Financial and Taxation Directory 2004/2005

We believe that the information contained in this booklet is accurate at the time of publication 18 February 2004. As every situation depends on its own facts and circumstances, only professional advice should be relied upon.

® Cliffe Dekker Inc. and BDO Spencer Steward, South Africa.

CLIFFE DEKKER
Attorneys

CONTENTS

South African Taxation

Highlights of the 2004/2005 Budget	2 - 4
Calculation of Tax Payable	5
Tables of Normal Tax Payable	6 - 7
Comparison of 2005 vs 2004 Taxes Payable	8 - 9
Natural Persons	10 - 25
Basis of Taxation	10
Exempt Income	10 - 11
Deductions	11 - 13
Provisional Tax	13 - 14
PAYE/SITE	14 - 15
Lump Sum Payments	15 - 16
Fringe Benefits	16 - 25
Companies & Close Corporations	25 - 28
Trusts	29
Capital Allowances	30 - 32
Foreign Exchange Profits and Losses	32
Taxation of Retirement Funds	33
Trading Stock	33
Capital Gains Tax	33 - 40
Residence Based Tax	40 - 42
Tax Exemption for Charities	42 - 43
Value Added Tax	43 - 44
Estate Duty	45 - 46
Donations Tax	46
Stamp Duty	46
Marketable Securities Tax	46 - 47
Transfer Duty on Immovable Property	48
Regional Services Council Levies	48
Skills Development Act	49
Skills Development Levies Act	49

Taxation in other Southern African Countries

Comparison of Taxes Payable	50
Namibia	51 - 52
Botswana	52 - 54

Other Related Information

Exchange Control	54 - 60
Prime Bank Overdraft Rates	61
Retention of Records	62 - 63
Tax Timetable	64

HIGHLIGHTS OF THE 2004/2005 BUDGET
18 FEBRUARY 2004

The contents of this publication incorporate the budget proposals tabled in Parliament on 18 February 2004 by Mr TA Manuel, Minister of Finance. The notes are subject to amendment if the Income Tax Act is amended by Parliament and it is important that this point should be borne in mind when considering the application of these notes to any specific case.

Salient features of the budget proposals are summarised below for ease of reference.

INDIVIDUALS

Personal Income Tax Rates

The revised income tax tables propose relief for low income earners, with little relief for middle income earners.
For instance, taxpayers with taxable income of R40 000 per annum (pa) will enjoy a reduction in taxes of 22%, taxpayers earning R70 000 will save 6% and Taxpayers earning R300 000 will save 3%. See comparison tables on pages 8 and 9.

The maximum marginal tax rate remains the same at 40% but only applies to amounts exceeding R270 000 (previously R255 000). The lowest rate remains unchanged at 18%, but now applies to taxable income under R74 000 (previously R70 000).

The primary rebate has been increased from R5 400 to R5 800 while the secondary rebate for individuals over the age of 65 increased to R3 200 (previously R3 100).

The minimum tax threshold increases from R30 000 to R32 222 for persons under 65 and in the case of persons aged 65 and over, from R47 222 to R50 000.

Interest Income Exemption

The interest exemption has been increased from R10 000 to R11 000 for persons under 65 and from R15 000 to R16 000 for persons 65 and over. Of this exemption, only R1 000 will be allowed against foreign interest and foreign dividends.

Motor Vehicle Allowance

The deemed expense schedule will be reviewed during the year.

Entertainment incurred by Commission-based Employees and Entrepreneurs

It is proposed that the additional entertainment expenses be deleted in order to disallow possible personal expenses.

Provisional Tax

It is proposed that the threshold of provisional tax be modified.

COMPANIES

Employee Equity Participation

Proposed legislation will be introduced for the tax-free transfer of shares to employees. (Capped at a certain amount). This will encourage broad-based employee participation in companies.

Labour Broker Companies

It is proposed that PAYE deduction be waivered on payment to a labour broker if a labour broker employs more than three full-time employees.

Secondary Tax on Companies (STC)

It is proposed that the dividend exemption for intra-group dividends be limited so that the exemption does not apply to dividends paid to an exempt company.

VALUE ADDED TAX (VAT)

Motor Vehicles

It is proposed that the exemption list be extended to include hearses and game viewing vehicles.

Financial Services

It is proposed that the transactions between branches or divisions which are separately registered be zero rated.

Eliminating VAT Avoidance Schemes

It is proposed that the declaration required for the deemed input be reviewed.

TRANSFER DUTY

The transfer duty threshold for individuals has been increased from R140 000 to R150 000.

RETIREMENT FUND TAX

It is proposed that the interest on refunds be added in respect of tax on retirement funds.

STAMP DUTY

Mortgage Bonds

It is proposed that stamp duties on mortgage bonds be removed from 1 March 2004.

Negotiable Certificates of Deposit (NCD)

It is proposed that the stamp duty on NCDs be repealed from 1 April 2004.

MINERAL ROYALTY

The introduction of the mining royalty has been delayed for 5 years after the introduction of the Mineral and Petroleum Resources Development Act.

THE CALCULATION OF TAX PAYABLE - INDIVIDUALS

Gross Income	....
Less: Exempt Income (see pages 10 and 11)	....
Income	
Less: Deductions (see pages 11 to 13)	....
Add: 25% of Capital Gain (see pages 33 to 40)	....
TAXABLE INCOME	
TAX per Tables (see page 6)	....
Less: REBATES (see page 6)	....
NORMAL TAX PAYABLE	
Less: Provisional Tax Paid	
Foreign Tax Credit	
PAYE/SITE Paid	
TAX DUE	

NORMAL TAX RATES
YEAR ENDED 29 FEBRUARY

NATURAL PERSONS AND SPECIAL TRUSTS

Rebates	**2003**	**2004**	**2005**
Primary Rebate	R4 860	R5 400	**R5 800**
Age Rebate - Over 65	R3 000	R3 100	**R3 200**

Tax Threshold			
Under 65	R27 000	R30 000	**R32 222**
Over 65	R42 640	R47 222	**R50 000**

Taxable Income	**2004**	**Rates of Tax**
R		**R**
0 - 70 000		18% of each R1
70 001 - 110 000		12 600 + 25% of the amount over 70 000
110 001 - 140 000		22 600 + 30% of the amount over 110 000
140 001 - 180 000		31 600 + 35% of the amount over 140 000
180 001 - 255 000		45 600 + 38% of the amount over 180 000
255 001 and over		74 100 + 40% of the amount over 255 000

Taxable Income	**2005**	**Rates of Tax**
R		**R**
0 - 74 000		**18% of each R1**
74 001 - 115 000		**13 320 + 25% of the amount over 74 000**
115 001 - 155 000		**23 570 + 30% of the amount over 115 000**
155 001 - 195 000		**35 570 + 35% of the amount over 155 000**
195 001 - 270 000		**49 570 + 38% of the amount over 195 000**
270 001 and over		**78 070 + 40% of the amount over 270 000**

TRUSTS (Other than Special Trusts)

Taxable Income	**2004**	**Rates of Tax**
R0 and over		40% of each R1

Taxable Income	**2005**	**Rates of Tax**
R**0 and over**		**40% of each R1**

CORPORATE TAX RATES
YEARS OF ASSESSMENT ENDING AFTER 1 MARCH 2004

COMPANIES AND CLOSE CORPORATIONS

Taxable Income R	Rate of Tax %
Small business corporation	
0 - 150 000	15%
150 001 - and over	30%
Companies tax rate	30%
STC on dividends declared	12.5%

Local Branch of Foreign Company

Normal tax rate	35%

Long-term Insurers

Individual policyholder funds	30%
Company policyholder and Corporate funds	30%
Exempt policyholder funds	0%

Retirement Funds

Tax rate on gross interest and net rentals	18%

Gold Mines	38%

Comparison of 2005 with 2004 Taxes Payable
Persons under 65 years

Taxable Income	2005 Rates	2004 Rates	Annual Reduction	Percent Reduction
R	R	R	R	%
30 000	0	0	0	0%
40 000	1 400	1 800	400	22%
50 000	3 200	3 600	400	11%
60 000	5 000	5 400	400	7%
70 000	6 800	7 200	400	6%
80 000	9 020	9 700	680	7%
90 000	11 520	12 200	680	6%
100 000	14 020	14 700	680	5%
125 000	20 770	21 700	930	4%
150 000	28 270	29 700	1 430	5%
175 000	36 770	38 450	1 680	4%
200 000	45 670	47 800	2 130	4%
250 000	64 670	66 800	2 130	3%
300 000	84 270	86 700	2 430	3%
350 000	104 270	106 700	2 430	2%
400 000	124 270	126 700	2 430	2%
450 000	144 270	146 700	2 430	2%
500 000	164 270	166 700	2 430	1%
600 000	204 270	206 700	2 430	1%
700 000	244 270	246 700	2 430	1%
800 000	284 270	286 700	2 430	1%
900 000	324 270	326 700	2 430	1%
1 000 000	364 270	366 700	2 430	1%

Comparison of 2005 with 2004 Taxes Payable
Persons over 65 years

Taxable Income	2005 Rates	2004 Rates	Annual Reduction	Percent Reduction
R	R	R	R	%
45 000	0	0	0	0%
50 000	0	500	500	100%
55 000	900	1 400	500	36%
60 000	1 800	2 300	500	22%
65 000	2 700	3 200	500	16%
70 000	3 600	4 100	500	12%
80 000	5 820	6 600	780	12%
90 000	8 320	9 100	780	9%
100 000	10 820	11 600	780	7%
125 000	17 570	18 600	1 030	6%
150 000	25 070	26 600	1 530	6%
175 000	33 570	35 350	1 780	5%
200 000	42 470	44 700	2 230	5%
250 000	61 470	63 700	2 230	4%
300 000	81 070	83 600	2 530	3%
350 000	101 070	103 600	2 530	2%
400 000	121 070	123 600	2 530	2%
450 000	141 070	143 600	2 530	2%
500 000	161 070	163 600	2 530	2%
600 000	201 070	203 600	2 530	1%
700 000	241 070	343 600	2 530	1%
800 000	281 070	383 600	2 530	1%
900 000	321 070	323 600	2 530	1%
1 000 000	361 070	363 600	2 530	1%

TAXATION OF NATURAL PERSONS

BASIS OF TAXATION

Tax is imposed on all persons who earn taxable income. There is one set of income tax tables applicable to all natural persons, irrespective of marital status or dependents. The amount of tax is reduced by rebates which are dependent on the taxpayer's age.

Persons Married Out of Community of Property

Married persons are taxed as separate taxpayers and each spouse is taxed on his/her own income. Section 7(2) of the Income Tax Act provides one exception to the rule:

- Any income which is received by or accrued to a spouse in consequence of a donation/settlement/ disposition by the other spouse is deemed to be income of the spouse who made such donation/ settlement/disposition if done solely to avoid tax.

