

Tax Brochure for
Non-Residents

TAX BROCHURE FOR NON-RESIDENTS

FOREWORD

This document provides general guidelines regarding-

- different forms/types of business entities through which a business can be conducted by non-residents in South Africa; and
- the liabilities of a non-resident in respect of taxes, duties and levies which are charged in terms of the various Acts administered by the Commissioner, with particular emphasis on Income Tax. The income which is subject to income tax includes business income, remuneration and investment income.

This document is not meant to delve into the precise technical and legal detail that is often associated with taxation. It should, therefore, not be used as a legal reference.

Should you require additional information concerning any aspect of taxes, duties or levies administered by SARS, you may:

- Contact any SARS office
- Visit SARS online at <http://www.sars.gov.za>
- Contact your own advisor

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SOUTH AFRICAN REVENUE SERVICE

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OVERVIEW

Due to the rapid growth of investments made by non-residents in South Africa, SARS has identified a need to issue an information brochure that deals with the different forms of businesses carried on by non-residents in South Africa and the taxation of business income, remuneration and investment income of such non-residents. The main aim of this brochure is to explain the income tax consequences of such income for non-residents in South Africa.

It also contains information about the responsibilities of a non-resident with regard to some of the other taxes, duties and levies administered by SARS. Furthermore, it contains some non-tax information such as Exchange Control information of a very general nature.

Finally it contains information about certain administrative provisions of the various Tax Laws. The words “taxpayer” and “non-resident” will be used interchangeable as they have the same meaning for purposes of this brochure.

PART A: INTRODUCTION

Glossary

Unless the context indicates otherwise, the meaning of words, concepts and acronyms used in this brochure, are the following:

Commissioner	Commissioner for the South African Revenue Service
CGT	Capital Gains Tax
PAYE	Pay-as-you-earn
SARB	South Africa Reserve Bank
SARS	South African Revenue Service
SBC	Small Business Corporation
SITE	Standard Income Tax on Employees
South Africa	Republic of South Africa
STC	Secondary Tax on Companies
the Act	Income Tax Act, No. 58 of 1962
the Companies Act	Companies Act, No. 61 of 1973
VAT	Value-Added Tax

1. Tax basis of South Africa

Until fairly recently, the income tax system in South Africa was source-based, and apart from a few exceptions, residency was not a criterion. However, from the 1998 year of assessment, South African residents became taxable on certain of their worldwide income from investments received or accrued on or after 1 July 1997. With effect from years of assessment commencing on or after 1 January 2001, South Africa moved from a source-based system of taxation to a residence basis of taxation in respect of all income, subject to certain exemptions. The effect is that residents are taxed on their worldwide income, and no longer just on income from a source within or deemed to be within South Africa.

Non-residents are still taxable on their income from a source within or deemed to be within South Africa.

2. Who is a non-resident?

2.1 Introduction

There is no definition of the term “non-resident” in any Act administered by SARS. The Act refers to “taxpayer” and “resident”. The term “non-resident” used in the context of this brochure refers to a person who is not a resident for purposes of the Act.

The definition of “taxpayer” refers to any person chargeable with any tax leviable under the Act and includes every person required by the Act to furnish a return.

The definition of “resident”-

- includes
 - any natural person who is ordinarily resident in South Africa; or
 - any natural person who complies with the physical presence test; and
 - any person (other than a natural person) which is incorporated, established or formed in South Africa or which has its place of effective management in South Africa, but
- excludes any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the government of South Africa and that other country for the avoidance of double taxation.

2.2 Natural person – Ordinarily resident test

A person is a resident of South Africa if his/her permanent home, to which he/she will normally return, is in South Africa. A continuous physical presence is not a prerequisite to be ordinarily resident in South Africa.

In summary the courts have held in ascribing the concept “ordinarily resident” as:

- Living in a place with some degree of continuity, apart from accidental or temporary absence. If it is part of a person’s ordinary regular course of life to live in a particular place with a degree of permanence that is where he/she must be regarded as being ordinarily resident.
- The place where his/her permanent place of abode is, where his/her belongings are stored, which he/she leaves for temporary absence and to which he/she regularly returns after such absences.
- A residence that is settled and certain and not temporary and casual.
- Where a person normally resides, apart from temporary/occasional absences.

A natural person, who becomes ordinarily resident in South Africa, will not be taxable in South Africa on any income that accrued from a source outside South Africa prior to the date on which he/she became ordinarily resident in South Africa.

Example

B became ordinarily resident in South Africa on 1 October 2004. Prior to 1 October 2004 B is also not regarded to be a resident by virtue of the physical presence test. All worldwide income received by or accrued to B on or after 1 October 2004 (excluding certain income that might be exempt) will be included in the taxable income of B for the years of assessment ending 28 February 2005 and thereafter. Prior to 1 October 2004, only income from a source within or deemed to be within South Africa (excluding certain income that might be exempt) is taxable in South Africa.

For more information regarding the concept of ordinarily resident refer to Interpretation Note No. 3 dated 4 February 2002, available on the SARS website www.sars.gov.za.

2.3 Natural person – Physical presence test

This rule is time-based and is only applicable to a natural person who was not at any time during the relevant year of assessment ordinarily resident in South Africa.

• Qualifying as a resident

This test is based on the number of days during which a natural person is physically present in South Africa.

It is important to note that a day includes a part of a day. Thus both the day of arrival and departure are included in the count. This test is also known as the day test or time rule. A day starts at midnight. A person who arrives in South Africa, for example, on 12 December at 23:55 is present in South Africa for that day. However, any day that a person is in transit through South Africa between two places outside South Africa and that person does not formally enter South Africa through a port of entry, or at any other place in the case of a person authorised by the Minister of Home Affairs, is excluded in the count.

The physical presence test must be performed annually in order to determine whether the individual concerned is a resident for the year of assessment under consideration. The test consists of three requirements, i.e. the person must be physically present in South Africa for a period or periods exceeding-

- 91 days in aggregate during the year of assessment under consideration;
- 91 days in aggregate during each of the three years of assessment preceding the year of assessment under consideration; and
- 549 days in aggregate during the three years of assessment.

A natural person has to meet all three requirements before that person will be a resident. The year of assessment starts on 1 March and ends on the last day of February in the following year.

In terms of the physical presence test, a person who is not ordinarily resident in South Africa becomes a South African resident with effect from the first day of the fourth year of assessment if he/she is physically present in South Africa for the periods as set out above. The purpose of the presence is irrelevant. A day is therefore counted even if the presence is, for example, for the purposes of a holiday, visiting friends or a funeral.

• Ceasing to be a resident

A natural person, who is a resident by virtue of the physical presence test, ceases to be a resident if he/she is physically outside South Africa for a continuous period of at least 330 full days. The continuous period commences the day after the day he/she physically left South Africa.

For more information on this rule, see Interpretation Note No. 4 (issue 2) dated 31 March 2004, available on the SARS website www.sars.gov.za.

2.4 Person (other than a natural person) – Place where established, incorporated or formed or place of effective management

A person, other than a natural person, which is established, incorporated or formed in South Africa, is a resident. The place of effective management is the place where the company is managed on a regular or day-to-day basis by the directors or senior managers of the company, irrespective of where the overriding control is exercised, or where the board of directors meets.

