



# Financial and Taxation Directory 2006/2007



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## **HIGHLIGHTS OF THE 2006/2007 BUDGET 15 FEBRUARY 2006**

The contents of this publication incorporates the budget proposals tabled in Parliament on 15 February 2006 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 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.

### **Personal Income Tax Rates**

The minimum tax threshold increases from R35 000 to R40 000 for persons under age 65. For persons aged 65 and over the tax threshold increases from R60 000 to R65 000.

The primary rebate increases from R6 300 to R7 200. The secondary rebate for individuals aged 65 and remains at R4 500.

The maximum marginal tax rate at 40% is applicable to taxable income above R400 000 (previously R300 000).

Most of the tax relief is allocated to persons with taxable incomes below R150 000 (refer to tax reduction tables on pages 9 and 10).

### **Interest and Dividend Income Exemption**

The domestic interest exemption is increased from R15 000 to R16 500 for taxpayers aged under 65 and from R22 000 to R24 500 for taxpayers aged 65 and over.

The portion of the exemption applicable to foreign interest on dividend income increases from R2 000 to R2 500.

### **Medical Expenses**

A monetary cap was recently introduced for tax-free medical scheme contributions. In addition hereto, with effect from 1 March 2006, the threshold for deduction of individual tax-deductible medical expenses increases from 5% to 7.5% of taxable income. Taxpayers aged 65 years and older continue to enjoy a full deduction for all medical expenses.

## **Transfer Duty**

The exemption threshold for fixed property transfers has been increased from R190 000 to R500 000. The maximum transfer duty rate of 8% applies above R1million (previously R330 000).

The flat rate of property transfer duty for companies and trusts reduces to 8% from 10%.

These changes come into effect on 1 March 2006.

## **Motor Vehicle Allowance**

As from 1 March 2006 the percentage of the monthly motor vehicle allowance subject to tax will be increased from 50% to 60%.

## **Donations Tax**

The annual donations tax exemption for natural persons is increased from R30 000 to R50 000 with effect from 1 March 2006.

## **Death Duty**

The estate duty exemption is increased from R1,5million to R2,5million with effect from 1 March 2006.

## **RSC Levies**

RSC Levies will be eliminated as from 30 June 2006.

## **Small Business Corporations**

Significant tax relief extended to small business corporations for tax years ending on or after 1 April 2006.

- Turnover limit for eligible corporations increased from R6million to R14million.
- Small business tax exemption threshold increased from R35 000 to R40 000.
- Tax threshold for reduced corporate tax rate of 10% increased from R250 000 to R300 000.
- The 100% depreciation allowance for small businesses who are permitted to submit 4-monthly returns increases from R1million to R1,2million.

## **Tax Amnesty for Small Businesses**

An amnesty has been proposed for small businesses who are not in the tax system.

SARS will waive taxes due by small businesses for years of assessment ending on or before 31 March 2004 (where the turnover for the 2005 tax year does not exceed R5million).

A non-disclosure penalty of 10% will apply, as calculated on the taxable income for 2005.

The first phase of the amnesty will focus on the taxi industry with effect from 1 August 2006, whereas the second phase applicable to other small businesses will take effect later.

### **Learnership Allowances**

Leadership allowances introduced in 2002, are set to expire in October 2006. These allowances have now been extended to October 2011.

Maximum initial allowances increase from R17 500 to R20 000 per annum for existing employees and from R25 000 to R30 000 for new employees. The allowance for completed learnerships increases from R25 000 to R30 000 for agreements entered into from 1 March 2006.

The employment of a disabled person as a learner will qualify for an enhanced allowance as from 1 July 2006.

### **Scholarships and Bursaries**

Scholarships for current and future employees will be tax-exempt as long as the employer makes payment directly for tutor and tuition rendered expenses. This proposal takes effect from 1 March 2007.

### **Retirement Fund Taxation**

The tax on retirement funds will be reduced from 18% to 9% with effect from 1 March 2006.

### **Capital Gains Tax**

The annual capital gain/loss exclusion increases from R10 000 to R12 500.

The primary residence exclusion increases from R1million to R1,5million.

CGT exclusion on death increases from R50 000 to R60 000.

The one-time CGT relief for small business increases from R500 000 to R750 000.

## **Stamp Duties**

The threshold exemption for stamp duties on leases increases from R200 to R500 per agreement as from 1 March 2006.

## **Exchange Control**

The offshore individual investment allowance is increased from R750 000 to R2million.

