persons.

Emigrants
Where the foreign capital allowance has not been fully utilised, emigrants are permitted a top-up to:

- R8 million per calender year per family unit
- R4 million per calender year per single emigrant

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

In addition, the unutilised portion of the single discretionary allowance may be remitted 60 days prior to departure but not after departure.

Inheritances
Non-residents are entitled to transfer their inheritance, irrespective of whether the deceased was resident or non-resident in South Africa. Former South African residents have to complete emigration formalities to qualify.

Remittable Income
The income earned by an emigrant on his blocked assets is freely remittable abroad, after providing for income tax.

Blocked Assets
Unlimited blocked funds may be released locally for any purpose, except the granting of a loan to a South African resident.

Local Visits by Emigrants
There is no limit on the daily utilisation of blocked funds during a visit by an emigrant but these funds may not be loaned to a South African resident. Direct return airflights may be paid locally from blocked funds.

Restrictions on Local Financial Assistance
The 3:1 ratio restriction on local financial assistance has been abolished for affected persons where the borrowing is for working capital.

Local financial assistance subject to the 1:1 ratio is available to:
- Emigrants where blocked rand balances or blocked rand assets are used as collateral
- Non-residents if the borrowing is required for the acquisition of residential or commercial property in South Africa and/or financial transactions
- Affected persons if the borrowing is required for the acquisition of residential property in South Africa or financial transactions
- Non-resident wholly owned subsidiaries if the borrowing is required for the acquisition of residential property in South Africa or financial transactions.

Foreign Investment in South Africa
Non-residents enjoy unrestricted rights to invest in gilts and shares listed on the JSE and export the proceeds on the sale thereof. Interest and dividends are also freely remittable. Loans by non-residents to South African individuals/ entities require prior Exchange Control approval.

Outbound Investments by Companies
The limit that can be approved by Authorised Dealers is R500 million (2008 : R50 million). Exchange Control approval will have to be obtained for investments exceeding this limit.

ENVIRONMENTAL EXPENDITURE

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

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

Recoupments arise where the taxpayer breaches the agreement or violates the declaration.

MARRIED IN COMMUNITY OF PROPERTY

Taxpayers who are married in community of property are taxed on half of their own interest, dividend, rental income and capital gain and half of their spouses' interest, dividend, rental income and capital gain, no matter in whose name the asset is registered (except for assets excluded from the joint estate). All other taxable income is taxed only in the hands of the spouse who receives that income.

RECOMMENDED GUIDELINE FOR THE RETENTION OF DOCUMENTS AND RECORDS

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

Companies (In terms of Government Gazette dated 25 November 1983)	**Retention period**
Certificate of Incorporation	Indefinite
Certificate of Change of Name	Indefinite
Memorandum and Articles of Association	Indefinite
Certificate to Commence Business	Indefinite
Minute book, CM25 and CM26, as well as resolutions passed at general meetings	Indefinite
Annual Financial Statements	15 years
Books of account	15 years
Supporting schedules to books of account and ancillary books of account	15 years
Fixed asset registers	15 years
Proxy forms	3 years

Close Corporations

Founding Statement (CK1)	Indefinite
Amended Founding Statement (CK2)	Indefinite
Minute book	Indefinite
Annual Financial Statements	15 years
Books of account	15 years
Accounting records including supporting schedules	15 years
Fixed asset registers	15 years

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

Other Suggested Periods of Retention

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

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

The above list is not comprehensive