Persons Married In Community of Property

If persons are married in community of property, the net property rentals and/or interest income received by them is deemed to accrue in equal shares to each spouse. Any income which does not fall into the joint estate of the spouses is taxed in the hands of the spouse entitled thereto.

Minor Children

Minor children may be taxpayers in their own right and are taxed on income received or accrued by them. Where the income arises as a result of the child's parent having made a donation or transferring income to the child, the resultant income will be taxed in the parent's hands.

EXEMPT INCOME

The following income received is exempt from income tax:

- pension received or accrued to a resident from a source outside South Africa;
- capital portion of a purchased annuity;
- exemption on remuneration received from foreign services on behalf of an employer (see S10(i)(0)(ii));
- war and certain disability pensions;
- all dividends received (except for dividends distributed by property trusts and specified foreign dividends);

- interest earned by natural persons, up to a maximum of R11 000 per tax year (R16 000 for persons over 65 years of age). Only R1 000 allowed against foreign interest and foreign dividends;
- interest earned by persons not resident nor carrying on business in South Africa;
- UIF and Workmen's Compensation benefits; and
- an amount to a maximum of R30 000 received on termination of employment subject to:
  . the taxpayer having attained 55 years of age; or
  . termination of employment being the result of ill-health or superannuation; or
  . termination of services resulting from the employer ceasing to carry on trade, or the taxpayer becoming redundant as a consequence of a general reduction of personnel. This exemption is not available if the taxpayer was at any time a director of the company or held more than 5% of the shareholding in the company.

DEDUCTIONS

Medical and Disability Expenses

Medical Expenditure

- being all costs paid in respect of medical, dental and hospitalisation expenses, including contributions to medical aid funds, payments to nursing home or registered nurse/midwife.

  Deductions allowable are as follows:

  - Taxpayers over the age of 65

    There is no limit on the deduction claimable i.e. all medical and disability expenses (except amounts recoverable from a medical aid) paid by the taxpayer can be deducted.

  - Taxpayers under the age of 65

    The medical deduction is limited to the total amount of expenses to the extent that the amount exceeds 5% of taxable income before the medical deduction.

Physical Disability Expenditure

- being all expenses necessarily paid by a taxpayer as a result of his physical disability or the physical disability of his spouse, child or step-child.

If the taxpayer or his spouse/child/stepchild is handicapped, all medical expenses (ie not only those paid in respect of the handicapped person) may be claimed to the extent that it exceeds R500 pa.

Note: The deduction is claimed by the person who pays the expense.

Entertainment

Section 11(u) has been amended to exclude employees and office holders who receive "remuneration" as defined in the Fourth Schedule from claiming entertainment expenditure. This expense may still be claimed by an agent or representative whose remuneration is derived from commission.

This amendment is effective from 1 March 2002.

Donations to "Public Benefit Organisations"

Bona fide donations made by individuals and companies to certain Public Benefit Organisations (PBOs) (including donations to the Government) are allowable and the deduction is calculated at 5% of taxable income before this deduction, or R1 000 which ever is the greater.

Proof of payment is required by the SARS.

Home Study Expenses

A deduction for home study costs will only be allowed if:

- the study is exclusively used for the purpose of the taxpayer's trade; or
- in the case of an employee who derives income mainly from commission, his duties are mainly performed other than in an office provided by the employer.

Contributions to Pension, Retirement Annuity and Provident Funds

Pension Funds
Any person may claim a deduction of his current contributions to a pension fund. The deduction is limited to the greater of:

- R1 750; or
- 7,5% of his remuneration derived from retirement funding employment.

A maximum deduction of R1 800 pa is allowable for arrear contributions to a pension fund.

Retirement Annuity Funds
A taxpayer may claim his current contributions to a retirement annuity fund as a deduction which is limited to the greatest of:

(i) 15% of income from non-retirement funding employment;
(ii) R3 500 less any deduction for current contributions to a pension fund; or
(iii) R1 750.

The maximum deduction of contributions with regard to the reinstatement of membership of a retirement annuity fund is R1 800 pa.

Provident Funds
Contributions to approved provident and benefit funds are not allowed as a deduction from the taxpayer's income.

PROVISIONAL TAX

Provisional payments are advance tax payments in respect of normal tax payable for the year.

The following taxpayers are obliged to register as provisional taxpayers:

- individuals who earn taxable income of R10 000 or more which is not "remuneration" as defined;
- any director of a private company; or
- any member of a close corporation.

Due Dates for Returns

First Provisional Tax Return
Due within the first six months of the tax year - 31 August.

Second Provisional Tax Return
Due before the end of the tax year - 28 February.

Third Provisional Tax Return
Due seven months after the end of the tax year for February year ends - 30 September.

Due six months after the end of the tax year, for year ends other than the end of February.

The third provisional tax payment must bring the total tax paid for the year to 100% of the taxpayer's liability if interest is to be avoided.

With effect from 1 December 2003 interest on an underpayment of the third provisional tax payment is charged at 11,5% pa (non-deductible) whereas interest on an overpayment accrues at a rate of 7,5% (taxable).

No interest is levied on taxpayers with taxable income of less than R50 000 and hence these taxpayers are not required to make third provisional tax payments.

Natural persons over the age of 65 are not subject to provisional tax if the only income they receive is remuneration, interest, dividends or rental from letting fixed property. Their taxable income should not exceed R80 000 for the year and is effective from 1 March 2001.

PAY AS YOU EARN (PAYE)

Employers are required to deduct employees tax according to PAYE tax deduction tables on all remuneration paid to employees unless otherwise instructed in terms of a tax deduction directive issued by the SARS.

Directors of private companies, as well as members of close corporations, are required to deduct PAYE from any amount paid to them by such companies or close corporations in respect of services rendered or to be rendered, unless the Commissioner so otherwise directs, effective 1 March 2002.

STANDARD INCOME TAX ON EMPLOYEES (SITE)

SITE is a procedure through which the normal tax in respect of the first R60 000 of an employee's remuneration is finally determined by the employer and deducted under the PAYE system.

SITE constitutes either a final or minimum liability and is thus not refundable, except in certain instances. The most important exclusions from the SITE system are:

- directors' remuneration;
- 50% of any travel allowance;
- remuneration that may be set off against any assessed loss; and
- remuneration from which the taxpayer is entitled to claim expenses of at least 1% of such remuneration.

All taxpayers who receive remuneration will thus have an element of SITE in their tax deductions but only amounts which are PAYE in excess of the SITE liability will be refunded.

From an administrative point of view the SITE liability is only calculated at the end of a tax period, but on a monthly basis tax deductions are made in terms of the PAYE tables.

TAXATION OF LUMP SUM PAYMENTS

Certain lump sum payments received on termination of service qualify for taxation at the average rate of tax. These amounts are taxed at the rate of tax applicable to the other income derived by the taxpayer during the year.

In determining the rating amount for calculating the effective tax rate that applies to a lump sum payment, the deduction allowable in respect of retirement annuity fund contributions will only be allowed as a deduction from income, excluding the lump sum benefit. In addition, lump sums qualifying for the concession will be taxed at the higher of the rating amount calculated for the year of accrual of the lump sum and the preceding year of assessment.

Lump sum payments received by the taxpayer from his employer by way of bonus, gratuity or compensation upon either reaching the age of fifty five, retirement due to superannuation, ill health or other infirmity are tax free to a maximum of R30 000 over the lifetime of the taxpayer.

Furthermore, all employees who lose their jobs as a result of either the employer ceasing to operate or because of a general reduction of personnel will qualify for the tax free concession, regardless of age. This extension will however not apply to any present or past director nor to any shareholder who holds or held more than 5% of the company's shares.

Lump sum benefits payable by approved funds are aggregated for tax purposes and subject to tax as detailed below.

On Retirement

Pension Funds
A maximum of one third of the taxpayer's entitlement may be commuted to cash. The actual tax free amount of this lump sum benefit is calculated using a formula which takes into account the number of years of membership of the fund and the highest annual average salary over any five-year period of membership, limited to the greater of R120 000 or R4 500 times the number of years of membership, plus contributions not previously allowed as deductions.

Retirement Annuity Funds
A maximum of one third of the taxpayer's entitlement may be commuted to cash. The tax free portion of the lump sum benefit will be equal to the amount commuted to the greater of R120 000 or R4 500 times the number of years of membership, plus contributions which were not allowed as a tax deduction.

Provident Funds
As for pension funds, with a minimum tax free amount of R24 000.

On Death prior to Retirement

Pension and Provident Funds
The benefits are the same as on retirement except that the minimum amount which will be tax free is the greater of R60 000, or twice the taxpayer's salary for the last twelve months, again limited to the greater of R120 000 or R4 500 times the number of years of membership, plus contributions not previously allowed as deductions.

On Withdrawal from the Fund

Pension Funds
The tax free portion will be R1 800 plus any amount paid into any approved pension or retirement annuity fund.

Retirement Annuity Funds
The tax free portion will be R1 800 plus the amount paid into another retirement annuity fund or used to purchase an approved insurance policy that provides benefits similar to a retirement annuity fund.

Provident Funds
The tax free portion will be R1 800, plus any amount paid into any approved pension, provident or retirement annuity fund.

Provided that the tax free portions from either a pension, provident or retirement annuity fund shall not be less than the lesser of the lump sum benefit or any contributions made to the fund by the member which were not previously allowed as deductions.

THE TAXATION OF FRINGE BENEFITS

The Income Tax Act provides for the taxation of various taxable benefits granted by an employer by virtue of services rendered by an employee.

Bursaries

Bona fide bursaries or scholarships granted by an employer to an employee or employee's relative shall be exempt in the hands of the employee. However, this exemption will not apply in circumstances where the bursary has been granted due only to the person's employment if:

- the employee's present or future remuneration is forfeited as a result of the bursary; or
- the bursary is granted to an employee's relative and the employee earns more than R60 000 pa in which case the exemption is limited to R2 000 pa.

From the employer's point of view, no deduction shall be granted in respect of a bursary or scholarship granted to an employee or employee's relative, if granted on a present or future salary sacrifice basis.

Acquisition of Asset at less than Actual Value

A taxable benefit arises whenever an asset (other than money) has been acquired by an employee from:

- his employer; or
- an associated institution; or
- any other person by arrangement with his employer.

The benefit is the difference between the value and the consideration given by the employee.