THE CALCULATION OF TAX PAYABLE - INDIVIDUALS

Gross Income	.....
Less: Exempt Income (see pages <u>11 and 12</u> )	=====
Income	.....
Add: 25% of Capital Gain (see pages <u>35 to 42</u> )	.....
TAXABLE INCOME	=====
TAX per Tables (see page <u>7</u> )	.....
Less: REBATES (see page <u>7</u> )	=====
NORMAL TAX PAYABLE	=====
Less: Provisional tax paid	=====
Foreign tax credit	=====
PAYE/SITE paid	=====
TAX DUE	=====

**NORMAL TAX RATES  
YEAR ENDED 28 FEBRUARY**

**NATURAL PERSONS AND SPECIAL TRUSTS**

<b>Rebates</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Primary Rebate	R5 800	R6 300	<b>R7 200</b>
Age Rebate – Over 65	R3 200	R4 500	<b>R4 500</b>

**Tax Threshold**

Under 65	R32 222	R35 000	<b>R40 000</b>
Over 65	R50 000	R60 000	<b>R65 000</b>

<b>Taxable Income</b>	<b>2006</b>	<b>Rates of Tax</b>
<b>R</b>	<b>R</b>	
0 – 80 000		18% of each R1
80 001 - 130 000	14 400 + 25% of the amount over 80 000	
130 001 - 180 000	26 900 + 30% of the amount over 130 000	
180 001 - 230 000	41 900 + 35% of the amount over 180 000	
230 001 - 300 000	59 400 + 38% of the amount over 230 000	
300 001 and over	86 000 + 40% of the amount over 300 000	

<b>Taxable Income</b>	<b>2007</b>	<b>Rates of Tax</b>
<b>R</b>	<b>R</b>	
<b>0 – 100 000</b>		<b>18% of each R1</b>
<b>100 001 - 160 000</b>	<b>18 000 + 25% of the amount over 100 000</b>	
<b>160 001 - 220 000</b>	<b>33 000 + 30% of the amount over 160 000</b>	
<b>220 001 - 300 000</b>	<b>51 000 + 35% of the amount over 220 000</b>	
<b>300 001 - 400 000</b>	<b>79 000 + 38% of the amount over 300 000</b>	
<b>400 001 and above</b>	<b>117 000 + 40% of the amount over 400 000</b>	

**TRUSTS (Other than Special Trusts)**

<b>Taxable Income</b>	<b>2006</b>	<b>Rates of Tax</b>
R0 and over		40% of each R1

<b>Taxable Income</b>	<b>2007</b>	<b>Rates of Tax</b>
<b>R0 and over</b>		<b>40% of each R1</b>



**CORPORATE TAX RATES**  
**YEAR OF ASSESSMENT ENDING AFTER 1 MARCH 2006**

**COMPANIES AND CLOSE CORPORATIONS**

<b>Taxable Income</b>	<b>Rate of Tax</b>
<b>R</b>	<b>%</b>
<b>Small Business Corporation</b>	
0 - 40 000	0%
40 001 - 300 000	10%
300 001 and over	29%
<b>Companies</b>	29%
<b>Employment companies</b>	34%
STC on dividends declared	12.5%
<b>Local Branch of Foreign Company</b>	
Normal tax rate	34%
<b>Long-term Insurers</b>	
Individual policyholder funds	30%
Company policyholder and Corporate funds	29%
Exempt policyholder funds	0%
<b>Retirement Funds</b>	
Tax rate on gross interest and net rentals	9%
<b>Gold Mines</b>	37%

**Comparison of 2007 with 2006 Taxes Payable  
Persons Under 65 Years**

<b>Taxable Income</b>	<b>2007 Rates</b>	<b>2006 Rates</b>	<b>Annual Reduction</b>	<b>Percent Reduction</b>
<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>%</b>
30 000	0	0	0	0%
40 000	0	900	900	100%
50 000	1 800	2 700	900	33.3%
60 000	3 600	4 500	900	20%
70 000	5 400	6 300	900	14.3%
80 000	7 200	8 100	900	11%
90 000	9 000	10 600	1 600	15.1%
100 000	10 800	13 100	2 300	17.6%
125 000	17 050	19 350	2 300	12%
150 000	23 300	26 600	3 300	12.4%
175 000	30 300	34 100	3 800	11%
200 000	37 800	42 600	4 800	11.3%
250 000	54 300	60 700	6 400	10.5%
300 000	71 800	79 700	7 900	9.9%
350 000	90 800	99 700	8 900	9%
400 000	109 800	119 700	9 900	8.3%
450 000	129 800	139 700	9 900	7%
500 000	149 800	159 700	9 900	6.2%
600 000	189 800	199 700	9 900	5%
700 000	229 800	239 700	9 900	4%
800 000	269 800	279 700	9 900	4%
900 000	309 800	319 700	9 900	3%
1 000 000	349 800	359 700	9 900	3%