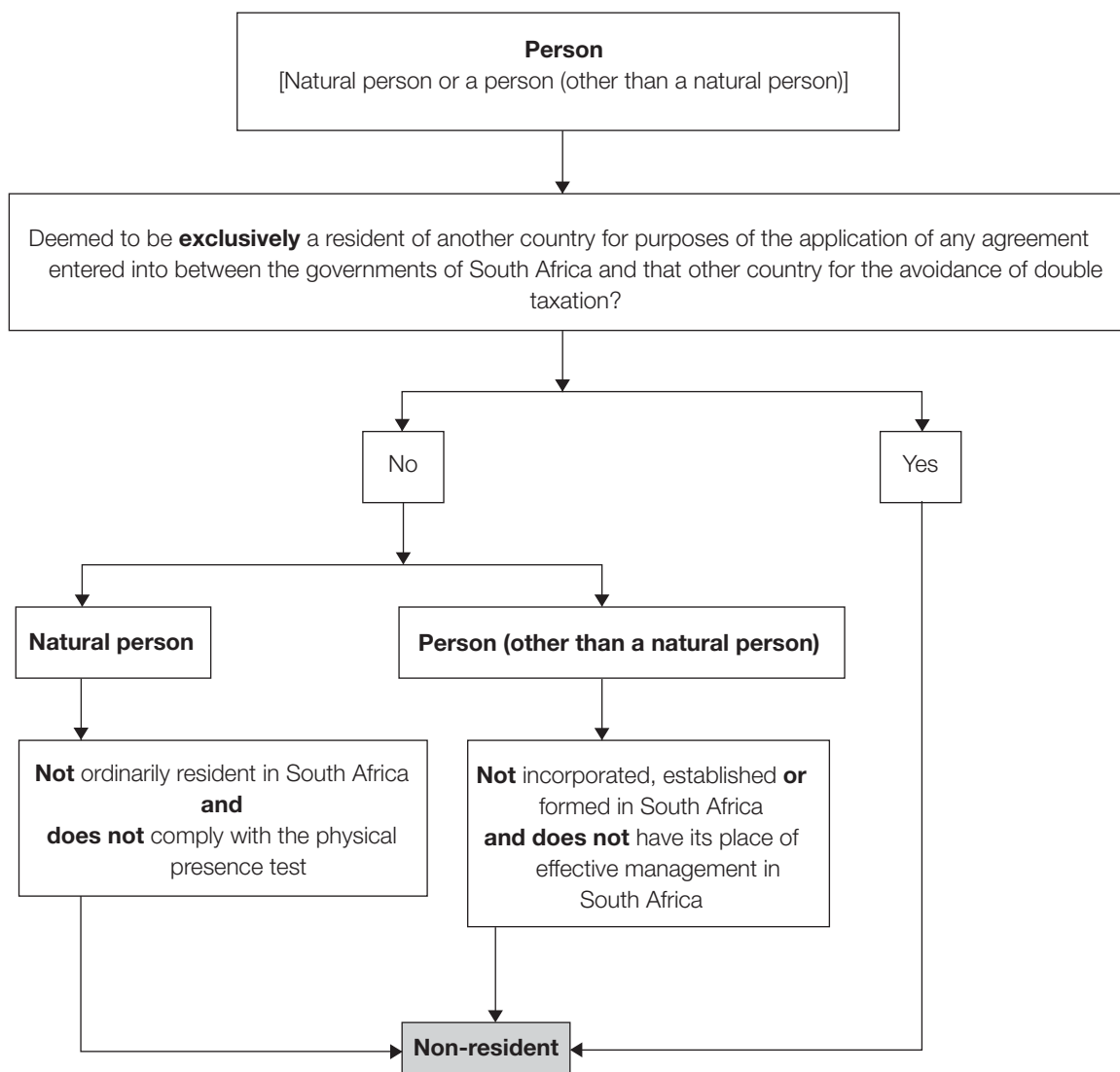
Management by these directors or senior managers refers to the execution and implementation of policy and strategy decisions made by the board of directors. It can also be referred to as the place of implementation of the entity's overall group vision and objectives.

Management structures, reporting lines and responsibilities vary from entity to entity, depending on the requirements of the entity, and no hard and fast rules exist. It is therefore not possible to lay down absolute guidelines in this respect.

For more information regarding the concept of place of effective management refer to Interpretation Note No. 6 dated 26 March 2002, available on the SARS website www.sars.gov.za.

2.5 Conclusion

Based on the above discussion of the term “resident”, a non-resident can be illustrated as follows:



3. SARS website

Regarding the taxes levied in South Africa, a non-resident investor can visit the SARS website at www.sars.gov.za which serves as a valuable source of tax information for non-residents.

PART B: BUSINESS AND INVESTMENT IN SOUTH AFRICA

4. Assistance to new investors

South Africa is an emerging market, offering investors exceptional investment opportunities. Investors are advised to make contact with Trade and Investment South Africa (TISA) which is the national trade and investment promotion agency of South Africa and is established as a division of the Department of Trade and Industry. It seeks to promote and facilitate the successful entry of non-residents who directly invest into South Africa.

Valuable information can be obtained from the Department of Trade and Industry at their website www.thedti.gov.za

5. Factors to be taken into account when investing

When investing in South Africa, a non-resident investor has to consider the best form of business to invest in. The form of business will depend on the particular business and need of the investor. Factors to be taken into account include:

- number of participants
- how the business is to be operated from a management and control point of view
- achieving limited liability for participants
- tax considerations

6. Forms of business

An investment in South Africa can take place in any of the following forms, namely-

- company (close corporation / private / public / external company);
- partnership (limited or unlimited);
- business by way of a trust; and
- sole proprietor.

6.1 Company

- **Introduction**

- o **Formation and existence**

- In South Africa a company is formed and governed by the Companies Act. A company is a separate legal entity as from the date of incorporation and continues in existence until the company is deregistered or liquidated, irrespective whether there is a change in shareholding from time to time. For registration procedures see www.thedti.gov.za "Company and Intellectual Property Registration".

- o **Capital**

- A company is formed with share capital which may consist of ordinary, preference, redeemable, convertible shares or a combination thereof. There is a minimum ordinary share capital of R1 requirement for a company.

- o **Shareholders**

- Both natural persons and juristic persons can hold shares in a company. There is no requirement that a shareholder must be a South African resident.

- o **Board of directors**

- The board of directors is appointed by the shareholders. There is no requirement that a director must be a South African resident. The company needs to disclose the nationality of a director on company documents.

- o **Financial assistance – acquisition of own shares**

- A company is not allowed to provide financial assistance for the acquisition of its own shares, except in the case of a share incentive scheme. The buy back of its own shares is allowable, subject to liquidity and insolvency requirements and other provisions of the Companies Act.

- o **Public officer for tax purposes**

A company (including a close corporation) must be represented by the public officer of the company. The public officer must be an individual who is a South African resident. Within one month after the company commences business or acquires an office in South Africa-

- a public officer must be appointed; and
- the company must appoint a place within South Africa approved by the Commissioner at which any notice or other documents under the Act affecting the company may be served or delivered or to which any such notices or documents may be sent.

In default of such appointment, the public officer of the company will be the managing director, director, secretary or other officer of the company, as the Commissioner may designate for that purpose. Any default in appointing a public officer or appointing a place for service or delivery of notice will incur a penalty not exceeding R25 for every day during which the default continues.

- o **Auditor**

A company must appoint an auditor practicing in South Africa.

- **Close corporation**

Close corporations are governed by the Close Corporations Act, No. 69 of 1984. Close corporations are simpler, less expensive corporate entities for single business persons or small groups of entrepreneurs. For income tax purposes a close corporation is classified as a company.

In contrast with a company, a close corporation does not have any shareholders, but members and does not have shares, but member's interest. The maximum number of members permitted in a close corporation is limited to ten. Their interest in the close corporation must always add up to 100% and be expressed as a percentage. Only natural persons may hold an interest in a close corporation.

A close corporation is a legal entity on its own. It provides the members with limited liability, but personal guarantees may negate a certain amount of this. It does not have a board of directors as the members manage and own the close corporation.

A close corporation does not have to appoint an auditor, but only an "accounting officer" to submit reliable financial records, which agree with the accounting records. An accounting officer is a person who is a member of a recognised profession which as a condition for membership requires its members to have passed in accounting and related fields of study in order to enable the person to perform the duties of an accounting officer.

- **Private company**

Section 173 of the Companies Act requires that private companies must submit annual returns with effect from 1 May 2005 to the Companies and Intellectual Property Office (CIPRO). Annual returns refer to the information that companies must submit to CIPRO as confirmation that the company is still in business and that the information provided is still valid. For more information, visit www.cipro.gov.za.

A private company has fewer requirements than a public company. These requirements are as follows-

- o a minimum of one director;
- o the company's name ends with "(Proprietary) Limited" or "(Pty) Ltd"; and
- o the articles of association must-
 - limit transferability of shares;
 - limit the number of shareholders to a maximum of 50 and a minimum of one; and
 - prohibit any offer to the public to subscribe for shares or debentures in the company.

An incorporated company is a special type of private company, which is usually used by professional associations, e.g. attorneys, accountants, etc. The name of this type of company ends with "Incorporated". The directors will be jointly and severally liable with the company for liabilities incurred by the company while they were directors.

- **Public company**

There are no restrictions on the maximum number of shareholders or the transferability of shares. A public company can be listed on the JSE Securities Exchange South Africa. The requirements for a public company are as follows-

- o a minimum of two directors
- o at least seven shareholders are required;
- o the name of the company ends with “Limited” or “Ltd”; and
- o disclosure requirements which include the submission of annual and interim financial statements to CIPRO

- **External company**

An external company may conduct its business in South Africa in its own name either through a South African branch or a South African subsidiary.

- o **South African branch of a foreign company**

The branch-

- must be registered with CIPRO as an “external company” within 21 days of establishing a place of business in South Africa or owning immovable property in South Africa;
- does not exist as a separate locally registered company. The external company is to be registered as an external company for income tax purposes;
- must comply with the provisions of the Companies Act, which includes the filing of-
 - a certified copy of the Memorandum of Articles of Association (or other documents defining its constitution) of the external company with CIPRO; and
 - annual financial statements with CIPRO;
- is not required to appoint a local board of directors and therefore can have the same board of directors as the external company;
- must appoint an auditor practicing in South Africa as well as a public officer who is resident in South Africa; and
- may be converted to a local private company.

The legal liabilities of the branch are not limited to the extent of its South African assets.

- o **South African subsidiary of a foreign company**

The subsidiary-

- is regarded as a South African company and is registered as such;
- does exist separate from the external company;
- must comply with the provisions of the Companies Act, which includes the filing of-
 - a certified copy of the Memorandum of Articles of Association (or other documents defining its constitution) of the company (South African subsidiary) with CIPRO; and
 - annual financial statements with CIPRO;
- is required to appoint a board of directors;
- must appoint an auditor practicing in South Africa as well as a public officer who is resident in South Africa; and
- may be more beneficial for an enhanced image and easier access to credit facilities. It may also be an advantage when obtaining Government contracts.