Travelling Allowances

If an employee uses his own motor vehicle for business purposes and receives an allowance from his employer to defray expenditure, the allowance is tax free to the extent that it is expended for business purposes. Unless acceptable figures for expenditure and business kilometres can be produced, the expenditure for business purposes is calculated on the total kilometres travelled (limited to a maximum of 32 000km), less deemed private travel of 14 000km at a rate per kilometre determined by the value of the vehicle from the table below. Where the taxpayer has used more than one vehicle for business purposes, the deemed private travel of 14 000km will be applied separately to each vehicle. The value of the vehicle is essentially the purchase price including VAT but excluding finance charges. Private travelling includes travelling between the employee's place of residence and his place of employment.

Rates per kilometre in respect of private vehicles used for business purposes from 1 March 2003:

Where the Value of the Vehicle -	Fixed Cost R	Fuel Cost c	Maintenance Cost c
does not exceed R30 000	16 916	23.1	17.1
exceeds R30 000 but not R35 000	18 984	23.5	17.3
exceeds R35 000 but not R40 000	21 051	23.8	17.8
exceeds R40 000 but not R45 000	23 116	24.3	18.5
exceeds R45 000 but not R50 000	25 197	24.8	19.2
exceeds R50 000 but not R55 000	27 670	25.3	19.9
exceeds R55 000 but not R60 000	29 778	25.5	20.6
exceeds R60 000 but not R70 000	33 873	25.9	21.3
exceeds R70 000 but not R80 000	38 102	26.1	22.2
exceeds R80 000 but not R90 000	40 538	26.3	22.7
exceeds R90 000 but not R100 000	44 535	26.5	23.4
exceeds R100 000 but not R110 000	48 533	26.8	24.1
exceeds R110 000 but not R120 000	51 110	27.5	24.8
exceeds R120 000 but not R130 000	54 990	28.1	25.5
exceeds R130 000 but not R140 000	58 803	28.9	26.2
exceeds R140 000 but not R150 000	62 677	29.4	26.9

Where the value of the vehicle exceeds R150 000-

(a) the fixed cost shall be the sum of R62 677, plus an amount of R3 874 for every R10 000 or part thereof by which the value of the vehicle exceeds R150 000;

(b) the fuel cost shall be 29,4 cents per kilometre; and

(c) the maintenance cost shall be 26,9 cents per kilometre.

The fixed cost is pro-rated if the vehicle is not used for business purposes for the full year.

The deduction in respect of business travel of less than 8 000km will apply only if no other allowance or reimbursement is received by the employee in respect of the vehicle.

Where business travel is 8 000km or less for the year of assessment, the rate per kilometre shall, at the option of the recipient, be 153 cents per kilometre.

For PAYE purposes, 50% of the monthly travel allowance is regarded as remuneration and is subject to PAYE.

Three different methods of determining business travel cost:

- taxpayer can furnish accurate data, can deduct actual cost;
- actual kilometres travelled for the year; less: private use travel, equals: actual business travel (records kept); or
- actual kilometres travelled for the year (limited 32 000km); less: deemed private travel (14 000km), equals deemed business travel (18 000km).

Note: An amendment in 1995 no longer permits a taxpayer to deduct deemed business expenditure if he has been given the use of an employer owned vehicle as contemplated in par 7 of the Seventh Schedule and a travel allowance is paid in respect of the same vehicle.

Right of Use of Motor Vehicle

Where a taxpayer is granted the right to use a motor vehicle free of charge or for a consideration less than the value of the use of that vehicle, a taxable benefit accrues to him and is included in his taxable income.

The monthly taxable benefit for employer owned vehicles used by employees is 1,8% of the determined value of the vehicle. The taxable benefit of a second or subsequent vehicle granted by an employer to an employee or his family, where the vehicle is not used primarily for business purposes, is 4% of the determined value.

The "determined value" of the vehicle is the original cash cost to the employer (excluding VAT) or the retail market value thereof in the case of a lease, or donation. However, should the taxpayer not be the first employee to have use of the motor vehicle, and the taxpayer first obtains the right of the use of the vehicle more than twelve months after the employer acquired the vehicle, the determined value comprises the original value as determined above, depreciated by 15% per annum on the reducing balance. The determined value does not decrease in subsequent years.

Where the employee:

- bears the cost of all fuel used for private purposes, the value of private use for each such month shall be reduced by an amount of R120; or
- bears the full cost of maintaining the vehicle, the value of private use for each such month shall be reduced by an amount of R85.

The fringe benefit may be reduced if the employee keeps a detailed logbook to prove that private kilometres travelled are less than 10 000km pa.

The value of private use will not be reduced where the vehicle is temporarily not used by the employee for private purposes.

In the following cases, private use of a motor vehicle will not give rise to a taxable benefit:

- if the vehicle is available to, and used by, employees of the employer in general; the private use is of a casual nature or merely incidental to the business use; and the vehicle is not normally kept at or near the employee's home when not in use outside business hours; and
- the nature of the employee's duties are such that he is regularly required to use the vehicle outside his normal hours of work and he is not permitted to use such vehicle for private purposes other than travelling between his place of residence and work.

This fringe benefit has a VAT implication. The employer must account for output VAT, the consideration for which is calculated as follows:

	% of Determined Value pm
Motor vehicle as defined	0,3
Other vehicles	0,6

Where the employee:

- pays for the use of a motor vehicle, the consideration on which the VAT is based must be reduced by what the employee pays; and
- bears the full cost of repairs and maintenance of the vehicle, the consideration calculated is reduced by R85 pm.

Interest on Loans

The taxable benefit arising from interest-free or low-interest loans granted to employees will be valued at the difference between the rate and the interest (if any) payable by the employee.

The official interest rate is:

1 September 1998 - 30 November 1998	16%
1 December 1998 - 30 April 1999	19%
1 May 1999 - 31 August 1999	16%
1 September 1999	14,5%
1 March 2000	13%
1 October 2001	10,5%
1 September 2002	13,5%
1 March 2003	14.5%
1 September 2003	12%
1 December 2003	9.5%

No benefit is placed on a casual loan to an employee up to R3 000 or a study loan to enable the employee to further his own studies.
Where the employee has utilised the loan to produce income, the interest taxed, as above, is deductible in terms of the general deduction formula.

Subsistence Allowance

While an employee is absent from his usual place of residence for the purpose of his duties, for at least one night, then he is entitled to a tax free allowance within South Africa of:

- where the accommodation to which that allowance or advance relates is in South Africa, an amount equal to:
  (a) R60 if the allowance/advance is paid to defray the cost of incidental subsistence expenses;
  (b) R196 if the allowance/advance is paid to defray the cost of meals and incidental subsistence expenses, ie beverages, room service, etc.
- where the accommodation to which the allowance relates is outside South Africa, an amount equal to US$190 is applicable. This allowance only applies to continuous periods, not exceeding six weeks away from home. *These as well as other changes will be published in the Government Gazette.*

Sale or Donation of an Asset

Any asset acquired by an employee from his employer at less than its value is taxable on the difference between the value of the asset and the consideration (if any) paid by the employee. VAT is payable by the employer on this difference at a rate of 14/114.
The first R5 000 of an asset awarded is excluded if it comprises:
- a bravery award; or
- a long service award (unbroken period of service of 15 years or any subsequent unbroken period of 10 years).

Right of use of an Asset (other than Residential Accommodation or Motor Vehicles)

A taxable benefit arises whenever an employee is granted the right to use an asset for his private or domestic purposes, either free of charge or for a consideration which is lower than the value of use. VAT is payable by the employer on this value at a rate of 14/114.

Exclusions:
- amenities enjoyed at work or recreational facilities;
- equipment or machinery used by employees for private use for short periods of time and the value of the use is negligible; or
- assets consisting of books, literature, recordings or works of art.

Residential Accommodation

If an employer or associated institution provides residential accommodation which is owned by the employer to an employee (in which property the employee does not have any interest), the employee will be taxed on the difference between the rental value for the year, as determined by the following formula, and the amount paid by him:

$$(A-B) \times \frac{C}{100} \times \frac{D}{12}$$

A = the remuneration of the employee in the preceding year of assessment, including directors fees, but excluding entertainment allowances and taxable benefits from the use of a motor vehicle or residential accommodation.

If the employee was with the current employer for only part of the preceding year, his salary is grossed up to that of a full year, but if he was with another employer in the previous year, "A" will be his first month's salary divided by the number of days in that month and multiplied by 365.

B = R20 000 except for the following situations where it is nil:

(i) where the employer is a private company controlled directly or indirectly by the employee or his spouse even if the employee is only one of the persons controlling the company; or

(ii) where the employee or his spouse or minor child has a right of option or pre-emption granted by the employer or another person by arrangement with the employer whereby they may become the owner of the accommodation.

C = 17, or 18 if unfurnished and power or fuel is supplied by the employer or furnished but no power or fuel supplied, and 19 if furnished and power and fuel are supplied.

D = the number of months the employee was entitled to occupation.

If an employer provides accommodation for an employee through the rental of property (irrespective of whether the employee has an interest in the property or not), or by the purchase of property in which the employee has an interest, the value of the benefit is the greater of an amount arrived at by using the formula, or the total amount of the rentals payable for such accommodation by the employer and any other expenditure defrayed by the employer in respect of such accommodation.

This valuation based on the cost to the employer will not apply where:

- it is customary for the employer in the industry concerned to provide free or subsidised accommodation to employees;
- it is necessary for the employer to provide free or subsidised accommodation for the proper performance by employees of their duties, and as a result of frequent movement of employees or lack of existing accommodation; and
- the benefit is provided at arms length and for bona fide purposes.

When all of the criteria have been met the value will be determined in accordance with the formula, even though accommodation is not wholly owned by the employer.

Housing Subsidies

Where a loan has been granted to an employee, the amount taxed is the difference between interest payable on the loan and the official interest rate.

Where a housing subsidy has been paid by the employer, the full amount will be taxable in the hands of the employee.

Holiday Accommodation

If the accommodation is hired by the employer the employee will be taxed on all costs borne by the employer (including meals, refreshments and services). In any other case the employee will be taxed on R100 per person per day or at the prevailing rate, if lower.

Where the use of residential accommodation is rented by the employee and the employee has an interest in the accommodation, the rent paid by the employer is deemed not to have been received by or accrued to the employee or any connected person in relation to the employee.

Payment of Employee's Debts
A taxable benefit arises where an employer has paid an amount owing by the employee to a third party, without requiring reimbursement from the employee.

Professional subscriptions paid by the employer are, however, exempt if membership is a condition of employment.

Meals and Refreshments

An employee is taxed on the cost to the employer of any meal or refreshment provided by the employer.

The following exclusions apply to meals or refreshments:

- supplied in a canteen or dining room operated for employees;
- supplied during business hours, extended working hours or a special occasion; or
- enjoyed by an employee providing entertainment on behalf of the employer.