**Comparison of 2007 with 2006 Taxes Payable  
Persons Over 65 Years**

<b>Taxable Income</b>	<b>2007 Rates</b>	<b>2006 Rates</b>	<b>Annual Reduction</b>	<b>Percent Reduction</b>
<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>%</b>
45 000	0	0	0	0%
50 000	0	0	0	0%
55 000	0	0	0	0%
60 000	0	0	0	0%
65 000	0	900	900	100%
70 000	900	1 800	900	50%
80 000	2 700	3 600	900	25%
90 000	4 500	6 100	1 600	26%
100 000	6 300	8 600	2 300	27%
125 000	12 550	14 850	2 300	15%
150 000	18 800	22 100	3 300	15%
175 000	25 800	29 600	3 800	13%
200 000	33 300	38 100	4 800	12%
250 000	49 800	56 200	6 400	11%
300 000	67 300	75 200	7 900	11%
350 000	86 300	95 200	8 900	9%
400 000	106 200	115 200	9 000	8%
450 000	125 300	135 200	9 900	7%
500 000	145 300	155 200	9 900	6%
600 000	185 300	195 200	9 900	5%
700 000	225 200	235 200	9 900	4%
800 000	265 300	275 200	9 900	4%
900 000	305 300	315 200	9 900	3%
1 000 000	345 300	355 200	9 900	3%

## **TAXATION OF NATURAL PERSONS**

### **BASIS OF TAXATION**

'Income' earned by South African resident natural persons, irrespective of where in the world that 'income' is earned, is subject to taxation. Non-resident natural persons are subject to tax on income earned from a South African source (actual or deemed). There is 1 set of income tax tables applicable to all natural persons, irrespective of marital status or dependants. 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 1 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. Similar principles apply in respect of capital gains and losses made by persons married in community of property.

#### **Minor Children**

Minor children may be taxpayers in their own right and are taxed on income received by or accrued to 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 section 10(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 R16 500 per tax year (R24 500 for persons over 65 years of age). Only R2 500 is allowed against foreign interest and foreign dividends;
- interest earned by non-residents who are absent from South Africa for 183 days, or more, per annum and who are not 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 shares in the company.

## **DEDUCTIONS**

### **Medical and Disability Expenses**

#### *Medical Expenditure*

A number of changes have been made to this section of the legislation, effective 1 March 2006.

Qualifying Medical Expenditure includes:

- any contributions to a medical scheme made in respect of the taxpayer and his/her spouse and dependants; and
- all amounts paid in respect of medical, dental and hospitalisation expenses, payments to pharmacists for medicines obtained on prescription and payments to nursing homes or a registered nurse/midwife for services supplied to the taxpayer, his/her spouse, and his/her children.

Qualifying medical expenses do not include expenses that have been recovered from the medical scheme. Only the person that paid the expense can claim it.

Deductions allowable are as follows:

- In case of taxpayers over the age of 65:
  - . There is no limit on the amount of qualifying medical expenditure that may be claimed as a deduction, i.e., all medical expenses paid by the taxpayer can be deducted.

- In case of taxpayers under the age of 65:  
From 1 March 2006 the deduction is split into two parts:
  - (a) Basic deduction for medical aid contributions:
    - R500 per month if the contribution is solely for the benefit of the taxpayer;
    - R1 000 per month if the contributions are for the benefit of the taxpayer and 1 dependent;
    - If the taxpayer has more than 1 dependent the limit is increased by R300 for each additional dependent, e.g., if the contributions the taxpayer makes to the fund are in respect of the taxpayer and 3 dependants, the limit is R1 600 per month.

The basic deduction is reduced by any amount contributed to the medical aid by the employer on behalf of the taxpayer.

- (b) Deduction of other medical expenses:
  - The balance of the medical aid contributions exceeding the basic deduction and all other qualifying medical expenditure paid by the taxpayer, and not recovered from the medical aid are deductible to the extent that they exceed 7.5% of the taxpayer's taxable income (before medical deduction). Any part of medical aid contributions paid by an employer that is included in the taxpayer's remuneration as a fringe benefit, shall be deemed to have been contributed by the taxpayer and will therefore qualify for deduction under this part.

#### *Physical Disability Expenditure*

A taxpayer can claim all expenses paid by him/her as a result of his/her physical disability or the physical disability of his/her spouse or his/her child.

If the taxpayer or his/her spouse or his/her child is handicapped, all qualifying medical expenses paid by the taxpayer, i.e., not only those paid in respect of the handicapped person, may be claimed.

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

#### **Entertainment**

With effect from 1 March 2002, section 11(u) was 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.

## **Donations to Public Benefit Organisations**

*Bona fide* donations made by individuals and companies to certain Public Benefit Organisations (PBO) (including donations to the Government) are deductible and the deduction is calculated at 5% of taxable income before deducting medical expenses.

Proof of payment is required by 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 per annum 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 per annum.