The legal liabilities of the subsidiary are limited to the extent of its South African assets.

6.2 Partnership

A partnership is not governed by statute and may be formed between at least two persons up to a maximum of 20 persons, except in the case of certain professional partnerships such as accountants, attorneys, etc.

A partnership carrying on a trading business must comply with the requirements of the Business Names Act, No. 27 of 1960 (the Business Names Act) which provides for the disclosure of the names of the partners on all business letters and trade catalogues. The Business Names Act also imposes certain restrictions on the names that may be used by partnerships.

No registration or specific formalities are required to form a partnership. Normally a partnership is formed by way of the partners entering into a partnership in terms of a partnership agreement.

Note that for income tax purposes a partnership is not regarded as a legal entity and each partner, notwithstanding the fact that he/she may be a limited partner, is deemed for income tax purposes to be carrying on such trade or business. For VAT purposes the partnership is regarded as a separate entity and therefore the partnership is to be registered as a vendor.

The characteristics of a partnership are as follows-

- at least two or more persons not exceeding 20 agree to act jointly;
- each partner makes a contribution (either in cash, assets, skills or a combination thereof) to the partnership in terms of the partnership agreement;
- the objective of the partnership is to make a gain;
- profits/losses of the partnership are divided between the partners according to his/her contribution to the partnership;
- a partnership is not a separate legal person from the partners;
- each time there is a change in partners (due to death, insolvency or otherwise), the partnership terminates; and
- no details of the financial position of the partnership need to be made available to the public.

Each partner is taxed on his/her share of the partnership's profits.

6.3 Trust

A business can be carried on through a trust by trustees for the benefit of nominated beneficiaries. The profits of the trust are subject to tax in the hands of the beneficiaries/trust to the extent such profits vest in them.

Other than for tax purposes the trust does not have a separate legal personality. The trust deed must be lodged to the Master of the High Court. A written authorisation from the Master must be obtained before a trustee can act in the capacity of a trustee.

The Master can request security from the trustee, but the Master can be requested to waive this requirement.

The provisions of the Companies Act do not apply to a trust. A trust does not have to submit financial statements with CIPRO and does not have to appoint an auditor. There is no limitation on the number of trustees or beneficiaries of a trust.

6.4 Sole proprietor

There are no statutory regulations relating to the registration of a sole proprietor, except that proper books and records of trading activities must be maintained.

Where the business is carried on in a personal capacity, whether under a trading name or otherwise, the owner of the business must submit a balance sheet and an income statement together with the personal income tax return. The profits of the business are taxed in the hands of the owner/sole proprietor. The accounts need not to be audited and no public disclosure of the affairs of the sole proprietor need to be made.

In the event of insolvency of the business, the owner's private estate is at risk of being sequestrated.

PART C: TAXES

7. Introduction

Taxation in South Africa is made up of various taxes, duties and levies including the following major types:

Taxes	Duties	Levies
Income tax	Estate duty	Skills Development Levy (SDL)
Secondary tax on companies	Transfer duty	Unemployment Insurance Contributions (UIC)
Donations tax	Customs duty	Regional Establishment Levy and Regional Services Levy
Value added tax	Excise duty	

Please note that Capital Gains Tax (CGT), Employees' Tax (PAYE and SITE) and Provisional Tax are not separate taxes in South Africa, but forms part of the income tax system. (See paragraphs 8.11, 8.17 and 8.18 of Part C of this brochure.)

8. Income Tax

8.1 Introduction

Income tax in South Africa is governed by the provisions of the Act. Income tax (referred to in the Act as "normal tax") is an annual tax and consists of-

- normal tax in respect of natural persons including insolvent and deceased estates (also referred to as personal income tax) and special trusts;
- normal tax in respect of trusts (other than special trusts); and
- normal tax in respect of companies and close corporations (also referred to as corporate income tax).

8.2 Registration as a taxpayer and the submission of income tax returns

- **Registration**

Any non-resident investor who invested in South Africa and who carries on a trade in South Africa or receives income from a source within South Africa which is subject to taxation in South Africa, is obliged to register as a taxpayer in South Africa.

- **Filing**

A non-resident investor is required to submit an income tax return after the end of each year of assessment. Late submissions or failure to do so is an offence punishable by the imposition of fines, penalties and additional taxes.

8.3 Tax threshold

The tax threshold is the point at which a natural person becomes liable for the payment of normal tax.

Tax thresholds – Natural persons	2004/5	2005/6
Under 65 years	R32 222	R35 000
65 years and older	R50 500	R60 000

8.4 Assessment

An assessment is the determination by the Commissioner of the normal tax payable by the taxpayer by way of a notice of assessment. It reflects the normal tax, in respect of a specific year of assessment, which is calculated on the taxable income of a person.

8.5 Year of assessment

A year of assessment in respect of a natural person begins on 1 March of one year and ends on the last day of February the following year. In the case of a company (including a close corporation), the year of assessment coincides with the company's financial year. If the year-end of the company ends on a day other than the end of February or the company wishes to change its current financial year-end, approval must first be obtained from the Commissioner.

8.6 Taxable income of a non-resident

In the case of a non-resident, the taxable income is calculated as follows-

Gross income (as defined in the Act)	R450 890
Less: Exemptions	(R 11 000)
Income (as defined in the Act)	R439 890
Less: Deductions and allowances	(R 39 880)
Add: Taxable capital gain	<u>R 20 500</u>
Taxable income (as defined in the Act)	<u>R420 510</u>

8.7 Gross income of a non-resident

In respect of any year of assessment, the gross income of a non-resident is calculated on a source basis. It follows that the total amount received by, or accrued to or in favour of that person from a source within, or deemed to be within South Africa, is taken into account in order to calculate the gross income of that person. This includes:

- **Remuneration**

It is internationally accepted that the income from employment (remuneration) should be taxed in the source country, i.e. where the services are actually rendered, as opposed to the country where the employee is resident.

Non-residents working in South Africa for short periods are liable for tax in South Africa in respect of their income from a South African source. The normal employees' tax rules apply to remuneration received by those persons. Where the employer or representative employer is present in South Africa, the income from employment will be subject to a withholding tax, viz. employees' tax (SITE and PAYE).

The tax position of non-residents may be affected by an agreement for the avoidance of double taxation entered into between the Government of South Africa and the Government of the foreign country in which the non-resident resides. In terms of that agreement the non-resident's remuneration earned in South Africa may not be taxable in South Africa where specific requirements are met. In the absence of a double taxation agreement, the income will be taxable in South Africa.

Any fringe benefit enjoyed by seconded non-resident employees will be subject to tax in South Africa on the same basis as any resident employee. Benefits subject to tax include the following—

- o Cost of home leave
- o Children's education expenses
- o Security costs
- o Storage of furniture

Non-resident employees who render services in South Africa for short periods may be subject to tax on the rental value of accommodation provided to them by their employer in South Africa for the duration of their stay, while performing their duties of employment.

Any benefit received by a non-resident employee by virtue of the fact that his/her employer has borne some expenditure incurred in consequence of the employee's transfer from one place of employment to another, or on termination of the employee's employment is usually not taxed in South Africa.

No tax liability will arise in respect of amounts paid to non-resident employees for reimbursement by a foreign employer for the loss on sale of vehicles and residences outside of South Africa as the amounts are not from a source or deemed to be from a source in South Africa. For more in-depth information on employees' tax, for example, the value that must be placed on any fringe benefit received, reference can be made to the EMP 10 guidelines for employers available on the SARS website.

For more information you may also refer to booklets such as "Residence Basis of Taxation for Individuals" and "Foreigners Working in South Africa", available on the SARS website.

- **Investment income**

- o Interest

The interest received by a non-resident from a source within or deemed to be within South Africa forms part of gross income. However, certain exemptions can apply, see paragraph 8.8.

The source of interest is deemed to be in South Africa where the interest was derived from the utilisation or application in South Africa of any funds or credit obtained in terms of a financial arrangement.

- o Dividends

The source of dividends is the shares giving rise to the dividends. The shares are located where the share register of the company is kept. If shares are purchased in a South African company, the source of the dividends is within South Africa. However, all dividends from a South African source are exempt from tax, see paragraph 8.8.

- **Business income**

- o Rental

The source of rental income is generally regarded to be where the property is utilised on a day-to-day basis. In the case of fixed property, the source of the rental is where the property is located. A non-resident who invests in property in South Africa will, therefore, be subject to taxation on such rental income.

- o Royalties

Generally, the source of royalty income will be where the originator applies his/her wits and labour. Royalty income includes income derived from the use or right of use or the grant of permission to use in South Africa patent rights, trade marks, films, etc., normally referred to as “know-how” payments.

In the case of non-residents, “know-how” payments received for the use, or right of use of intellectual property in South Africa, are subject to a final withholding tax of 12% (or a rate determined in a relevant agreement for the avoidance of double taxation) on the payments received.

The withholding tax is levied at 12% on the gross amount of the royalty and is regarded as a final payment made on behalf of the non-resident. No deductions are allowed against royalty income.