Free or Cheap Services

Services provided to an employee by his employer (whether they are rendered by the employer or some other person) for no cost or for an amount lower than the cost of such services to the employer, gives rise to a liability for tax to the employee on the difference between the cost to the employer of the service and the amount paid by the employee.

The following exclusions apply:

- certain situations where the employer is engaged in the business of conveying passengers;
- transport service conveying employees between their home and work; or
- services rendered by the employer to assist with better performance of employees' duties.

Medical Aid Contributions

As from 1 April 1998 a fringe benefit arises when an employer has directly or indirectly made any contribution to any medical aid scheme for the benefit of an employee or his dependents, and if such contributions exceed two thirds of the total contribution to the fund.

Exemptions

The following benefits are exempt from tax:

- the value of a uniform, or an allowance paid for that purpose, which an employee is required to wear while he is on duty, provided that the uniform is clearly distinguishable from ordinary clothing;
- cost of the transfer of an employee to another place of employment arising out of the appointment or resignation of an employee at the insistence of the employer; and
- if an employee purchases shares under a share incentive scheme and the transaction is cancelled or the shares are repurchased from the employee, the employee will not be taxed on the amount received in so far as it does not exceed the amount paid for the shares; and
- any bona fide scholarship or bursary granted to enable or assist any person to study at a recognised educational or research institution (certain restrictions apply - see S10(i)(q)).

Employer's Obligations

The determination of the cash equivalent of any taxable benefit is to be made by the employer although the Commissioner may redetermine the cash equivalent if he thinks the employer's determination is incorrect.

An employer is obliged to deduct PAYE on taxable fringe benefits.

COMPANIES AND CLOSE CORPORATIONS

Normal Taxation

Close corporations are taxed at the same rates and on the same basis as companies. The rates of South African normal company taxation is 30%.

For small business corporations (see definition below) the rates are:
- 15% on the first R150 000; and
- 30% on the amount exceeding R150 000.

For employment companies (see definition below) being personal service companies or labour brokers (who have not been issued with an exemption certificate for PAYE purposes) the rate is 35%.

A small business corporation is:

- a close corporation or private company (other than an employment agency);
- the entire shareholding or membership of which is held by natural persons;
- the gross income of which does not exceed R5 million during the year of assessment;
- none of the shareholders or members, at any time during the year of assessment, holds shares in any other company (other than listed companies); and
- not more than 20% of the gross income consists collectively of investment income and the rendering of *personal services* by members or shareholders.

For the purposes of the above definition, *personal service* is defined as:

Any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftmanship, education, engineering, entertainment, health, information technology, journalism, management, performing arts, real estate, research, secretarial services, sport, surveying, valuation or veterinary science, which is performed personally by any person who holds an interest in the company or close corporation referred to in the definition of 'small business corporation'.

A personal service company is:

Any company (other than a labour broker) where any service rendered on behalf of the company to a client (of the company) is rendered personally by any person who is a connected person in relation to the company and:

- such a person would be regarded as an employee of the client if such service was rendered directly by such person to the client; or
- such a person or company is subject to the control or supervision of such client as to:
  - the manner in which the duties are performed; or
  - the hours in which the duties are performed; or
- the amount paid in respect of such service consists of, or includes, earnings which are payable at regular daily, weekly, monthly or other intervals; or
- where more than 80% of the income of such a company (during the year of assessment) from services rendered consists of or is likely to consist of amounts received directly or indirectly from any one client or any associated institution in relation to such client.

Any company which throughout the year of assessment employs more than three full time employees, who are engaged on a full time basis in the business of such company of rendering any service to a client, other than an employee who is a shareholder or member of the company or is a connected person in relation to such shareholder or member, is excluded from the definition of a personal service company.

Any amount that is paid to an employment company is now subject to employees' tax at the rate of 35%.

Furthermore, section 23(k), which came into operation with effect from 1 April 2000, prohibits a deduction in respect of any expenses incurred by a labour broker (who is not in possession of a certificate of exemption for PAYE purposes) or a personal services company, other than remuneration paid to an employee which will be taken into account when determining the taxable income of that employee.

Secondary Tax on Companies

A company resident in South Africa will be liable for Secondary Tax on Companies (STC) on dividends declared. STC is payable on the net amount, which comprises the dividend declared, less total dividends received or accrued during the dividend cycle. The dividend cycle extends between dividend declaration dates, or where the dividend was declared before 17 March 1993, the dividend cycle is deemed to commence on 1 September 1992 and ending on the day on which such dividend accrues to the shareholder.

STC is payable on or before the last day of the month, following the month in which the dividend cycle ends. Interest on late payment of STC is charged at the prevailing SARS rate - there is however no penalty in respect of a late payment of STC.

Rates applicable to STC for dividends declared:

- on or after 17 March 1993 and before 22 June 1994: 15%;
- on or after 22 June 1994 and before 14 March 1996: 25%; and
- on or after 14 March 1996: 12,5%.

Anti-avoidance provisions include the deeming of certain cash or asset distributions to shareholders or connected persons in relation to the shareholders to constitute dividends for the purposes of STC, for example an interest free loan by a close corporation to a member.

With effect from 23 February 2000, interest-free loans between associate companies that were previously not deemed dividends for STC purposes are now subject to the deemed dividend provision due to an amendment to the legislation.

Any dividends declared after 1 January 2003 by a company in liquidation, or in anticipation of liquidation, winding up or deregistration from capital profits that accrued after 1 October 2001 will be subject to STC. If the capial profits accrued before that date the dividend will still be exempt from STC if declared in process of liquidation or deregistration, provided certain prescribed steps were taken and instituted within six months after the date the dividend was declared.

Provisional Tax

All companies and close corporations (except those engaged in gold mining activities) are obliged to make provisional tax payments.

Provisional payments are advance tax payments in respect of normal tax payable for the year. Companies are required to make the first provisional tax payment within six months of the tax year and the second provisional payment before the end of the company's tax year.

The third optional provisional payment is due seven months after the end of the tax year if the year end is February and six months after the end of the tax year if the year end is on any other date. The third provisional tax payment must bring the total tax paid for the year to 100% of the taxpayer's liability, if interest is to be avoided. No interest is levied on companies with taxable income of less than R20 000 and hence these companies are not required to make third provisional tax payments.

With effect from 1 December 2003 interest on an underpayment of the third provisional tax payment is charged at 11,5% pa (non-deductible) whereas interest on an overpayment accrues at a rate of 7,5% (taxable).

TRUSTS

Trusts are a separate fiscal entity and pay tax at a flat rate of 40% on income retained in the trusts. Trusts do not qualify for the annual interest exemption or the primary rebate.

Trusts pay CGT on 50% of all capital gains made.

Various anti-avoidance provisions exist to combat the use of trusts for income splitting and tax avoidance structures. These provisions work predominantly on a basis whereby any income earned by the trust as a result of a donation, settlement, or disposition made by a person ('the donor'), which is not distributed, is deemed to be the income of that donor and taxed in his or her hands. If income is distributed to beneficiaries that are minor children of the donor, the income is also taxed in the hands of the donor. Similar provisions exist in respect of capital gains made by or accrued to a trust.

Trusts are very important in estate planning and if properly planned, managed and controlled can act as a significant shelter against future estate duties. With the introduction of CGT, the effectiveness of the use of trusts in estate planning have been slightly negated, but with careful planning the impact of CGT can be minimised and even completely avoided.

The legislation allows for a "special trust" to be taxed at the normal income tax rates applicable to individuals and not the 40% flat rate. A "special trust" is one that is created:

- solely for the benefit of a person who suffers from a mental illness or a serious disability, where that person is incapacitated from earning sufficient income or from managing his or her own financial affairs; or
- in terms of the Will of a deceased person, where all the beneficiaries are surviving relatives of the deceased, the youngest of which must be under the age of 21 at the end of the tax year.

CAPITAL ALLOWANCES

Plant and Machinery

New or used plant and machinery used in the process of manufacturing or similar process, qualify for a write-off over five years (20% pa), subject to the accelerated depreciation allowance referred to below.

New manufacturing assets acquired within three years from 1 March 2002 will be written-off over a period of four years, 40% in year one and 20% pa thereafter for the remaining three years.

Plant and machinery acquired by small business corporations, as defined (see page 26), can be deducted in the year the asset was acquired (100%). The effective date was 1 April 2001.

Farmers are entitled to an allowance, over three years, of 50%, 30% and 20% respectively calculated on the cost of machinery, implements and articles used for farming, excluding passenger motor vehicles, office furniture and equipment. Farmers are also entitled to the deduction of various capital expenses against farming income.

These allowances can be recouped and are not reduced where the asset was used for only part of the year.

Wear and Tear Allowance

Assets used for trade (excluding buildings and assets qualifying for the above-mentioned allowances) qualify for a depreciation allowance on the straight line basis over the useful life of the asset.

The Commissioner has approved the following write-off periods:

	Years
Personal computers	
- hardware	3
- software	2
- mainframe	5
Passenger cars	5
Delivery vehicles	4
Motor cycles	4
Furniture and fittings	6
Cash registers	5
Telephone equipment	5
Typewriters, adding machines	6
Workshop equipment	5
Air conditioners (window type)	5
Calculators	3
Demountable partitions	6
Dental and medical equipment	5
Fax machines	3
Fitted carpets	6
Shop fittings	6
Photocopying equipment	5
Security systems	5
Cellular telephones	3
Containers	5
Burglar alarms (removable)	10
Fork-lift trucks	4
Front-end loaders	4
Neon signs and advertising boards	10
Television sets, video machines and decoders	6
Text books	3
Trucks (heavy duty)	3
Trucks (other)	4

A *more detailed list is available on request*.

In order to qualify for these write-off periods, the taxpayer must maintain an adequate fixed assets register. The allowance is reduced proportionately if the asset is purchased during the tax year. A shorter write-off period may be applied for. Assets costing R2 000 or less may be written off in full in the year of acquisition. A taxpayer may change from a reducing balance method to a straight-line method in respect of existing assets. Should the election be made, the straight-line method must be applied to all assets of the same class. The assets will have to be written off over the remaining period of their life. The remaining period of their life is the write-off periods acceptable to SARS.

Where the original cost of an asset amounts to less than R2 000, the balance on changeover to the straight-line basis may be written off in full in the year of the changeover.

Buildings

An annual allowance of 5% is allowed in respect of the cost of certain industrial and hotel buildings, and improvements thereto, if erection commenced on or after 1 January 1989. Where erection commenced before 1 January 1989, the annual allowance is limited to 2%.

For a limited period, the tax allowance was granted on an accelerated basis where the erection of any building commenced during the period 1 July 1996 to 30 September 1999 and the building was brought into use before 31 March 2000, the cost of such building will be written off at 10% per annum on the straight-line basis.