### *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.

Individuals who earn taxable income of R10 000 (for individuals over 65, R80 000) or more, which is not "remuneration" as defined, are obliged to register as provisional taxpayers.

With effect 1 March 2006, directors and members of a close corporation are no longer required to register as provisional taxpayers merely because they are directors of private companies or members of a close corporation. This does not apply where they receive any other additional income.

### **Due Dates for Returns**

#### *First Provisional Tax Return*

Due within the first 6 months of the tax year - 31 August (Applies to all individuals, juristic persons with a February year end and most trusts).

#### *Second Provisional Tax Return*

Due before the end of the tax year - 28 February. (Applies to all individuals, juristic persons with a February year end and most trusts).

#### *Third Provisional Tax Return*

Due seven months after the end of the tax year for February year ends - 30 September. (Applies to all individuals, juristic persons with a February year end and most trusts).

Due 6 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 November 2004, interest on an underpayment of the third provisional tax payment is charged at 10,5% per annum (non-deductible), whereas interest on an overpayment accrues at a rate of 6,5% (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.



## **EMPLOYEES' TAX (PAYE AND SITE)**

Employers are required to deduct employees' tax according to tax deduction tables supplied by the SARS Commissioner on all remuneration paid to employees unless otherwise instructed in terms of a tax deduction directive issued by 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;
- 40% 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, except for directors of private companies and members of close corporations, will 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 tax deductions are made on a monthly basis in terms of the PAYE tables.

## **SHARE INCENTIVES**

The tax treatment of employee share incentive schemes applicable prior to 26 October 2004 is being phased out and replaced by two new forms of schemes.

### **Broad-based Employee Share Plans**

The new rules in terms of section 8B allows for the tax-free treatment of "qualifying shares" acquired by employees. For shares to qualify as "qualifying shares" the following two requirements must be satisfied:

- (i) The employee must receive the shares in terms of

- a "broad-based employee share plan"; and
- (ii) The total shares received under the plan by the employee may not exceed R9 000 in value during any 3-year period.
- special rules apply when an employee sells qualifying shares.
- the employer is required to report all gains (whether income or capital) arising from the disposal of the shares by the employee and withhold employees' tax thereon for up to 5 years after the date of the grant.
- the employer will be allowed a deduction in respect of the shares issued/transferred, limited to R3 000 per annum.

### **Restricted Share Schemes**

A summary of the provisions of section 8C is as follows:

- The employee/director will be subject to tax when he/she is awarded shares/share options by his/her employer;
- The amount subject to tax is the difference between the market value and the "strike price" of the shares/share options on the date of vesting;
- The date of vesting depends on whether the instrument is restricted or unrestricted (refer to section 8C).
- Unrestricted instruments trigger a taxable event when acquired whereas restricted instruments trigger such an event once the restrictions cease; and
- The amount of the "income/gain" determined on the vesting of an equity instrument will be included in the definition of "remuneration" and will be subject to employees tax.

### **TAXATION OF LUMP SUM PAYMENTS**

Certain lump sum payments received on termination of service, qualify for taxation at the average rate of tax. The average rate of tax to be used in determining the tax liability on the lump sum will be whichever average rate of tax is higher in respect of pre-lump sum taxable income accrued in the current and preceding years 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 55, 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 a 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 1 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 5-year period of membership. The tax free portion is 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 1 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 tax-free amount is the greater of R60 000, or twice the taxpayer's salary for the last 12 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 fringe benefits granted by an employer in respect of services rendered by an employee.

### **Bursaries**

*Bona fide* bursaries or scholarships granted by an employer to an employee or employee's relative will 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 per annum in which case the exemption is limited to R2 000 per annum.

From the employer's point of view, no deduction will 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 market value of the asset 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, business purpose expenditure is calculated on the total kilometres travelled (limited to

a maximum of 32 000km), less deemed private travel determined by the value of the vehicle from the table below. Where the taxpayer has used more than 1 vehicle for business purposes, the deemed private travel 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 2006:

Where the Value of the Vehicle	Fixed Cost R	Fuel Cost c	Maintenance Cost c
does not exceed R40 000	15 364	47.3	22.5
exceeds R40 000 but not R60 000	20 910	49.4	26.2
exceeds R60 000 but not R80 000	25 979	49.4	26.2
exceeds R80 000 but not R100 000	31 513	54.8	30.5
exceeds R100 000 but not R120 000	36 978	54.8	30.5
exceeds R120 000 but not R140 000	41 771	54.8	30.5
exceeds R140 000 but not R160 000	47 512	57.2	39.8
exceeds R160 000 but not R180 000	52 629	57.2	39.8
exceeds R180 000 but not R200 000	58 334	65.9	43.8
exceeds R200 000 but not R220 000	64 591	65.9	43.8
exceeds R220 000 but not R240 000	69 072	65.9	43.8
exceeds R240 000 but not R260 000	74 777	65.9	43.8
exceeds R260 000 but not R280 000	79 918	69.3	52.5
exceeds R280 000 but not R300 000	85 440	69.3	52.5
exceeds R300 000 but not R320 000	88 793	69.3	52.5
exceeds R320 000 but not R340 000	95 218	69.3	52.5
exceeds R340 000 but not R360 000	100 011	77.1	68.0
exceeds R360 000	100 011	77.1	68.0

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 will, at the option of the recipient, be 246 cents per kilometre.