This withholding tax is not applicable to any amount received by or accrued to as a royalty to-

- a company which is not a resident, if a royalty or similar payment is derived by such company from any trade carried on through a branch or agency in South Africa and such amount is subject to tax in South Africa; or
- a person (other than a person whose place of residence is in a neighbouring country) in respect of the use (otherwise than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright.

A person who pays a royalty amount to a non-resident must pay the withholding tax to the Commissioner within 14 days after the end of the month during which the payment is made.

- o Services rendered

The source of services rendered is located where the services are rendered and it is not dependent on where the service contract is signed or where payment is made. All amounts paid to a non-resident for services rendered in South Africa will therefore be taxable. A director of a company, for example, who is a non-resident, is taxable on director's fees earned for services rendered in South Africa.

- o Other business income generated through a branch

The source of business income is where the business is carried on or where the business capital is employed. Where business income is received by or accrued to a non-resident from carrying on a trade/business within South Africa, the source of such income is within South Africa. Business income received by or accrued to a non-resident from carrying on a trade/business within South Africa will be taxable in South Africa. The taxability of the income may be affected by an agreement for the avoidance of double taxation.

8.8 Exemptions

- **Interest**

The Act makes specific provision for the exemption of interest received by or accrued to any person who is not a resident. In terms of this exemption the full amount of the interest is exempt from tax. This exemption is not applicable in the following circumstances, namely:

In the case of a natural person-

- if that person was physically present in South Africa for a period exceeding 183 days in aggregate during that year of assessment; or
- if that person at any time during that year of assessment carried on a business through a permanent establishment in South Africa.

In the case of a person (other than a natural person)-

- if that person at any time during the year of assessment carried on a business through a permanent establishment in South Africa.

If the above exemption is not applicable, a further exemption is available. Domestic interest of up to R11 000 per annum (2005) and R15 000 per annum (2006), earned by a natural person under 65 years of age, and up to R16 000 per annum (2005) and R22 000 (2006) earned by any natural person who is 65 years of age and older, is exempt from taxation.

- **Dividends**
Dividends received by or accrued to a non-resident, from a source within South Africa, are exempt from tax.

8.9 Deductions

- **General**

There are no different rules regarding the deductibility of expenses, whether claimed by a resident or a non-resident. The general deduction formula provides for the general rules which an expense must comply with in order to be deductible for normal income tax purposes. Other provisions of the Act allow for special deductions/allowances. If no special deduction/allowance applies, the expense in question will have to comply with the general deduction formula.

The general deduction formula provides that for expenditure and losses to be deductible they must be_

- actually incurred;
- during the year of assessment;
- in the production of income;
- not of a capital nature; and
- laid out or expended for the purposes of trade.

- **Allowances**

The Act also makes provision for the deduction of certain expenditure, notwithstanding the fact that it is of a capital nature, for example:

- o **Patents, inventions, copyrights, designs, other property and knowledge**

An allowance will be allowed as a deduction in respect of expenditure incurred during the year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating), the following property—

- invention or patent as defined in the Patents Act, 1978 (Act No.57 of 1978);
- design as defined in the Designs Act, 1993 (Act No. 195 of 1993);
- copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);
- other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993); or
- knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted.

The allowance is allowed in the year of assessment in which the above-mentioned property is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade.

Where the expenditure exceeds R5 000, the allowance will not exceed in any year of assessment—

- 5% of the amount of the expenditure in respect of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or
- 10% of the amount of the expenditure of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted.

- o **Machinery, plant, implements, utensils and articles**

An allowance, equal to the amount which the Commissioner may think just and reasonable which the value of the asset used by the taxpayer for the purpose of his trade has been diminished by reason of wear and tear or depreciation. For more information in respect of this allowance, see Practice Note No. 19, available on the SARS website www.sars.gov.za.

- o **Expenditure and losses incurred prior to commencement of trade (Start-up costs)**

Start-up costs that would have been allowed, had trade commenced are deductible in any year of assessment, irrespective of the year in which the cost have been incurred. Start-up costs are not defined but they would include costs as advertising and marketing, promotion, insurance, accounting and legal fees, rent, telephone, licenses and permits, market research and feasibility studies, but exclude capital costs such as the purchase of buildings and motor vehicles.

Such costs incurred prior to the commencement of trade can only be set off against income from that trade after the deduction of any amounts allowable in that year of assessment in terms of any other provisions of the Act.

o **Research and development**

Assets of a capital nature which are used exclusively for research and development can be depreciated at 40% of the cost of the asset in the year of assessment in which such asset is brought into use for the first time by the taxpayer, and 20% of such cost in each of the three succeeding years of assessment.

o **Machinery, plant, implements, utensils and articles used for farming and bio-fuel production**

- **Farming**

An allowance in respect of these assets, brought into use for the first time by the taxpayer in the carrying on of farming operations, is equal to-

- 50% of the cost of the asset to the taxpayer in the year of assessment in which the asset is so brought into use;
- 30% of such cost in the 2nd year of assessment; and
- 20% of such cost in the 3rd year of assessment.

- **Production of bio-fuels**

In respect of any year of assessment ending on or after 18 February 2004, an allowance in respect of these assets, brought into use for the first time by the taxpayer for the purpose of the taxpayer's trade to be used for the production of bio-fuels (bio-diesel and/or bio-ethanol), is equal to-

- 50% of the cost of the asset to the taxpayer in the year of assessment in which the asset is so brought into use;
- 30% of such cost in the 2nd year of assessment; and
- 20% of such cost in the 3rd year of assessment.

o **Machinery or plant (manufacture)**

In respect of any new or unused machinery or plant acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 March 2002 and brought into use by the taxpayer on or after that date directly in a process of manufacture or similar process, the allowance is -

- 40% in the year of assessment in which the machinery or plant is so brought into use for the first time; and
- 20% in each of the three subsequent years of assessment.

o **Agricultural co-operatives**

Plant or machinery used for storing / packing farming products brought into use for the first time the allowance is equal to 20% (5 year straight-line)

o **Hotel keepers**

- Buildings and improvements the allowance is 5% (20 year straight-line)
- Machinery / implements / utensils / articles the allowance is 20% (5 year straight-line)
- Refurbishment of buildings within existing exterior framework the allowance is 20% (5 year straight-line)

o **Aircraft**

An allowance in respect of an aircraft is equal to 20% of the cost of the aircraft to the taxpayer in the year of assessment in which the aircraft is brought into use for the first time by the taxpayer for the purposes of his trade and 20% in each of the four succeeding years of assessment.

o **Ship**

An allowance in respect of a ship is equal to 20% of the cost of the ship to the taxpayer in the year of assessment in which the ship is brought into use for the first time by the taxpayer for the purposes of his trade and 20% in each of the four succeeding years of assessment.

o **Pipelines, transmission lines and railway lines**

An allowance not exceeding in any one year of assessment-

- 10% of the cost incurred by the taxpayer in respect of the acquisition of any new and unused pipelines used for the transportation of natural oil; or
- 5% of the cost incurred by the taxpayer in respect of the acquisition of any new and unused-
 - line or cable used for the transmission of electricity;
 - telephone line or cable for the transmission of any signal for the purposes of telecommunication; and
 - railway lines used for transportation of persons, goods or things.

These lines or cables-

- must be contracted for on or after 23 February 2000;
- must be owned and used by the taxpayer; and
- the construction, erection or installation must be commenced on or after 23 February 2000 (includes any earthworks or supporting structures forming part of such pipeline, transmission line or cable or railway line).

The allowance will not in the aggregate exceed the amount of such cost.

o **Small business corporations (SBC)**

An allowance in respect of plant or machinery brought into use by an SBC (as defined in section 12E of the Act) and used by it directly in a process of manufacture or similar process, equal to 100% of the cost of such asset in the year of assessment in which such asset is brought into use.

As from 1 April 2005 an SBC will be eligible for a depreciable write-off at a 50:30:20 percent rate over a three year period for depreciable assets (other than manufacturing assets referred to above) acquired on or after 1 April 2005.

o **Aircraft hangers, aprons, runways and taxiways**

An allowance equal to 5% of the cost incurred on any new or unused aircraft hanger, apron, runway or taxiway on any airport approved by the Minister in consultation with the Minister of Transport, as a designated airport by notice in the Gazette.

The aircraft hanger, apron, runway or taxiway-

- must have been contracted for on or after 1 April 2001; and
- the construction, erection or installation must have commenced on or after 1 April 2001 (includes any earthworks or supporting structures forming part of such hanger, apron, runway or taxiway).

o **Industrial assets used for qualifying strategic industrial projects**

A deduction (known as additional industrial investment allowance) equal to-

- 100% of the cost of any industrial asset used in a qualifying strategic industrial project which is approved with preferred status; or
- 50% of the cost of any industrial asset used in any other qualifying strategic industrial project,

in the year of assessment during which that asset is first brought into use by the company as owner thereof for such project carried on by that company.