The annual allowance is also claimable in respect of purchased industrial buildings, provided that the seller was entitled to the allowance.

Residential Building Allowance

An initial allowance of 10% and an annual allowance of 2% of the cost of erecting housing accommodation for letting or for occupation by the taxpayer's full-time employees may be deducted in the year in which the project is completed and the accommodation is first let or occupied, provided the project consists of not less than five housing units.

Housing Allowance

The taxpayer may deduct 50% of the cost (up to a maximum of R6 000) of erecting a dwelling for his employee (and his household) in certain circumstances.

FOREIGN EXCHANGE PROFITS AND LOSSES

A comprehensive section was introduced with effect from years of assessment ending on/after 1 January 1994 in an attempt to standardise the tax treatment of exchange profits and losses. The section basically provides for the deduction/inclusion of exchange losses/profits both realised and unrealised whether of a capital nature or not.

TAXATION OF RETIREMENT FUNDS

Tax at the rate of 18% is payable on the following income of retirement funds: gross interest, net rentals, dividends received from property unit trusts and compensation received by lenders from borrowers of interest-bearing instruments.

TRADING STOCK

Trading stock includes packing materials. The trading stock provisions in S22 do not apply to farmers, the First Schedule deals with farmers.

With effect from 1 July 2000, no person may, for the purposes of determining the cost price of any trading stock, adopt the LIFO basis.

Trading stock is reflected exclusive of VAT if an input can be claimed and inclusive of VAT if an input cannot be claimed (ie the taxpayer is not a vendor).

Any donation of trading stock and the cost price of such trading stock which was accounted for in taxable income, a deemed recoupment of an amount equal to the cost price or where the cost price cannot be determined, the market value of such trading stock.

During a "company formation transaction" trading stock will be deemed to be transferred at cost. The transferor therefore makes no profit.

CAPITAL GAINS TAX (CGT)

Effective Date

1 October 2001 (valuation date).

Determination of a Capital Gain or Loss

A capital gain or loss is the difference between the base cost of an asset and the proceeds received or deemed to have been received for that asset upon the disposal or the deemed disposal of that asset.

Four Cornerstones for Determining a Capital Gain or Loss

A capital gain or loss is the difference between the base cost of an asset and the proceeds received or deemed to have been received for that asset upon the disposal or the deemed disposal of that asset.

For CGT purposes, the following must be present:

- an asset;
- proceeds or deemed proceeds;
- a disposal or deemed disposal; and
- a base cost.

Determination of Base Cost

Assets acquired before 1 October 2001:

- the base cost will be the sum of the "valuation date value" and qualifying costs incurred after the valuation date. The valuation date value, depending on the information and records available, can be determined by using any one of the following methods:
  - market value of the asset on 1 October 2001;
  - the time-apportionment base method; or
  - 20% of the proceeds from the disposal.

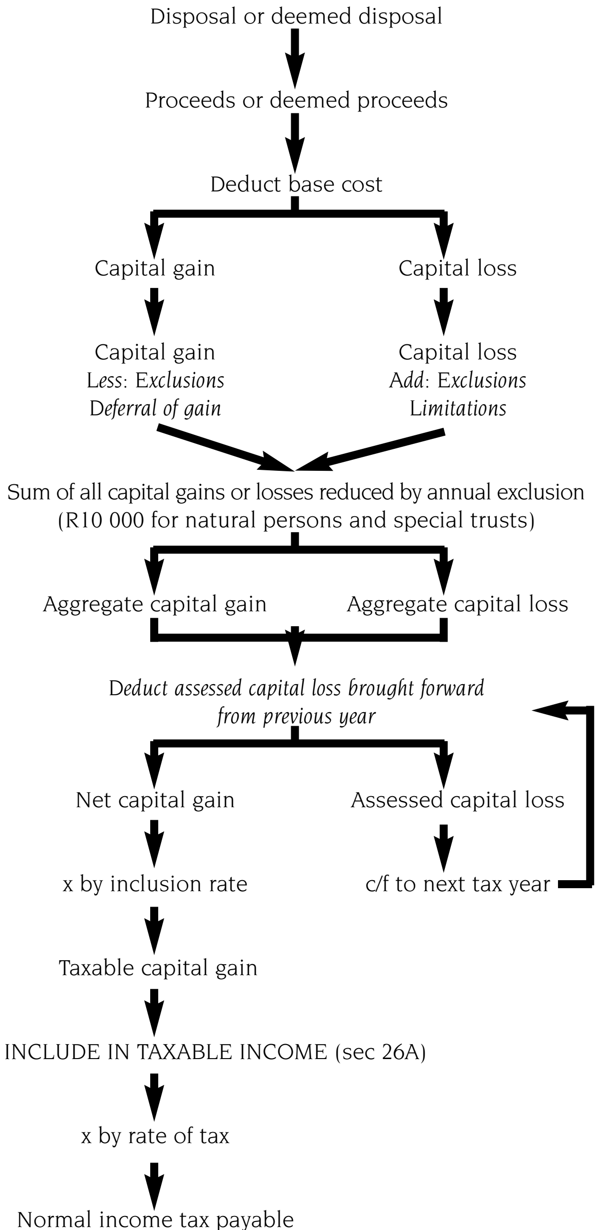
In the case of assets acquired before 1 October 2001, special rules apply to prevent taxpayers from claiming phantom losses or from being taxed on gains that were made before that date.

Assets acquired on or after 1 October 2001:

- the base cost is the price paid for the asset, plus certain other costs incurred that are directly related to buying it, selling it or improving it, eg transfer duties, attorney's fees, improvement costs, commissions, donation tax, etc. The following are examples of costs that cannot be added to the base cost:
  - expenses otherwise allowable as a deduction for income tax purposes;
  - borrowing costs;
  - raising fees;
  - rates and taxes; and
  - insurance.

In the case of an asset that was subject to a deemed disposal, the base cost in the hands of the recipient will be equal to the deemed proceeds that were used to calculate the gain in the person's hand.

Basic Framework



Inclusion Rates

Type of Taxpayer	Inclusion Rate	Statutory Tax Rate (%)	Effective Tax Rate (%)
Individuals	25	0 - 40	0 - 10
Companies	50	30	15
Trusts			
Unit	N/A	30	N/A
Special	25	0 - 40	0 - 10
Other	50	40	20
Retirement Funds	N/A	0	N/A
Life Assurers			
Ind policyholder fund	25	30	7.5
Co policyholder fund	50	30	15
Corporate fund	50	30	15
Untaxed policyholder fund	0	0	0

Liability for CGT

South African residents are liable for CGT on their worldwide assets.

Non-residents are liable for CGT on the following assets situated in South Africa:

- immovable property and any interest in or right to that immovable property; and
- assets of a permanent establishment, branch or agency situated in South Africa through which a trade is carried on.

What is an Asset?

An "asset" is property of whatever nature, whether movable or immovable, corporeal or incorporeal, including:

- coins mainly made from gold or platinum; and
- any right or interest of whatever nature to or in such property,

but excluding currency.

What is a Disposal?

A “disposal” is any event, act, forbearance or operation of law, which in terms of paragraph 11 of the Eighth Schedule, is treated or regarded as a disposal and includes:

- any event that constitutes alienation or the transfer of ownership of an asset; eg sale, donation, cession, expropriation, grant or exchange;
- any event that results in expiry or abandonment of an asset; eg forfeiture, termination, redemption, cancellation, surrender, waiver, discharge, release, renunciation or relinquishment;
- scrapping, loss or destruction of an asset;
- vesting of an interest in a trust asset in a beneficiary;
- distribution of an asset by a company to a shareholder;
- granting, renewal, extension or exercise of an option; or
- decrease in value of a person's interests in a company, trust or partnership through value shifting.

The following are not regarded as “disposals”:

- transfer of an asset as security for debt;
- issuing or cancellation of shares by a company;
- granting of an option by a company to take up shares or debentures;
- issuing of units by an equity unit trust or the granting of an option to take up units;
- issuing of a bond, debenture, note or borrowing of money from a person;
- obtaining of credit from a person;
- distribution of trust assets to a beneficiary who has a vested right to the assets;
- correction at the deeds office of incorrect property registration; and
- lending of marketable security in terms of lending arrangement.

Certain events are deemed disposals for CGT purposes, whilst certain other events will give rise to simultaneous disposals and acquisitions, eg on emmigration, when a person ceases to be a resident for South African tax purposes, waiver of debt by a creditor, on death, etc.

Exclusions

The following are examples of assets that are excluded from CGT:

- primary residence owned by a natural person or special trust (various special rules apply);
- most personal use assets, ie assets not mainly used for purposes of carrying on a trade;
- lump sum benefits from pension, provident or retirement annuity funds;
- proceeds from long term insurance policies (excluding second-hand policies);
- payments as compensation for personal injury, illness or defamation claims;
- gains from gambling, games or competitions authorised and conducted in terms of South Africa's laws;
- gains made by approved PBOs;
- gains and losses made by unit trust funds;
- gains of up to R500 000 on the disposal of a small business by reason of death, reaching the age of 55 or for reasons of ill-health, provided certain other requirements are met; and
- donations and bequests to approved PBOs.

Rollover or Deferrals

In the case of the following, the gain on the disposal of an asset is deferred until a subsequent CGT event:

- involuntary disposals (eg theft, fire) provided the asset is replaced within one year;
- reinvestment in replacement assets that is brought into use within one year; and
- transfers between spouses.

Capital Losses not taken into Account

Losses suffered in respect of the following transactions or events cannot be claimed for CGT purposes:

- losses on disposal of intangible assets acquired before 1 October 2001;
- losses in respect of certain forfeited deposits;
- losses suffered on transactions with connected persons are ring-fenced and can only be offset against gains resulting from dealing with that same connected person;
- losses on disposal of options on certain personal use assets; and
- losses on disposal of certain shares.

Assets held in Foreign Currency

Special rules apply in respect of assets held and disposed of in foreign currencies.

In the case of foreign equity instruments, profits and losses resulting from foreign exchange differences must be accounted for.

"Currency" is excluded from the definition of an "asset" and therefore not subject to the normal CGT rules. Complex rules apply in determining capital gains and losses made in respect of the disposal or acquisition of "foreign currency assets" or the settlement or part settlement of a "foreign currency liability" because of foreign exchange fluctuations.

"Foreign currency asset" means:

- a unit of foreign currency; or
- a foreign loan, advance or debt owing by a person.

"Foreign currency liability" means:

- a foreign loan, advance or debt owing by a person.