For PAYE purposes, 60% of the monthly travel allowance is regarded as remuneration and is subject to PAYE.

The following methods may be applied in determining business travel deductions against travel allowances received:

- the taxpayer can furnish accurate data and deduct actual cost; or
- the taxpayer can furnish total kilometres travelled less deemed private travel, applied to actual travel costs based on expense records maintained; or
- the taxpayer can furnish total kilometres travelled,

less deemed private travel, applied to deemed travel expenses.

Deemed private travel is determined as follows:

- . 2005 tax year - 14 000km;
- . 2006 tax year - 16 000km; and
- . 2007 tax year - 18 000km.

## **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% (2007: 2.5%) 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 12 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 method. The determined value does not decrease in subsequent years.

Where the employee:

- bears the cost of all fuel used for private purposes, the monthly percentage to be applied is reduced by 0.22 percentage points; or
- bears the full cost of maintaining the vehicle, the monthly percentage to be applied is reduced by 0.18 percentage points.

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

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 (i.e., pool car); 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:

	<b>% of Determined Value pm</b>
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 per month.

### **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 official interest 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%
1 March 2004	9%
1 September 2004	8,5%
1 September 2005	8%

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 1 night, then he is entitled to a tax-free allowance within South Africa as follows:

- 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; or
  - (b) R196 if the allowance/advance is paid to defray the cost of meals and incidental subsistence expenses, i.e., beverages, room service, etc.; and
- 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 6 weeks away from home.

## **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 = R40 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 1 of the persons controlling the company; or
- (ii) where the employee or his spouse or minor child has an option or right of 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, 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 the 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 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, subject to

the following exclusions:

- supplied in a canteen or dining room operated for employees;
- supplied during business hours, extended working hours or a special occasion; and
- 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 homes and work; and
- services rendered by the employer to assist with better performance of employees' duties.

### **Medical Aid Contributions**

Previously, a fringe benefit arose when an employer directly or indirectly made any contribution to any medical aid scheme for the benefit of an employee or his dependants, if such contributions exceeded two thirds of the total contribution to the fund.

From 1 March 2006, following an amendment to the legislation, a taxable fringe benefit will arise for an employee to the extent that the direct or indirect contributions made by an employer to a medical aid scheme for the benefit of an employee or his dependants exceed:

- R500 a month, where the employee has no dependants;
- R1 000 a month, where the employee has 1 dependent; or
- R1 000 a month for employee and first dependent plus R300 a month, for each additional dependent thereafter.

No taxable fringe benefit arises in respect of contributions made by an employer to a medical aid scheme, where the employee is over 65 years of age.

## 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;
- 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 section 10(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 rate of South African normal company taxation is 29%, effective 1 April 2005.

Branches of foreign companies conducting business in South Africa through a permanent establishment is taxed at 34%.

For small business corporations (see definition below) the rates, with effect from 1 April 2005, are:

R0 - R40 000	0%
R40 001 - R300 000	10%
R300 001 and above	29% of amount by which taxable income exceeds R300 000

For employment companies being personal service companies (see definition below) or labour brokers (who have not been issued with an exemption certificate for

PAYE purposes) the rate is 34%.

A small business corporation is a close corporation or private company (other than an employment company):

- the entire shareholding or membership of which is held by natural persons;
- the gross income of which does not exceed **R14 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);
- not more than 20% of the gross income consists of investment income; and
- if engaged in the provision of personal services, maintains at least 4 full-time employees (none of whom may be a shareholder or a connected person in relation to the shareholder) for core operations (effective 1 April 2005).

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 1 client or any associated institution in relation to such client.

Any company which throughout the year of assessment employs more than 3 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 subject to employees' tax at the rate of 34%.

Furthermore, section 23(k), which came into operation on 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 is 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. In the case of a first dividend declared after 17 March 1993, the dividend cycle is deemed to commence on the later of 1 September 1992, or the day following the date of the last dividend declared by the company prior to 17 March 1993, or the date the company was incorporated, or the date on which the company became resident 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.

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, are subject to STC. If the capital profits accrued before that date, the dividend will be exempt from STC if declared in the process of liquidation or deregistration, provided certain prescribed steps are taken and instituted within 6 months after the date the dividend is declared.