The additional industrial investment allowance-

- will be allowed only against income received by or accrued to the company from carrying on any industrial project (as defined in the Act), provided that the amount whereby the allowance exceeds the income, will be carried forward to the immediately succeeding year of assessment and be deemed to be a deduction or allowance which may be allowed in that succeeding year; and
- may not exceed the lesser of the amount reflected in the application for approval as being the cost of the industrial assets (as defined in the Act) to be acquired by the company, as set out in the Act, or
 - R600 million in the case of any qualifying strategic industrial project (as defined in the Act) with preferred status; or
 - R300 million in the case of any other qualifying strategic industrial project.

Application for approval of the project by the company must have been received by the Minister of Trade and Industry after 31 July 2001, but not later than 31 July 2005.

o Learnership agreements

An allowance where-

- a) the employer during the year of assessment entered into a registered learnership agreement with a learner in the course of any trade carried on by that employer; or
- b) the learner completed during that year of assessment any registered learnership agreement entered into by that employer with that learner during that year or any previous year of assessment in the course of any trade carried on by that employer.

The allowance will be in the case of-

- a learner who was at the time of entering into that agreement employed by the employer as contemplated in (a) above, the lesser of-
 - 70% of the annual equivalent of the remuneration of the learner; or
 - R17 500 or
- a learner who was at the time of entering into that agreement was not employed by the employer as contemplated in (a) above, the lesser of-
 - the annual equivalent of the remuneration of the learner; or
 - R25 000; or
- the completion of any registered learnership agreement contemplated in (b) the lesser of-
 - the annual equivalent of the remuneration of that learner; or
 - R25 000.

o Buildings used in a process of manufacturing

Wear and tear is normally not allowed on buildings or other structures of a permanent nature. However, an annual allowance equal to 5% (20 year straight line) of the cost of industrial buildings or of improvements to existing industrial buildings is granted.

This allowance was increased to 10% for industrial buildings erected between 1 July 1996 and 30 September 1999 and brought into use before 31 March 2000.

o Buildings used by hotel keepers

An annual allowance equal to a 5% of the cost to the taxpayer of the buildings or improvements erected by the taxpayer will be allowed as a deduction.

Improvements to existing hotel buildings which do not extend beyond the exterior framework of the building which are commenced on or after 17 March 1993 are subject to an allowance of 20% per year, namely a 5 year write-off period.

No allowance will be made in respect of the cost of the buildings or improvements as has been taken into account in the calculation of any allowance to the taxpayer in terms of the provisions of lease improvements, whether in the current or any previous year of assessment.

If the hotel building is sold-

- the seller has a recoupment of the building allowance claimed. Any recoupment of the building allowance claimed is taxable, but the recoupment may be set off against the cost of such further building erected by him; and
- the purchaser cannot claim any building allowance on the cost to him as he did not erect the buildings or improvements.

o Residential buildings

The residential buildings must be erected in terms of a housing project. A housing project is a project for the erection of a building or buildings in South Africa consisting of at least five residential units.

A residential unit is a self-contained residential accommodation consisting of more than one room (but excluding any hostel, hotel or similar accommodation), of which the erection commenced by the taxpayer on or after 1 April 1982.

The purpose of the erection of the unit must be to let to a tenant for the purpose of deriving a profit for the taxpayer or in order to be occupied by any bona fide full-time employee of the taxpayer.

- The residential building initial allowance, equal to 10% of the cost to the taxpayer of the residential buildings erected by the taxpayer, is only allowable in the year of assessment during which at least five residential units in that housing project have been let or occupied for the first time.
- The residential building annual allowance, equal to 2% of the cost to the taxpayer of the residential buildings erected by the taxpayer, is allowable for the 1st time for the year of assessment in which the residential building initial allowance is made in respect of that residential unit.

Both these allowances are allowed for a full year, notwithstanding the fact that the units were only let or occupied for the first time during the year of assessment.

o **Erection or improvement of buildings in urban development zones**

Taxpayers investing in one of the 13 demarcated urban development areas receive special depreciation allowances for construction or refurbishment of commercial and residential buildings used solely for trade purposes. These areas are in the municipality of Buffalo City, Cape Town, Ekurhuleni, Emfuleni, eThekweni, Johannesburg, Mangaung, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje and Tshwane.

The following allowances will be allowed as a deduction in respect of-

- the cost of the erection of any new buildings or the extension of or addition to any buildings (other than existing buildings), an amount equal to:
 - 20% of the cost to the taxpayer of the erection, extension or addition to that building in the year of assessment is brought into use by the taxpayer, and
 - 5% of that cost in each of the 16 succeeding years of assessment; or
- the cost of improvements (including any extension or addition) to any existing building an amount equal to:
 - 20% of the cost to the taxpayer of the improvements, extensions or addition in the year of assessment in which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purpose of that taxpayer's trade, and
 - 20% of that cost in each of the four succeeding years of assessment.

Note: The list of allowances set out above is not comprehensive.

8.10 Special provisions

- **Determination of taxable income of certain persons in respect of international transactions**

- **Thin Capitalisation**

Where financial assistance has been granted in terms of an international agreement by a non-resident to a resident who are connected persons in relation to each other and the Commissioner, having regard to the circumstances of the case, is of the opinion that the financial assistance is excessive in relation to the fixed capital (three times the fixed capital of that non-resident in that resident company) of the resident, any interest, finance charge or other consideration payable in respect of the financial assistance which relates to the amount which is excessive must be disallowed as a deduction in the hands of the resident.

For more information regarding the concept of thin capitalisation refer to Practice Note No. 2 dated 14 May 1996, available on the SARS website www.sars.gov.za.

- **Transfer Pricing**

Transfer pricing provisions are normally applied to adjust the prices of goods and services in terms of certain transactions concluded between related parties to reflect an arm's length price which would have applied had the transaction been concluded on normal commercial grounds between unrelated parties. The effect of the application of transfer pricing provisions is to neutralise the tax benefit arising from such transactions.

For more information regarding the concept of transfer pricing refer to Practice Note No. 7 dated 6 August 1999, available on the SARS website www.sars.gov.za.

- **Assessment of owners or charterers of ships or aircraft who are not residents of the Republic**

Any non-resident who is an owner or charterer of any ship or aircraft and embarks passengers or loads livestock, mail or goods in South Africa, will be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of 10% of the amount payable to him/her or to any agent on his/her behalf. It does not matter whether the payment is made inside or outside South Africa.

This deeming provision above is not applicable if the person submits accounts which satisfactorily disclose the taxable income derived by him/her from embarking of passengers or the loading of livestock, mail and goods.

Note: The list of allowances set out above is not comprehensive.

8.11 Capital Gains Tax (CGT) on the disposal or deemed disposal of property in South Africa by non-residents

CGT is not a separate tax, but forms part of the income tax system and is a tax on capital gains. CGT is only applicable to the disposal or deemed disposal of an asset on or after 1 October 2001.

Non-residents are liable to pay CGT on the taxable gain made on the disposal of the following assets:

- Immovable property situated in South Africa (e.g. land and buildings);
- Any right or interest in immovable property in South Africa (e.g. long-term lease)
- Shares in a company where 80% or more of the market value of its net assets comprises immovable property in South Africa, and the non-resident holds directly or indirectly 20% or more of the shares in the company;
- Assets of a permanent establishment (e.g. a branch of a foreign company) situated in South Africa.

The taxpayer need not register separately for CGT if registered for income tax. However, if a taxpayer is not registered for income tax purposes, for example, as a result of being a non-resident and receiving no taxable income in South Africa and an asset is disposed of in South Africa resulting in a capital gain or a capital loss, then the taxpayer must submit an income tax return.

A capital gain in respect of the disposal of an asset during a year of assessment equals an amount by which the proceeds received or accrued in respect of such disposal exceed the base cost of that asset.

A capital loss in respect of the disposal of an asset during a year of assessment equals an amount by which the base cost of that asset exceeds proceeds received or accrued in respect of that disposal.

Natural persons and special trusts are entitled to an annual exclusion of R10 000 of capital gains or losses during a year of assessment. In the case where a natural person passed away, the annual exclusion of R10 000 is increased to R50 000 for the year of assessment.

In the case of natural persons and special trusts, only 25% net capital gain, after deducting from the net capital gain the amount of the annual exclusion, is included when calculating the tax payable. For companies, closed corporations and trusts, 50% of the net capital gain on the disposal of an asset is included in taxable income. Roll over relief or deferral is available where the asset is either disposed of involuntarily and is replaced or is disposed of in order to acquire another similar business asset that qualifies for a capital allowance.