Until 28 February 2003, any gains or losses in respect of foreign currency assets and liabilities have been excluded from the CGT net. With effect from 1 March 2003 these gains and losses will be included.

The following constitutes the disposal of a "foreign currency asset":

- the conversion, sale, donation, cession, exchange or transfer of that foreign currency asset;
- the forfeiture, loss, termination, redemption, cancellation, surrender, waiver, expiry or abandonment of that foreign currency asset; or
- the vesting of any foreign currency asset of a trust in a beneficiary of that trust.

Different pools must be created for different foreign currencies acquired after 1 March 2003. Foreign currencies held on 1 March 2003 are deemed to have been acquired into the various currency pools on that date and must be converted to Rands at the average exchange rate for the year ending 29 February 2004.

Every time new currency assets are introduced into a pool, the "total asset pool base cost" must be redetermined. When a foreign currency asset is disposed of, a prorata portion of the "total asset pool base cost" must be allocated to that currency asset.

The Calculation of CGT

Consideration on disposal	....
LESS: Base cost	....
Capital gain	....
LESS: Primary exclusion (if applicable)	....
Amount subject to CGT	....
MULTIPLIED BY: Inclusion rate (25%/50%)	....
Amount of the capital gain to be included in the taxpayer's income	....

RESIDENCE BASED TAX

With effect from 22 February 2000 foreign sourced dividends earned by South African residents become taxable in South Africa with certain exceptions (eg if the dividend paying company is listed on the JSE).

With effect from years of assessment commencing on or after 1 January 2001, all income earned by a South African resident will become taxable in South Africa, whilst non-residents will still be taxed on their South African sourced income.

Definition of Resident

Natural Person
The definition of resident provides, that in the case of a natural person, a resident is:

- any natural person who is permanently resident in South Africa; or
- any natural person who is not permanently resident in South Africa but who:
  - is physically present in South Africa for a period exceeding 91 days during the current year of assessment and for a period exceeding 91 days during each of the prior three years of assessment; and
  - was physically present in South Africa for a period exceeding 549 days (one and a half years) in aggregate during the previous three years of assessments.

Where a person has been outside of South Africa for a continuous period of 330 full days after he ceases to be physically present in South Africa, he will be deemed to not have been resident in South Africa from the day that he ceased to be physically present in the country.

South African resident employees who render services for any employer outside South Africa for a period which in aggregate exceeds 183 full days commencing on or ending during a period of assessment, and for a continuous period exceeding 60 full days during such 183 day period, will not be liable for income tax on their remuneration for the period that they are outside South Africa.

Foreign contract workers in South Africa on contracts of less than three full years will be exempt from the definition of resident.

Companies
A company will be considered to be resident in South Africa for tax purposes if it is incorporated, established, formed or has its place of effective management in South Africa.

"International headquarter companies" are not defined as resident in South Africa for income tax purposes (and will not be subject to STC) where:

- the entire share capital is held by non-residents or trusts;
- any indirect interests of residents or of any trust in the equity share capital does not exceed 5% in aggregate of the total equity share capital of the company; and
- 90% or more of the value of the assets of the company are in the equity share capital and loan capital of subsidiary companies, which companies are not themselves resident in South Africa and in which the headquarter company holds at least 50% of the shares in issue.

It is anticipated that the dispensation for international headquarter companies will be withdrawn.

Foreign Branches of South African Companies

The taxable income of foreign branches will be subject to South African income tax, unless taxed in a designated country at a statutory rate of 27% or more.

Losses in foreign branches cannot be offset against income from a South African source with effect from years of assessment commencing on or after 1 January 2001 and must be carried forward for offset against foreign sourced income in the following years.

Controlled Foreign Companies (CFC)

A controlled foreign company (CFC) includes any foreign entity in which residents hold more than 50% of the participation rights or votes or control of the entity. South African residents must impute all income of a CFC in the same ratio as the participation rights of the resident in such a CFC, subject to a number of exclusions.

Foreign Dividends (S9E)

S9E is activated when a foreign dividend is received by a resident company and the resident company holds 10% or more of the equity share capital of the foreign company from which such dividend is received. The resident company must include the foreign company's taxable income into that of their own, subject to certain exclusions.

Foreign Tax Credits

A resident is allowed to deduct all foreign taxes paid in respect of foreign income included in his or her taxable income from the tax payable in South Africa on the total amount of such foreign income. Any excess credits may be carried forward.

TAX EXEMPTIONS FOR CHARITIES

In terms of the amended section 10 of the Income Tax Act all organisations which were exempt from income tax prior to 15 July 2001, must re-apply for exemption prior to 31 December 2004.
Organisations currently not formally exempt from income tax must similarly apply for exemption. These organisations must be approved as PBOs and comply with certain provisions, the most important of which are :

- the sole object of the entity must be to carry on one or more public benefit activities falling into 11 categories including the activities which would be carried on by:

  - schools, technikons, universities and other educational bodies;
  - religious bodies;
  - retirement homes;
  - conservation, environment and animal welfare bodies;
  - research and consumer rights bodies;
  - amateur sports bodies; and
  - charitable trusts which fund PBOs;
- substantially the whole of the activity must be carried out in South Africa;
- the management committee must comprise at least three persons who are not connected persons;
- no excessive remuneration and no profits may be distributed to any person;
- the PBO must register with the Department of Welfare as a Non-Profit Organisation;
- the PBO may not carry on any trade or business unless:
  - the gross income thereof does not exceed the greater of 15% of its gross receipts or R25 000;
  - the activity is related to the main object of the PBO and is carried out on a cost recovery rather than a profit making basis, is of an occasional nature and undertaken mainly by unpaid volunteers; or
  - the activity is approved by the SARS.
- surplus funds may be invested only as prescribed;
- if the PBO is approved in terms of Section 18A as a body, donations to which are tax deductible by the donor, 75% of its tax deductible donations must be applied for its activities within 12 months from the financial year in which they are received; and
- Organisations which were approved in terms of Section 18A prior to 15 July 2001 were obliged to re-apply for approval prior to 31 December 2003 to avoid the approval lapsing.

VALUE ADDED TAX (VAT)

VAT is levied on the supply of most goods and services at a rate of 14%, the major exceptions of which are as follows:

Exempt Supplies

- rental of residential accommodation;
- educational services;
- local passenger transport;
- trade union contributions;
- share block and body corporate levies; and
- certain financial services.

Zero Rated Supplies

- the sale of a going concern to a VAT vendor;
- petrol sales;
- certain basic foodstuffs;
- certain goods to be used for farming purposes;
- exported goods and services, subject to prescribed requirements;
- services rendered outside South Africa; and
- international transportation and related services.

Essential Features

- enterprises with a turnover of less than R300 000 in any period of 12 months are not obliged to register for VAT;
- enterprises with a turnover of less than R20 000 in any period of 12 months are not permitted to register for VAT;
- VAT returns are generally submitted bi-monthly unless turnover in any period of 12 months exceeds R30 000 000, in which case returns are submitted monthly. Farmers may submit VAT returns on a six monthly basis and property letting companies may, subject to certain requirements, submit annual VAT returns;
- a vendor is legally obliged to notify the SARS as soon as annual turnover exceeds or is expected to exceed R30 000 000;
- vendors may reclaim the VAT element of all expenditure except on:
  - entertainment;
  - passenger vehicles (including hiring); and
  - club subscriptions.
- input tax credits may not be claimed on expenditure relating to exempt supplies;
- input tax credits may only be claimed upon receipt of a valid tax invoice;
- a notional input tax credit may be claimed on the purchase of second hand goods, subject to prescribed requirements;
- notional input tax claimed on property transactions are limited to transfer duty paid on all transactions;
- all fee based financial services (with the exception of certain premiums on life policies and contributions to retirement funds) are subject to VAT with effect from 1 October 1996; and
- only natural persons may, provided permission has been granted by SARS, account for VAT on the payments basis.

ESTATE DUTY

The general rule is that if the deceased is ordinarily resident in South Africa at the time of death, all of his assets, wherever they are situated, will be included in the gross value of his estate for the determination of duty payable thereon.

The dutiable amount is arrived at as follows:

Value of all property at date of death	R	....
(including limited interests such as usufructs, and off-shore assets)		....
Deemed property *	R	....
Gross value of property	R	....
Deductions*	R	....
Net value of estate	R	....
Abatement	R	(1 500 000)
Dutiable estate	R	....
Estate Duty 20% of	R	....

- * Deemed property includes: certain insurance policies on the life of the deceased as well as any accrual claim the deceased's estate may have against a surviving spouse.
- * The most important deductions are:
  - funeral expenses and administration costs;
  - debts due at date of death;
  - CGT (death is a CGT event);
  - bequests to approved charities; and
  - value of property and deemed property bequeathed or otherwise passing to a surviving spouse.

There is relief from estate duty in the case of the same property being included in the estates of taxpayers dying within ten years of each other. The deduction is calculated on a sliding scale decreasing from 100% where the taxpayers die within two years of each other to 20% where the deaths are within eight to ten years of each other.

If a deceased party was not ordinarily resident in South Africa, only his assets located in South Africa will be subject to estate duty.

South Africa has entered into reciprocal agreements with various countries (eg United Kingdom and Canada) for the avoidance of double estate duty being payable in respect of the same property.

Rates

Estate duty is payable at a flat rate of 20% on the dutiable amount, in respect of persons who died on or after 1 October 2001 (25% if death occurred prior to 1 October 2001).

DONATIONS TAX

Donations tax is payable by any individual ordinarily resident in South Africa, or any South African company or one managed or controlled in South Africa, on the value of any gratuitous disposal of property including the disposal of property for inadequate consideration and the renunciation of rights. A donation is also a disposal for CGT purposes.

Principal Exemptions

- donations between husband and wife;
- donations to approved PBOs;
- the donation of assets outside South Africa, subject to certain conditions;
- casual donations up to R10 000 per year by donors other than natural persons;
- donations by natural persons not exceeding R30 000 per year; and
- bona fide maintenance payments.

Rates of Donations Tax

Donations tax is payable within three months after the donation at a flat rate of 20% on all donations made. The rate of 20% is effective in respect of all donations made on or after 1 October 2001.

STAMP DUTY

Leases of Immovable Property

For every R100 or part thereof of aggregate rent and other consideration:

	R	%
Where the lease period does not exceed 5 years	0,25	0,25
For a period exceeding 5 but not exceeding 10 years	0,40	0,40
For a period exceeding 10 but not exceeding 20 years	0,55	0,55
For a period exceeding 20 years	0,70	0,70

Marketable Securities Tax

Marketable securities tax is taxable to SARS by stock-brokers on a monthly basis at a rate of 0.25% on the purchase consideration of all listed securities purchased through or from them.