No penalty is charged in respect of a late payment of STC. However, with effect from 24 January 2005 the Act was amended to provide that 200% additional tax can be charged in the event of default or omission to correctly or properly pay any STC that may be due to SARS.

Rates applicable to STC for dividends declared:

<b>From</b>	<b>Until</b>	<b>Rate</b>
17 March 1993	21 June 1994	15%
22 June 1994	13 March 1996	25%
14 March 1996	To date	12,5%

Anti-avoidance provisions exist that deem certain transactions and dealings between a company and its

shareholders or connected persons in relation to the shareholders to constitute dividends. This includes, *inter alia*, interest free loans and advances to, or asset distributions to shareholders or a connected person in relation to the shareholders.

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.

### **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 6 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 7 months after the end of the tax year if the year end is February and 6 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 a taxable income of less than R20 000 and hence these companies are not required to make third provisional tax payments.

<b>Date From</b>	<b>Date To</b>	<b>Rate of Underpayment</b>	<b>Rate of Overpayment</b>
1 Oct 2002	31 Mar 2003	15,5%	11,5%
1 April 2003	30 June 2003	16,5%	12,5%
1 July 2003	31 Aug 2003	15%	11%
1 Sept 2003	30 Sept 2003	14%	10%
1 Oct 2003	30 Nov 2003	13%	9%
1 Dec 2003	31 Oct 2004	11,5%	7,5%
1 Nov 2004	To date	10,5%	6,5%

### **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 Capital Gains Tax (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 who 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 has 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 whom 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 a similar process, qualify for a write-off over 5 years (20% per annum), subject to the accelerated depreciation allowance referred to below.

New or unused manufacturing assets acquired and brought into use, on or after 1 March 2002, will be written-off over a period of 4 years, 40% in year 1 and 20% per annum thereafter over the remaining 3 years.

Manufacturing assets acquired by small business corporations, as defined (see page 27), can be deducted in full (100%) in the year the asset was acquired. Other depreciable assets acquired by small business corporations are eligible for a depreciation write-off at a 50:30:20 rate over a 3-year period (effective 1 April 2005).

Farmers are entitled to an allowance, over 3 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:

	<b>Years</b>
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 period 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 would 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 no less than 5 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.

Section 24I(10) has been amended by the 2005 Revenue Laws Amendment Act. This section previously applied to exchange items between a South African resident and a controlled foreign company.

The amendment, which applies for years of assessment ending on or after 8 November 2005, disregards the unrealised gains and losses made on exchange items between the resident and specified foreign companies.

## **TAXATION OF RETIREMENT FUNDS**

Tax at the rate of 9% 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**

The cost of trading stock is deductible, but if held and not disposed of at the end of the tax year, its cost price or net realisable value (whichever is less) will not be part of gross income, but merely an addition.

Trading stock held by farmers is dealt with in the First Schedule of the Income Tax Act.

The value of trading stock on hand at the end of the year becomes the opening trading stock for the following year and, as such, is deductible.

Anti-avoidance provisions provide that expenditure incurred on the acquisition of trading stock not held at the end of the tax year and not disposed of during the year is deferred and allowed as a deduction in the first subsequent year in which it is either included in closing trading stock or has been disposed of, lost or destroyed.

The LIFO method of valuation is not permitted.

Consumable stores and spare parts acquired to be consumed in the course of trade are also included in trading stock.

The cost price of contractors' work-in-progress relating to fixed property owned by another person must also be included in trading stock until the contract is complete. The cost price will be reduced by progress payments, retention monies and notional losses.

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

A disposal of inventory for no consideration or an inadequate consideration or a disposal other than in the ordinary course of trading (e.g., stock ceasing to be held as trading stock) including a distribution of a dividend, a liquidation distribution, reduction of capital or share premium or redemption of redeemable preference shares *in specie*, will result in an inclusion in taxable income of an amount equal to the market value or cost of the stock, less the consideration, if any, received.

Where a marketable security is lent in terms of a lending arrangement (i.e., a stock loan), conditional upon a marketable security of the same kind and of the same quality and quantity being returned to the lender within 12 months, the marketable security is deemed not to have been disposed of by the lender, nor held by the borrower.

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 (valuation) date was 1 October 2001.