8.12 Rates of normal tax in respect of natural persons & special trusts

Natural persons & Special trusts	2004/5
Taxable income (R)	Rates of tax (R)
Not exceeding 74 000	18% of each 1
74 001 – 115 000	13 320 + 25% of the amount above 74 000
115 001 – 155 000	23 570 + 30% of the amount above 115 000
155 001 – 195 000	35 570 + 35% of the amount above 155 000
195 001 – 270 000	49 570 + 38% of the amount above 195 000
270 001 and above	78 070 + 40% of the amount above 270 000

Natural persons & Special trusts	2005/6
Taxable income (R)	Rates of tax (R)
Not exceeding 80 000	18% of each 1
80 001 – 130 000	14 400 + 25% of the amount above 80 000
130 001 – 180 000	26 900 + 30% of the amount above 130 000
180 001 – 230 000	41 900 + 35% of the amount above 180 000
230 001 – 300 000	59 400 + 38% of the amount above 230 000
300 001 and above	86 000 + 40% of the amount above 300 000

8.13 Rebates in respect of natural persons

The income tax as calculated per the above table is reduced by the following rebates in the case of natural persons:

Rebates – Natural persons	2004/5	2005/6
Primary rebate	R5 800	R6 300
Secondary rebate – Natural person 65 years and older	R3 200	R4 500

8.14 Rates of normal tax for trusts (other than special trusts)

Trusts (excluding Special trusts)	2004/5	2005/6
Taxable income	Rate of tax	Rate of tax
R1 and more	40%	40%

8.15 Rates of normal tax for companies

Type	Rate of tax 2004/5
Standard Companies	30%
Small Business Corporations R1 – R150 000 R150 001 and above	15% 30%
Employment Companies	35%
Non-resident companies which trade in South Africa through a branch or agency (exempt from STC)	35%

Type	Rate of tax 2005/6
Standard Companies	29%
Small Business Corporations R1 – R35 000 R35 001 – R250 000 R250 001 and above	0% 10% 29%
Employment Companies	34%
Non-resident companies which trade in South Africa through a branch or agency (exempt from STC)	34%

8.16 When must the tax per assessment be paid?

The amount of tax due by the taxpayer must be paid not later than the second due date as indicated on the assessment. If the taxpayer fails to pay the full amount, interest is payable by the taxpayer at the prescribed rate on the outstanding balance of such tax in respect of each completed month during which any portion of the tax has remained unpaid.

8.17 Employees' tax

Employees' tax is not a separate tax but is a system in terms of which an employer, as an agent of government, deducts tax from the earnings of employees and pays it over to SARS on a monthly basis. This tax serves as a tax credit that is set-off against the final tax liability of an employee, which is determined on an annual basis.

Every employer who pays remuneration to an employee must register as an employer for employees' tax purposes. That means that any business that pays salaries or wages to its employees that is above the thresholds must register with SARS for employees' tax purposes.

Employees' tax is withheld when the amounts are paid or become payable to the employees and consists of two components, viz. Standard Tax on Employees (SITE) and Pay-As-You-Earn (PAYE). SITE is deducted from the full-time employment income below the specific threshold (R60 000) for a year of assessment and is classified as SITE. PAYE is the employee's tax that is deducted by the employer from the amount of full-time employment income in excess of the SITE threshold (R60 000) for a year of assessment or any part-time income.

8.18 Provisional Tax

Provisional tax is not a separate tax but simply a provision for the final tax liability for a year of assessment, which will be determined upon assessment. It prevents large amounts being payable on assessment as it spreads the tax burden over the year.

The payments, which are usually made in August and February, represent tax on income, which has already been earned during that year of assessment. An optional third payment may be made after the end of the tax year to prevent the accrual of interest on underpayment of provisional tax when the assessment for the relevant tax year is issued. This optional third payment is only available to a provisional taxpayer whose taxable income exceeds-

- R20 000 in the case of a company; or
- R50 000 in the case of any person other than a company.

9. Secondary Tax on Companies (STC)

STC is payable by resident companies. STC is a tax levied on companies in respect of net amount of dividends declared by such companies or distributed by close corporations at a rate of 12,5%. STC is not a withholding tax on dividends.

Non-resident companies, carrying on a trade through a branch or agency within South Africa, are not subject to STC in respect of dividends declared.

10. Donations Tax

Donations tax is not a tax on income, but rather a tax payable by a person (the donor) who is a resident on the transfer of assets to another person (donee). Certain foreign located assets are outside the donations tax net, for example, assets acquired by the donor before the donor became a resident.

A non-resident is not liable for any donations tax in respect of any donation made to any person. However, where a donation is made by a resident to a non-resident and the resident (donor) fails to pay the tax, the non-resident (donee) and the donor will be jointly and severally liable for the tax. Apart from other exemptions, such as donations to public benefit organisations, donations by an individual (resident) totalling R30 000 per year of assessment will be exempt from donations tax.

Donations made by residents are levied at a rate of 20% on the value of the property disposed of.

11. Value Added Tax (VAT)

11.1 Rates of tax

Value-added tax (VAT) is levied on the supply of goods and on services rendered by registered vendors throughout the business cycle. Effectively the tax is levied on the value-added by an enterprise. As vendors levy and pay over the tax, VAT is borne by the final consumer. VAT is also levied on the importation of goods as well as on the supply of imported services into South Africa by any person. It is levied at the standard rate of 14%, but certain supplies are subject to a zero-rate or are exempt from VAT. VAT is levied on an inclusive basis, which means that VAT has to be included in all prices on products, price lists, advertisements and quotations.

11.2 Who is liable for the payment of VAT?

VAT is levied on all supplies made by registered vendors in the course or furtherance of their enterprises. Only a registered vendor may levy VAT. A vendor making exempt supplies or a person who is not registered may therefore not charge VAT and may not claim back any VAT borne by the enterprise. A vendor making taxable supplies of more than R300 000 per annum must register for VAT. A vendor making taxable supplies of less than R300 000 per annum, but more than R20 000 per annum is not obliged to register as a VAT vendor, but may nevertheless apply for voluntary registration. Enterprises making taxable supplies of less than R20 000 per annum cannot register for VAT.

When a registered vendor is supplied with goods or services by another registered vendor, VAT is levied by the supplier of those goods or services. A vendor subtracts the input tax (VAT borne by the vendor) from the output tax (VAT charged by the vendor). The difference is VAT payable to SARS. The effect of this is that VAT is borne by the final consumer of goods and services.

11.3 Items subject to the standard rate

The standard rate of 14% applies to the supply of all goods and services by vendors. Imports are also subject to VAT at the standard rate.

11.4 Items subject to zero-rating

The following goods and services are subject to VAT at the zero-rate:

- **Goods**
 - o Goods exported from South Africa
 - o Brown bread
 - o Brown wheaten meal
 - o Maize meal
 - o Samp
 - o Mealie rice
 - o Dried mealies
 - o Dried beans
 - o Rice
 - o Lentils
 - o Fruit and vegetables
 - o Pilchards and sardinella in tins or cans
 - o Milk, cultured milk and milk powder
 - o Cooking oil
 - o Eggs
 - o Edible legumes and pulse or leguminous plants
 - o Dairy powder blends
 - o Petrol, diesel and illuminating paraffin
 - o Certain supplies made to VAT registered farmers of certain agricultural inputs
 - o Certain gold coins issued by the SARB, including Kruger Rands

- **Services**
 - o International transport and related services
 - o State subsidies and donations to welfare organisations
 - o Transfer payments made by public authorities to vendors
 - o Services supplied outside South Africa.

A zero-rating implies that VAT at 0% is levied on supplies and VAT borne by the vendor for purposes of making those supplies is claimable as input tax.

11.5 Exemptions

The following goods and services are exempt from VAT:

- Financial services
- Passenger transport by road and rail
- The rental of residential accommodation
- Educational services in primary and secondary schools, universities and technikons
- Interest, pension and similar institutions and medical schemes and life insurance benefits
- Medical services and medicines supplied by State and provincial hospitals and local authority clinics
- The supply of any goods or services by an employee organisation to its members to the extent that the consideration consists of membership contributions
- Child minding services in crèches and after-school centres.

An exemption implies that the supplier of goods does not levy VAT on those exempt supplies but must bear VAT on purchases.

11.6 Tourists, details of VRA Offices throughout South Africa, diplomats and exports to foreign countries

- **Tourists**

VAT borne by foreign tourists may be refunded by the VAT Refund Administrator (VRA) upon departure from South Africa. The tourist must be in possession of a tax invoice and have the goods available for inspection upon departure from South Africa. An administration fee of 1,5% of the VAT inclusive amount of the claim, subject to a minimum of R10 and a maximum of R250, is levied by the VRA for processing the refund.

- **Details of VRA Offices throughout South Africa**

Office	Address	Telephone number
Head Office	3 Hornet Street, Rhodesfield, Kempton Park	+2711 394 1117
Johannesburg Airport	Johannesburg International Airport (International Departure Area)	+2711 390 1655
Cape Town International	Cape Town International Airport	+2721 934 8675
Beit Bridge	Beit Bridge Border Post	+2715 530 0113
Lebombo	Lebombo Border Post	+2731 793 8178
Durban	Durban International Airport	+2731 465 9373
Sandton	Sandton City, 4th floor Entrance 6	+2711 784 7399
Nelspruit	Information Kiosk Riverside Mall, Whiteriver Road, Nelspruit, 1200	+2713 757 1236
Offices are also located in Swaziland, Botswana and Namibia		

- **Diplomats**

Tax relief is granted to certain diplomatic and consular missions in the form of a refund of VAT borne on official purchases.

- **Exports to foreign countries**

A vendor may apply the zero rate when supplying movable goods and consigning them to a recipient in an export county.

If a non-resident or a foreign enterprise purchases goods in South Africa and subsequently exports the goods, the VAT may be refunded by the VAT Refund Administrator. In certain circumstances the vendor may apply the zero-rate where the goods are exported by rail, sea or air, provided the vendor obtains proof of export as required under the Export Incentive Scheme.