	R	%
a. Original issue of shares (includes share premium) for every R20 or part thereof		
- transferable by registration	0,05	0,25
- transferable by delivery/ bearer document	0,20	1,00
b. Registration of transfer (includes share premium) for every R10 or part thereof of the consideration	0,025	0,25

Credit Agreements and Financial Leases

Where the amount payable under the instrument in respect of the goods, wares or merchandise (including any interest and finance charges or other charges):

	R	%
Does not exceed R5 000	2,00	-
Exceeds R 5 000, but does exceeds R10 000	4,00	-
Exceeds R 10 000, but does not exceed R 20 000	8,00	-
Exceeds R 20 000, but does not exceed R 40 000	16,00	-
Exceeds R 40 000, but does not exceed R 60 000	24,00	-
Exceeds R 60 000, but does not exceed R 80 000	32,00	-
Exceeds R 80 000, but does not exceed R100 000	40,00	-
Exceeds R100 000, but does not exceed R130 000	50,00	-
Exceeds R130 000, but does not exceed R150 000	60,00	-
Exceeds R150 000, but does not exceed R180 000	70,00	-
Exceeds R180 000, but does not exceed R200 000	80,00	-
Exceeds R200 000	100,00	-

Debit Entries

	R	%
Debit entries posted to bank or credit card accounts	0,20	-

Mortgage bonds

	R	%
For every R100 or part thereof of the debt	0,20	0,20

TRANSFER DUTY ON IMMOVABLE PROPERTY

Transfer Duty is calculated on the greater of purchase price or market value.

a. Companies and close corporations and trusts:	10%
b. Natural persons:	
on first R140 000	0%
R140 001 to R320 000	5%
R320 001 and above	R9 000 + 8% (*on value above* R320 000)

NB: With effect from 13 December 2003, a disposal of shares in a company, a member's interest in a close corporation, or a contingent right to residential property owned by a discretionary trust either directly or through a company, the shares in which are owned by a trust, will attract transfer duty at the same rates (depending on the type of purchaser) as those given above, where more than 50% of the total assets of the company, close corporation or trust in question consists of residential property, as defined.

REGIONAL SERVICES COUNCIL LEVIES

In terms of the Regional Services Council Act several geographical areas have been demarcated for Regional Services Councils and two forms of levies are payable to these councils:

- **The Regional Services Levy -** this is a form of payroll tax calculated on the remuneration paid to employees and drawings taken by partners and sole traders.
- **The Regional Establishment Levy -** this is a form of turnover tax payable on gross income from sales (excluding VAT), rental, services and certain investments.

A person who carries on an enterprise or is deemed to be carrying on such an enterprise is liable for the payment of levies.

Certain exemptions exist for both levies, and the regulations also provide for an apportionment where an enterprise is carried out both within and outside a region.

SKILLS DEVELOPMENT ACT

The purposes of the Act is to develop the skills of the workforce, improve quality of life of the workers, improve productivity and to improve self-employment.

The Act further encourages the employers to use the workplace as an active learning environment and to encourage workers to participate in learnership.

If employers are up to date with their payment of skills development levies they can claim skills grants from their SETA.

SKILLS DEVELOPMENT LEVIES ACT

Every employer must pay the following skills development levy:

- from 1 April 2000, at 0.5% of the leviable amount; and
- from 1 April 2001, at 1% of the leviable amount.

The leviable amount is the total amount of remuneration paid or payable by an employer to its employees.

Payments are made on the seventh day after each month-end to the Commissioner.

COMPARATIVE TABLE OF TAXES PAYABLE IN CERTAIN SOUTHERN AFRICAN STATES

	South Africa	Zambia	Botswana	Lesotho	Namibia	Swaziland	Zimbabwe
COMPANY TAX							
Manufacturing	—	—	15%	—	—	—	—
Normal non-mining, local	15%/30%	35%	25%	35%	35%	37,5%	30% + AIDS levy 3%
Non-resident Branch	35%	—	—	—	—	—	—
	30%	45%	15%/25%	35%	18%/35%	37,5%	33%
INDIVIDUAL TAX							
Maximum rate	40%	40%	25%	35%	36%	33%	45%
Non-residents	—	—	—	25%	—	—	—
Level of taxable income at which maximum rate applies	R270 000	K5 000 000	P100 000	M30 001	N$200 000	E36 000	Z$4 500 001 + AIDS levy 3%
OTHER TAXES							
Distributed Profits Tax	12,5%	—	—	—	—	—	—
CGT	10%/15%	—	25%	—	—	—	20%/10%
VAT	14%	17,5%	10%	14%	15%	—	15%
GST	—	—	—	10%	—	12%	—
NRST	—	15%	15%	25%	10%	10%	15%/20%
NRTI	—	25%	15%	25%	—	—	10%
NRTF	—	—	—	—	—	—	20%
Royalty tax	12%	15%	15%	25%	10,5%	—	20%

The above table has been compiled from information supplied and is subject to confirmation.

NAMIBIA

Tax Year

The tax year-end for individual taxpayers is February of each year. Companies and close corporations have different tax year-ends.

Company Tax Rates

N*on-manufacturing, non-mining companies and close corporations* are taxed at the rate of 35%.

R*egistered manufacturing companies and close corporations*, where the approval was granted before 1 January 2003, the rate is 18% for the first ten years, including the year when the taxpayer was registered and thereafter the 35% rate applies. For the approval to be granted after 1 January 2003, the 18% applies to the first ten years of registration, thereafter 35% applies.

H*ard rock mining* (other than diamond mining, oil and gas extraction) the tax rate is determined by way of a formula up to any period ending 31 December 2001. For the tax year commencing 1 January 2002, the tax rate will be 37,5%.

D*iamond mining* there is a 50% rate of taxable income and 10% surcharge on tax payable with an effective rate of 55%.

CGT

There is no CGT.

Withholding Tax

- 10% withholding tax is deductible on dividends received by non-resident shareholders that do not carry on business in Namibia;
- royalties paid to non-residents are subject to 10,5% withholding tax;
- DTAs may override these withholding taxes. There are DTAs with France, Germany, India, Mauritius, South Africa, Romania, Russia, Sweden and the United Kingdom; and
- no restrictions apply when foreign funds are introduced into Namibia as share capital. Share certificates must be endorsed “non-resident”. Companies owned by non-residents should observe a ratio of share capital to fixed assets of 1:1. Introduction of loan funds from abroad are subject to specific exchange approval.

VAT

- The rate applicable is 15% on taxable supplies.
- Zero ratings apply to certain goods and services.

BOTSWANA

Tax Year

Both companies and individuals are assessed on an annual basis at 30 June of each year.

Company Tax Rates

Companies - 25%.
Manufacturing Companies - 15%.
International Financial Services Centre (IFSC) *Companies* - 15%.

Although the above is the total tax chargeable, with no additional tax, there is a timing and administration split of this tax rate, with a basic company tax rate of 15% and an additional company tax (ACT) rate of 10%. Manufacturing companies are taxed at a basic rate of 5% and an ACT of 10% (a specific application has to be submitted to the Ministry of Finance and a Development Approval Order should be obtained in order to qualify for this special rate). The withholding tax (WHT) of 15% on dividends declared and paid is allowed as an offset against the 10% ACT. If the 10% tax due in any year is greater than the 15% WHT tax, the excess is carried forward and offset against WHT due on dividends in succeeding tax years.

CGT

Taxed as a separate source of income at a rate of 25%. CGT subject to tax includes:

- all moveable and immovable property of a business carried on in Botswana and investments in shares or debentures of a company.

However, gains arising in respect of the following are exempt:

- principal private residence;
- shares and debentures of a public company;
- plant and machinery, but not buildings, in respect of which annual allowances have been granted; and
- gains arising from disposal of mineral rights and mining or prospecting information.

100% of net gains on immovable property will be taxable, whereas only 50% will be taxable on moveable property.

Withholding Tax

- 15% WHT is deductible on dividends paid. Note that as mentioned above, this amount can be offset against company tax payable.
- Payment of interest to a non-resident is subject to WHT of 15% on payment.
- Commercial royalties and management or consultancy fees paid to non-residents are subject to 15% WHT.
- 10% WHT is deductible on entertainment fees paid to a non-resident.
- 3% WHT is deductible on construction contracts that are in excess of Pula5 000.

Self Assessment Tax (SAT)

Under this scheme, tax is payable on a quarterly basis in advance with a final payment due during the first quarter of the subsequent tax year and is at present, only applicable to companies. The quarterly payments must not be less than 20% of the actual liability for the relevant tax year. SAT is mandatory for companies with tax payable of over Pula50 000.

Individuals

Taxable income at which the maximum rate of 25% applies is Pula100 000; up to this amount tax of Pula9 375 is payable.

Income to Pula25 000 is tax free, with tax being in staggered intervals to Pula100 000.

VAT

Introduced on 1 July 2002.

Two rates are applicable; 10% and 0% on taxable supplies.

Compulsory registration is required for those whose taxable turnover is in excess of Pula250 000 and all auctioneers, irrespective of their annual turnover.

There are two categories of VAT periods, those of one calendar month (if turnover is over Pula12 million) and those of two calendar months.

EXCHANGE CONTROL

Some of the important aspects of the Exchange Control Regulations currently in force including proposals by the Minister of Finance and the SA Reserve Bank on 26 February 2003.

Exchange Control and Income Tax Amnesty

An amnesty was announced on 26 February 2003 to afford individuals an opportunity to regularise the disclosure of their foreign assets and tax affairs in relation to foreign assets.

The terms of the amnesty may be summarised as follows:

- The window period for filing for amnesty relief runs between 1 June 2003 and 29 February 2004.
- The *exchange control amnesty* releases individuals from all civil penalties and criminal liabilities stemming from the illegal shifting of funds offshore on or before **28 February 2002**.
- The *income tax amnesty* releases individuals from all income taxes, interest, civil and criminal liabilities stemming from the failure to disclose gross income or capital gains from foreign sources arising on or before **28 February 2002**. An individual income tax return for the year ended 28 February 2003 must disclose all foreign income.

- Individuals filing for *exchange control amnesty* are subject to:
  - a 5% charge on funds repatriated to South Africa;
  - a 10% charge on any foreign assets remaining offshore; and
  - a 0% charge on assets that may legally be held offshore under normal exchange control limits.

South African Residents

The following amounts may be converted into foreign currency:

Travel Allowances

- R160 000 per calendar year per person of twelve years and older;
- R50 000 per calendar year per child under 12 years.

Travel facilities may be provided by way of traveller's cheques, foreign bank notes and credit/debit cards.

Travel facilities not availed of during one calendar year may not be carried forward to the following year.

Travellers are permitted to export up to R5 000 in South African Reserve Bank notes. This is not regarded as being part of the travel allowance.