### **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**

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 1 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:

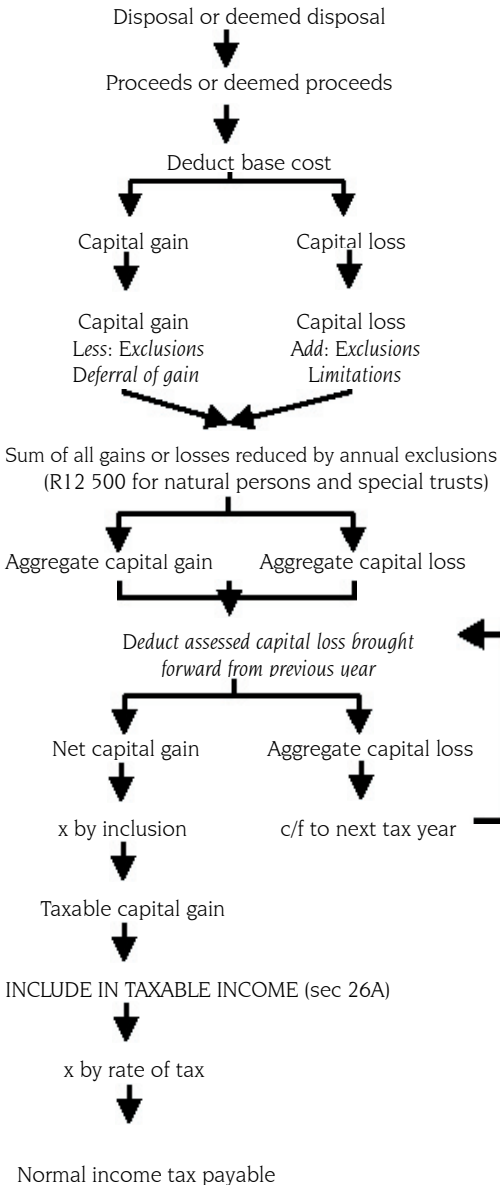
- the base cost is the price paid for the asset, plus certain other costs incurred that are directly related to buying it, selling it or improving it, e.g., transfer duties, attorney's fees, improvement costs, commissions, donation tax, etc.

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 (e.g., asset acquired through donation or inheritance), 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 hands of the person who disposed of the asset.

## Basic Framework



## Inclusion Rates

Type of Taxpayer	Inclusion Rate (%)	Statutory Tax Rate (%)	Effective Tax Rate (%)
Individuals	25	0 - 40	0 - 10
Companies	50	29	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	29	7.25
. Co policyholder fund	50	29	14.5
. Corporate fund	50	29	14.5
. Untaxed policyholder fund	0	0	0

## Death

The annual exclusion granted to individuals has increased to R60 000 during the year of death with effect from 1 March 2006.

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

## Withholding Tax Regime for Non-residents

With effect from a date still to be announced, a capital gain made by a non-resident on the disposal of an immovable property or any right or interest therein is subject to a withholding tax regime. The obligation to withhold the tax is placed upon the purchaser and the withholding rates vary from 5% to 10% depending on the nature of the non-resident seller.

No tax has to be withheld in respect of transactions if the total value is less than R2million. Tax withheld by the purchaser must be paid within certain timeframes depending on details of the transaction and subject to any directive that may have been issued by SARS.

Certain obligations and even personal liability for taxes, penalties and interest are placed upon estate agents and conveyancers involved in transactions where the seller is a non-resident.

### **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; e.g., sale, donation, cession, expropriation, grant or exchange;
- any event that results in expiry or abandonment of an asset; e.g., 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 a lending arrangement.



Certain events are deemed disposals for CGT purposes, whilst certain other events will give rise to simultaneous disposals and acquisitions, e.g., emigration; when a person ceases to be a resident for South African tax purposes; waiver of debt by a creditor; 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 and the exclusion only applies to the first R1,5million of the total gain made);
- most personal use assets, i.e., 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 (e.g., theft, fire) provided the asset is replaced within 1 year;
- re-investment in replacement assets that are brought into use within 1 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.

Any gains or losses in respect of foreign currency assets and liabilities up until 28 February 2003 have been excluded from the CGT net. With effect from 1 March 2003, these gains and losses are subject to CGT.

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 re-determined. When a foreign currency asset is disposed of, a *pro rata* portion of the "total asset pool base cost" must be allocated to that currency asset disposed of and the

gain or loss calculated with reference to the Rand value of the disposed foreign currency asset.

**The Calculation of CGT**

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

**RESIDENCE BASED TAX**

With effect from years of assessment commencing on or after 1 January 2001, all income earned by a South African resident became taxable in South Africa, whilst non-residents are subject to tax 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 ordinarily resident in South Africa; or
- any natural person who is not ordinarily resident in South Africa but who:
  - . is physically present in South Africa for a period exceeding 91 days in aggregate during the current year of assessment and for a period exceeding 91 days in aggregate during each of the prior 5 years of assessment; and
  - . was physically present in South Africa for a period exceeding 915 days in aggregate during the previous 5 years of assessments,in which case, that person will be a resident with effect from the first day of that relevant year of assessment.