More information is available in the VAT Guide for Vendors on the SARS website www.sars.gov.za.

PART D: DUTIES

12. Estate Duty

12.1 Introduction

Estate Duty is levied on the estates of natural persons.

12.2 What constitutes an estate?

For purposes of the Estate Duty Act, No. 45 of 1955 (the Estate Duty Act) the estate of a person consists of-

- all property of that person on the date of his/her death; plus
- all property which is deemed to be that person's property on the date of death, (e.g. life insurance policies, payments from pension funds).

12.3 Property

The term "property" means any right in or to property, whether movable or immovable, corporeal or incorporeal, with specific inclusions and exclusions. In the case of a non-resident who was not ordinarily resident in South Africa at the date of death, the following is excluded from property of that person's estate for purposes of the Estate Duty, namely-

- any right in immovable property situated outside South Africa;
- any right in movable property physically situated outside South Africa;
- any debt not recoverable or right of action not enforceable in the Courts in South Africa;
- any goodwill, licence, patent, design, trade mark, copyright or similar right not registered or enforceable in South Africa or attached to any trade, business or profession in South Africa;
- any stocks or shares held by him/her in a body corporate which is not a company;
- any stocks or shares held by him/her in a company, provided any transfer whereby any change of ownership in such stocks or shares is recorded is not required to be registered in South Africa; and
- any right to any income produced or proceeds derived from the last mentioned four items above.

12.4 Estate of a non-resident that is subject to estate duty

Based on the exclusions referred to in paragraph 12.3 above, the estate of a non-resident is only subject to estate duty to the extent that it consists of "property" and "deemed property" of the deceased as defined in the Estate Duty Act.

The Estate Duty Act, unlike the Income Tax Act, does not have a definition of the term "resident" and only refers to persons who are "ordinarily resident" or "not ordinarily resident". It, therefore, follows that any natural person who is not ordinarily resident in South Africa, but who became a resident of South Africa, in terms of the physical presence test for income tax purposes, is still regarded as a non-resident for estate duty purposes, due to the fact that such person is not ordinarily resident in South Africa.

12.5 Rate of estate duty

Estate duty is levied at a rate of 20% of the dutiable amount of the estate.

12.6 Dutiable amount

The dutiable amount is calculated as follows-

Value of property + deemed property	R2 500 000
<u>Less:</u> Deductions in terms of the Estate Duty Act	<u>(R 300 000)</u>
Net value of estate	R2 200 000
<u>Less:</u> Abatement in terms of the Estate Duty Act	<u>(R1 500 000)</u>
Dutiable amount	<u>R 700 000</u>

13. Transfer Duty

13.1 Introduction

Transfer duty is payable in respect of the acquisition of any “property” as defined in the Transfer Duty Act, No. 40 of 1949. The definition of “property” was amended to include shares, members’ interest and contingent rights in certain circumstances. The amendment was introduced with effect from 13 December 2002 to counter the avoidance of transfer duty by placing residential property in companies, close corporations and discretionary trusts and the selling of the shares, members’ interest and contingent rights instead of the property. This amendment brings the transfer of these assets within the charging section.

13.2 Rate of transfer duty

Transfer duty is calculated at the following rates, namely-
From 1 March 2004 to 28 February 2005

Person	Fair value*	Rate
Natural person	On the 1st R150 000 of purchase consideration	0%
	On the amount that exceeds R150 000 but not R320 000	5%
	On the amount in excess of R320 000	8%
Person other than a natural person	On purchase consideration	10%

*Fair value is usually the purchase price

From 1 March 2005 to date

Person	Fair value*	Rate
Natural person	On the 1st R190 000 of purchase consideration	0%
	On the amount that exceeds R190 000 but not R330 000	5%
	On the amount in excess of R330 000	8%
Person other than a natural person	On purchase consideration	10%

*Fair value is usually the purchase price

Where the person (seller) is a vendor for VAT purposes, the transfer of the immovable property is subjected to VAT at a rate of 14% and the person (purchaser) is exempted from transfer duty.

Where the immovable property is transferred as a going concern to a VAT vendor, VAT is charged at a zero rate (0%).

Where the seller is not a vendor for VAT purposes, transfer duty is payable by the purchaser at the rate as set out in the abovementioned table.

13.3 By whom and when is transfer duty payable?

Duty is payable by-

- the person who has acquired the property; or
- the person in whose favour or for whose benefit any interest in or restriction upon the use or disposal of property has been renounced.

The duty is payable within six months of the date of acquisition of the property.

13.4 Value of property on which transfer duty is payable

Normally duty is payable on-

- the amount of the consideration, where consideration is payable by the person who has acquired the property; and
- the declared value of the property, where no consideration is payable.

14. Stamp Duty and Uncertificated Securities Tax (UST)

14.1 Introduction

Stamp Duty is payable in respect of any instrument mentioned in the Stamp Duties Act, No. 77 of 1968 (the Stamp Duties Act) except the instruments which are specifically exempt in terms of the Stamp Duties Act.

14.2 Rate of stamp duty

The Stamp Duties Act contains the rate at which stamp duty is levied and depends on the specific instrument and the specific amount of the instrument, namely-

- lease or agreement of lease
- marketable securities

14.3 By whom is stamp duty payable?

- Lease or agreement of lease in respect of immovable property = Lessor
- Original issue of marketable securities = Company or corporate body issuing marketable security
- Registration/transfer of marketable security = Transferee
- Cancellation/redemption of company shares redeemed = Company of which the shares are cancelled/
- Acquisition of any marketable securities = Person by whom the security is acquired

14.4 Time within which instruments must be stamped

Every instrument chargeable with duty which is executed within South Africa must be stamped before the execution thereof or within 30 days of execution.

Every instrument chargeable with duty which is executed outside South Africa must be stamped within 30 days after the date on which it is first received in South Africa.

14.5 Uncertificated Securities Tax (UST)

UST is payable in respect of the issue of, and change in beneficial ownership in, any listed securities on the JSE Securities Exchange South Africa at a rate of 0,25%. This is in terms of the Uncertificated Securities Tax Act, No. 31 of 1998. In the case of unlisted securities stamp duty is levied at the same rate of 0,25%.

Note: UST on the issue of securities will be eliminated from 1 January 2006

15. Customs Duty and Excise Duty

15.1 Introduction

One of the core functions of Customs is the control of goods entering (imported into) or leaving (exported from) South Africa. A duty is levied on both the-

- importation of all goods; and
- exportation of certain locally manufactured products.

All imported goods arrive in South Africa through an approved entry point by any one of the following modes, namely: air, sea, road, rail, or post, where it is examined to ascertain if-

- goods were correctly declared; and
- correct duties were levied.

All goods (including locally manufacturing products) which are exported, leave South Africa through an approved port of exit. Examination facilities are available at most international ports of exit as well as at the transit sheds and container depots. Provision may also be made for the examination of locally manufactured products to be exported to be conducted on the premises of the clients. Exportation of a variety of goods is either totally prohibited or may be subject to inspection by other authorities.

15.2 Customs Duty

A duty, referred to as customs duty, is levied on all goods imported. The importer must declare to Customs what is brought into South Africa and the mode of transport. All imported goods are subjected to examination by Customs to ascertain if-

- goods were correctly declared; and
- correct duties were levied.

Certain goods require an import permit, which must be produced at the time of clearance. Application for import permits must be made to the Department of Trade and Industry.

An anti-dumping and Countervailing Duty, as set out in Schedule 2 to the Customs and Excise Act, No. 91 of 1964 is levied on goods considered to be dumped in South Africa or on subsidized import goods respectively.

The rate of the duties leviable are-

- duty free;
- percentage of the value of the goods (ad valorem basis);
- as a specific duty (cents per unit, kilogram or litre)
(These rates above are set out in Schedule 1 to the Customs and Excise Act); or
- A flat rate of 20% on the value of goods up to a value of R20 000.

15.3 Excise Duty

One of two duties is levied, depending on the nature of the product exported: either an excise duty or an ad valorem duty is levied.

Excise duty, which is based on the specific quantity or volume of the product, is levied on the exportation of certain locally manufactured products. This duty is levied on certain items such as tobacco products, alcoholic products, petroleum products and hydro-carbons.

An ad valorem excise duty, which is based on the value of the product, is levied on certain specified goods such as television receptors, audio equipment and on certain cosmetics.

15.4 Air Passenger Departure Tax

From 1 July 2003 to 31 July 2005

- (a) Passengers departing to Botswana, Lesotho, Namibia, and Swaziland, R55 per passenger.
- (b) Passengers departing to other international destinations, R110 per passenger.

From 1 August 2005 to date

- (a) Passengers departing to Botswana, Lesotho, Namibia, and Swaziland, R60 per passenger.
- (b) Passengers departing to other international destinations, R120 per passenger.

PART E: LEVIES

16. Skills Development Levies (SDL)

An employer must pay SDL if –

- the employer pays annual salaries, wages and other remuneration in excess of R250 000; or
- the employer is liable for registration with SARS for employees' tax purposes in respect of employees who are liable to pay PAYE/SITE irrespective whether the annual payroll is in excess of R250 000 or not.