Business Travel Facilities

Authorised dealers may approve applications by firms/companies for omnibus travel facilities to R2 million per calendar year, for allocations at the discretion of the firm/company. Representatives of the firm/company using this facility also qualify for the travel allowances referred to above.

Foreign Investment by South African Residents

Natural Persons

Private individuals over the age of 18 years are permitted to invest an amount of R750 000 outside South Africa. A tax clearance certificate must be obtained from the SARS prior to the transfer of funds.

Corporate **Entities**

Requests to invest overseas are considered on merit. The investor must be able to motivate that the investment will result in a long term benefit to the South African economy. Similarly, major corporates may apply to establish primary listings offshore.

Dividends repatriated from foreign subsidiaries are eligible for an exchange control credit.

Institutional **Investors**

Long term insurers, pension funds, unit trusts and fund managers may invest a portion of the assets offshore, based on the total assets under management. The restriction basing the investment limit on 10% of the prior year's net inflows will no longer apply as from 1 May 2003.

South African Residents Temporarily Living Abroad

Such persons qualify for:

- a standard travel facility;
- exportation of household goods and personal effects; and
- motor vehicles with a maximum insured value of R1 million.

Study Facilities

Foreign exchange study facilities are restricted to permanent residents of South Africa who are taking full-time courses at recognised educational institutions abroad.

The facilities comprise:

- full amount of tuition fees for the academic year transferred directly to the institution concerned;
- R160 000 living allowance per year for single students;
- R320 000 living allowance per year for a student accompanied by a spouse; and
- R50 000 per person per year (R100 000 if accompanied by a spouse) is allowed as a vacation travelling allowance.

Gifts

South African residents may transfer monetary gifts within a limit of R30 000 per applicant per calendar year to persons normally resident outside the Common Monetary Area.

Alimony and Maintenance Transfers

Authorised dealers may permit alimony transfers to non-residents on presentation of a court order.

Residents of South Africa may transfer an amount of up to R9 000 per month to a receiving family unit (being a father, mother, brother or sister relation of the South African resident) who is in necessitous circumstances.

Maintenance transfers may be remitted quarterly in advance.

Royalties and Licence Fees

Agreements by South African companies to pay royalties, licence and patent fees to non-residents in respect of the local manufacturing of a product are subject to the approval from the Department of Trade and Industry.

Agreements by South African companies to pay royalties, licences and patent fees to non-residents where no local manufacturing is involved, are subject to the approval of Excon (the Exchange Control authorities).

Non - Residents

Capital Transactions

Proceeds from the sale of assets in South Africa, owned by non-residents (excluding emigrants), may be remitted abroad.

Dividends

Dividends declared by companies out of income earned are remittable to non-resident shareholders (being companies, entities or persons that have never been resident in South Africa).

Directors' Fees

Authorised dealers may transfer directors' fees to non-resident directors permanently domiciled outside South Africa.

Management and Administration Fees

Request for payment of management and administration fees are considered by Excon on merit, taking into account the reason for the fees, nature of the services and the basis of calculation.

Emigrants From South Africa

Emigrants qualify for:

- a cash allowances (equal to a travel allowance);
- a foreign capital allowance; and
- exportation of certain items.

Cash Allowance
Emigrants qualify for a cash allowance equal to the annual travel allowance available to South African residents (see page 55).

Foreign Capital Allowance
- R750 000 per single person; or
- R1 500 000 per family unit.

Emigrants can, on application, request to transfer blocked assets in excess of the foreign capital allowance limits, subject to an exit schedule approved at the discretion of the South African Reserve Bank. An exit charge of 10% of the amount remitted is charged.

Persons who have emigrated and who have not fully utilised the authorised foreign capital allowance, may be afforded additional capital transfers within the overall limits.

Exportation of Goods
Emigrants may export household and personal effects and motor vehicles within the overall insured value of R1 million.

These goods, other than clothing, must have been in the emigrant's possession for at least one year prior to emigration.

Further Regulations

- Foreign assets held by an emigrant are not deducted from the settling-in allowance; and
- Emigrants must declare whether any assets were received as donations or gifts within the last three years or as capital distributions from *inter vivos* trusts within the last five years, prior to the date of emigration.

Blocked Funds

Assets of an emigrant in excess of the above allowances remain blocked in South Africa. They must be brought under the control of an authorised dealer and may be released for payment of specified investments and/or expenses.

Blocked assets are required to be invested in prescribed assets as determined by the SA Reserve Bank.

Certain income from a South African source may be remitted to emigrants. A detailed listing is available on request.

Distributions from Estates

Estates of Non-Residents (including Emigrants)
Cash bequests and legacies may be transferred on death, provided the deceased bequeathed the assets to a non-resident/emigrant.

Estates of Permanent Residents
Cash bequests and the cash proceeds of legacies and distributions due to beneficiaries permanently resident outside South Africa may be remitted abroad.

Restrictions on Local Borrowings for Income Tax Purposes

Non-resident, wholly owned subsidiaries may borrow locally up to 100% of their total effective capital (usually comprising share capital, share premium, reserves, retained income and shareholders' loans). Foreign controlled entities become subject to local borrowing limits at a non-resident ownership level of 75%.

Interest on amounts borrowed in excess of these limits may be disallowed by the SARS.

Local participation in non-resident controlled companies increases the ability to borrow locally. The formula applied to the “effective capital” in calculating the permitted local borrowings is:-

Local Borrowings Percentage =

$$100\% + \left(\frac{\text{South African Interest}}{\text{Non-Resident Interest}}\right) \text{x } 100\%$$

For example: if a company has a 25% South African participation and 75% non-resident shareholders, the ratio to be employed in calculating its financial assistance limit would be:

$$100\% + \left(\frac{25}{75} \text{x} 100\%\right) = 100 + 33\tfrac{1}{3}\%$$

= 133% (of effective capital)

PRIME BANK OVERDRAFT RATES

Effective Date	Rate %
18.12.03	11.50
20.10.03	12.00
16.09.03	13.50
14.08.03	14.50
12.06.03	15.50
13.09.02	17.00%
14.06.02	16.00%
14.03.02	15.00%
15.01.02	14.00%
08.10.01	13.00%
16.07.01	13.50%
18.06.01	13.75%
14.01.00	14.50%
04.10.99	15.50%
02.08.99	16.50%
19.07.99	17.00%
14.07.99	17.50%
25.06.99	18.00%
19.04.99	19.00%
09.03.99	20.00%
13.02.99	21.00%
08.01.99	22.00%

The above details relate to prime overdraft rates charged by Nedbank Ltd. The effective date may differ slightly at other banks.

RETENTION OF RECORDS

Set out below is a summary of recommended retention periods:

	Retention Period (Years)	
	Originals	*Originals if microfilmed*
Accounting Records		
Books of prime entry		
• Cash books, creditors ledgers, debtors ledgers, fixed asset registers, general ledgers, journals, petty cash books, purchase journals, sales journals, subsidiary journals and ledgers, as well as supporting schedules to such books of account, etc.	15	5
• Vouchers, working papers, bank statements, costing records, creditors invoices and statements, debtors invoices and statements, goods received notes, journal vouchers, payrolls, purchase orders and invoices, railage documents, salary and wage registers, sales tax records, tax returns and assessments, etc.	5	
Employee Records		
• Expense accounts, payrolls, employee tax returns, etc.	5	
Statutory and Share Registration Records		
• Annual returns, certificates of change of name, incorporation and to commence business, founding statements, amended founding statements, memorandum and articles of association, Minute books, notices of meetings, etc.	Indefinitely	
• Branch registers, registers of directors attendance, debenture holders, directors and officers, directors' interests, members and pledges and bonds, etc.	15	
• Cancelled share transfer forms.	12	

	Retention Period (Years)	
	Originals	*Originals if microfilmed*
Other Documents		
Customs & Excise Act		
• Documentation for export incentive scheme claim.	5	
Compensation for Occupational Injuries and Diseases Act		
• Records of wages paid, time worked and payment for piece work and overtime, and of any particulars prescribed for at least four years after the date of last entry in those records.	4	
Insolvency Act		
• The insolvent's record of his transactions should be kept for not less than three years.	3	
Occupational Health and Safety Act		
• The following records must be kept in terms of OHS Act:		
- a copy of the Act (if there are more than 19 employees);		
- an incident register;	5	
- certificate of compliance;		
- first aid certificate (valid for three years).		
Value Added Tax Act		
• Books of account, recording the supply of goods to or by the vendor; invoices; tax invoices, credit and debit notes; bank statements; deposit slips; stock lists and paid cheques.	5	
Information in book form - five years from last entry.		
Computerised records must be kept in printout form, not just on disk or tape.		
Capital Gains Tax		
All records pertaining to capital transactions		
- where a taxpayer was never required to register.	5	
- where a taxpayer determined a taxable gain or assessed capital loss, the retention period starts from the date on which the Commissioner received the return.	4	

TAX TIMETABLE FOR 2004

Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Provisional taxes												
Individuals		27 (2nd)						31 (1st)	30 (3rd)			
Trusts		27 (2nd)						31 (1st)	30 (3rd)			
Companies & CC												
Dec year - end						30 (1st/3rd)						31 (2nd)-
Jan year - end	30 (2nd)						30 (1st/3rd)					
Feb year - end		27 (2nd)						31 (1st)	30 (3rd)			
Mar year - end			31 (2nd)						30 (1st/3rd)			
Apr year - end				30 (2nd)						29 (1st/3rd)		
May year - end					31 (2nd)						30(1st/3rd)	
Jun year - end						30 (2nd)						31 (1st/3rd)
Jul year - end	30 (1st/3rd)						30 (2nd)					
Aug year - end		27 (1st/3rd)						31 (2nd)				
Sep year - end			31 (1st/3rd)						30 (2nd)			
October year - end				30 (1st/3rd)						29 (2nd)		
Nov year - end					31 (1st/3rd)						30 (2nd)	
PAYE	7	6	5	7	7	7	7	6	7	7	5	7
VAT	23	25	25	23	25	25	23	25	23	25	25	24
RSC levies	20	20	19	20	20	18	20	20	20	20	19	20
UIF	7	6	5	7	7	7	7	6	7	7	5	7
STC	By the last business day of the month following the month in which the dividend accrues											
Withholding tax on royalties	Within 14 days of month end i.e. the last Friday within the 14-day period, in which royalty liability was incurred											
Tax returns (without extension):												
Individuals and trusts							30					
Companies and CCs												
- Dec year - end		27										
- Feb year - end				30								
- Jun year - end									30			
IRP5 certificates - issue date												
IRP5 certificates - reconciliation date		**28**										

O.E.C.