This levy (currently 1%) is used for the funding of education and training of employees. It is calculated as a percentage of a leviable amount, which is more or less equal to the earnings of the employees. The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment. Further information in this regard is available in the SDL10 – "Guidelines to Employers" which is available at SARS offices and on the SARS website under SDL.

Note: From 1 August 2005 a new exemption rule applies in terms of which employers with an annual payroll of R500 000 or less (whether employers are registered for PAYE/SITE or not) are exempt from the payment of SDL.

17. Unemployment Insurance Contributions (UIC)

The Unemployment Insurance Fund insures employees against the loss of earnings due to termination of employment, illness and maternity leave. In terms of the Unemployment Insurance Contributions Act, No. 4 of 2002, a monthly contribution has to be made by both the employer (1%) and the employee (1%) based on the earnings of the employee. The contributions are calculated as a percentage of the gross remuneration paid or payable to the employee for services rendered, i.e. before the deduction of pension fund, retirement annuity fund and qualifying medical aid contributions.

An employer who is registered for Employees' Tax and/or the SDL is automatically registered for UIC with SARS. (The forms used are the same forms that are used for SDL and PAYE purposes). An employer who is not liable for the payment of Employees' Tax and/or SDL must register for UIC purposes with the Unemployment Insurance Commissioner at the Department of Labour. Further information in this regard is available in the Unemployment Insurance Contributions Guidelines to Employers which is available on the SARS website www.sars.gov.za.

The Department of Labour's website, www.labour.gov.za also has useful information in this regard.

18. Regional Services Council levies (RSC)

These levies are levied on turnover (establishment levy) and payroll (services levy). Any person carrying on or deemed to be carrying on an enterprise within a region may be liable for the regional establishment levy or regional services levy. Inquiries in this regard must be directed to the local municipality.

In the 2005 Budget Speech it was proposed to abolish these levies on 30 June 2006, and to replace them with alternative tax instruments of funding arrangements to ensure independence and financial viability of municipalities.

PART F: PENALTIES AND OR ADDITIONAL TAXES

The Acts in terms of which the different taxes/duties/levies discussed above are levied, contain special provisions regarding penalties and/or additional taxes to be levied on the late payment of these taxes/duties/levies.

PART G: OBJECTION AND APPEAL

The Acts referred to in Part F above also contain provisions regarding objection and appeal procedures. More information is available on the SARS website www.sars.gov.za under "Dispute Resolution".

PART H: DOUBLE TAXATION AGREEMENTS

In certain circumstances, the provisions of an agreement for the avoidance of double taxation may be applicable. It is practice in most countries for income tax to be imposed both on the worldwide income derived by the residents of the country and on income derived by non-residents which arises in that country. The effect of such a system is that income derived by a resident of one country from a source in another country is subject to tax in both countries. As this position clearly discourages non-resident investment, countries that have trade relationships enter into agreements for the avoidance of double taxation.

Such agreements commonly provide that income of a particular nature will be taxed only in one of the countries, but may be taxed in both countries with the country of residence allowing a credit for the tax imposed by the other. Certain agreements may provide that the residence country may exempt the income. South Africa uses the credit method in most instances. A list of the Countries with which South Africa has a Double Taxation Agreement is available on the SARS website www.sars.gov.za.

PART I: WORK PERMITS

Although this guide deals with the taxation of business and investment income by non-residents, it is, however, also important to note that other requirements need to be met when foreigners wish to work in South Africa. Work permits, for example, will be required and are issued by the Department of Home Affairs. Further information for foreign nationals is available on the South African Government website at www.gov.za.

PART J: EXCHANGE CONTROL

19. Introduction

Exchange control regulations, restricting the in and out flow of capital in South Africa still exist. For example, investments into South Africa must be reported and prior approval must be required if loan capital is invested in South Africa.

The administration of exchange control is performed by the SARB. The SARB has delegated some of its powers to deal with exchange control related matters to certain banks. These banks are known as “authorised dealers” in foreign exchange.

20. Non-resident – Local borrowings

All loans by a South African corporate to a non-resident require prior exchange control approval. An individual may transfer loans within a limit of R30 000 per applicant during a calendar year to persons normally resident outside South Africa, or to South African residents who are temporarily aboard for the sole purpose of study.

The ability of a South African company in which 75% or more of the voting rights, capital or earnings is held or controlled directly or indirectly by a non-resident (affected company) to obtain financial assistance is subject to certain restrictions. The purpose of these restrictions is to ensure that adequate capitalisation of foreign investments is made. Financial assistance for exchange control purposes includes the following:

- The lending of currency
- The granting of credit
- The taking up of securities
- The conclusion of an instalment and/or hire purchase sale or lease
- The financing of sales or stock
- Discounting
- Factoring, viz. the buying of trade debts or lending money on the security of trade debts
- The guaranteeing of acceptance credits or accepting of any obligation, a suretyship, a buy-back, a leaseback (excluding normal trade credits).

Non-residents may borrow up to 100% of the Rand value of funds introduced from aboard and invested locally. However, in instances where a non-resident wishes to borrow locally to finance a foreign direct investment into South Africa, the SARB would, on application, consider such borrowing up to 300% of the Rand value of the funds introduced from aboard and invested locally.

The ability of an affected company to borrow money from a South African lender is restricted by a formula which depends on the composition of the affected company and the extent of the funds of its shareholders. Both an entirely foreign-owned company and subsidiary are permitted to borrow up to 100% or 300% (depending on the type of investment) of its shareholders investment (also known as the company’s “borrowing base” or “effective capital”) in the affected company which consists of the accumulated amount of the following items:

- Paid-up share capital
- Preference shares
- Undistributed earned profits
- Shareholder’s loans from abroad
- In certain circumstances, the hard core of shareholder’s trade credit, which consist of-
 - the granting of credit by a seller in respect of any commercial transaction directly involving the passing of ownership of the goods sold from the seller to the purchaser; and
 - the granting of credit solely in respect of the payment for services rendered.

The participation of resident shareholders in a non-resident controlled entity can increase the ability of the non-resident controlled entity to obtain local borrowings. The local financial assistance ratio is calculated according to the following formula-

$$300\% \times \left[\frac{\% \text{ South African interest}}{\% \text{ Non-resident interest}} \times 100\% \right]$$

By applying this formula, a resident shareholding of 20% will increase the maximum allowable local borrowings from 300% to 325% of the effective capital, namely:

$$\begin{aligned} & 300\% + \left[\frac{20\%}{80\%} \times 100\% \right] \\ & = 300\% + 25\% \\ & = 325\% \end{aligned}$$

For more detailed information, visit the website of the SARB at www.reservebank.co.za.

21. Repatriation of funds

Having introduced funds into South Africa, the next fundamental issue is which of these investment funds and funds generated by the investment in South Africa can be remitted out of South Africa.

21.1 Funds utilised to buy assets

All funds introduced into South Africa-

- to acquire fixed property within South Africa may, together with any profits on resale of the property, be repatriated provided the title deed of the property has been endorsed "non-resident"
- to acquire shares/members interest in a company/close corporation may, together with any profit on resale, be repatriated provided the relevant securities have been endorsed "non-resident"
- in the form of a foreign loan to fund acquisitions of corporate entities which own property in South Africa may, together with any profits on resale, be repatriated in terms of the original loan approval granted by the SARB, provided the relevant securities have been endorsed "non-resident".

Where a resident has decided to exercise an option in the loan agreement to make an early repayment, in whole or in part, or the non-resident has agreed to the borrower's request to make an early repayment, the borrower must first submit an application to Exchange Control to obtain their approval.

21.2 After tax profits

An external company does have an advantage over a registered South African subsidiary in that any after tax profits in an external company can be freely remitted out of South Africa.

21.3 Dividends

Dividends declared by a listed South African company to non-resident shareholders may be remitted to non-residents.

Dividends declared by non-listed South African companies may be remitted to non-resident shareholders in proportion to the percentage shareholding of the non-resident shareholder in question. Such a non-listed South African company will be required to produce an auditor's report stating that the amount to be remitted arises from realised or earned profits on investments owned by the non-resident.

21.4 Loans

Both an external company and a South African subsidiary require exchange control approval for the repatriation of loans brought into South Africa as loan capital. Such approval might provide that the repayment of such loans must only be made out of profits of the company.

21.5 Other payments, e.g. royalties, licence or patent fees

Where the products in question are manufactured locally and payments are made to non-residents, approval must be obtained from the Department of Trade and Industry.

Where the products in question are not manufactured locally and payments are made to non-residents, approval must be obtained from Exchange Control.

All royalty payments have to be substantiated by an auditor's report in which it confirms the basis of calculation and that it is in terms of an approved agreement.

21.6 Interest

Provided Exchange Control has granted approval for the loan facility, there are no restrictions on interest payments. Non-resident investors' should refer to the thin capitalisation and transfer pricing rules referred to in the Act.

CONCLUSION

All relevant information should be considered to successfully doing business and/or invest in South Africa. It is trusted that the information provided in this brochure will be of assistance to non-residents who decided to do business in South Africa and/invest in South Africa. For more information you may contact any SARS branch office or visit the SARS website www.sars.gov.za.

NOTES



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