Before the introduction of the amendment in the 2005 Revenue Laws Amendment Act, the physical presence test was applied over the previous 3 years.

The section was amended to increase the period to 5 years. The amendment comes into operation as follows:

- in respect of a person who was a resident (by virtue of the physical presence test) on 28 February 2005, it comes into operation for years of assessment commencing on or after 1 March 2006; and
- in respect of any other person, it comes into operation for years of assessment commencing on, or after, March 2005.

Where a person has been outside of South Africa for a continuous period of at least 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 3 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.

### **Foreign Branches of South African Companies**

The taxable income of foreign branches will be subject to South African income tax.

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) means any foreign company where more than 50% of the total participation rights in that foreign company are held or more than 50% of the voting rights in that foreign company are directly or indirectly exercisable by 1 or more residents.

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.

Net income of the CFC is defined as the CFC's taxable income determined as if the CFC is a South African taxpayer.

### **Foreign Dividends (section 9E)**

With effect from 23 February 2000 foreign sourced dividends earned by South African residents became taxable in South Africa with certain exceptions (e.g., dividends paid by dual listed companies where more than 10% of the shares of that "listed company" is held by residents).

Section 9E was introduced to regulate the taxation of foreign dividends received by or accrued to residents. It provides for various rules relating to the claiming of direct or indirect tax credits in the case of residents holding more than 10% of the shares of a foreign company. The section also contains a number of exemptions.

With effect from 1 June 2004, and in respect of any foreign dividends received or accrued during any tax year commencing after that date, section 9E has been deleted. This means that the new provisions regarding the taxation of foreign dividends will apply to individual taxpayers with effect from 1 March 2005, i.e., their 2006 tax year.

In essence, the new rules for the taxation of foreign dividends are supposed to make the process of taxing such dividends and the claiming of tax credits more simple and to encourage dividend inflows. Dividends paid to residents who own 26% or more of the shares in a foreign company shall be exempt from tax. However, persons holding an interest of less than 26% in a foreign company will not be able to claim indirect tax credits. They will only be entitled to claim direct taxes (e.g., withholding taxes) paid in respect of such dividends. Persons holding between 10% and 25% who wish to avail themselves of the indirect tax credit system can elect that the foreign company be treated as a CFC and that they be taxed on the income of that foreign company in proportion to their shareholding.

### **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.

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

The Broad-Based Black Economic Empowerment ("BEE") Act, 2003 has now come into force and aims to promote equality within the business sector. The Department of Trade and Industry has issued a general BEE scorecard to measure companies' BEE credentials.

The components of the scorecard include ownership, management, employment equity, skills development, preferential procurement, enterprise development and a residual element. Increasing emphasis is being placed on ownership.

### **Broad-Based Employee Share Plans**

Section 8B has been introduced and is designed to promote empowerment of employees through share ownership. These provisions are likely to assist and encourage taxpayers in meeting their black economic empowerment objectives.

In summary, employees may acquire in aggregate R9 000 worth of shares from the employer or associated companies for a nominal consideration. The employee will be subject to capital gains tax on any amounts received or accrued, if the shares are held by the employee for more than 5 years before disposal. If the shares are disposed of within 5 years, any gains made will be taxable as normal income and subject to normal income tax.

The company is entitled to a deduction of the market value of any qualifying equity shares granted to employees, limited to a maximum of R3 000 in respect of each year of assessment and the two succeeding years of assessment.

In general, 'broad-based employee share plans' are subject to the following requirements:

- equity shares in the employer or other companies in the group are acquired by employees for a minimum consideration, namely the par value of the shares;
- at least 90% of the permanent or full time employees are entitled to participate (other than employees who participate in another equity incentive scheme of the group);
- employees who acquire the shares are entitled to all the dividends and have full voting rights of the shares acquired;
- no restrictions may be imposed on the disposal of the shares other than:
  - (a) restrictions imposed by legislation;
  - (b) a right of any person to acquire those equity shares from employees at market value; or
  - (c) a restriction in terms of which that employee

may not dispose of those equity shares for a period of at least 5 years from the date of the grant of those shares.

The value of the equity shares acquired in terms of the plan may not exceed R9 000 in aggregate in the first year and the two succeeding years of assessment.

There are also additional reporting obligations which are placed on the employer company when the equity shares are subsequently sold pursuant to where the employee disposes of broad-based equity shares in exchange for other equity shares in the group due to restructuring.

## **TAX EXEMPTION 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, were obliged to re-apply for exemption prior to 31 December 2004. Organisations currently not formally exempt from income tax must apply for exemption.

Public Benefit Organisations (PBOs) must be approved as such and must comply with certain provisions, the most important of which are:

- the sole object of the entity must be to carry on 1 or more public benefit activity falling into 11 categories including the activities which would be carried on by:
  - . schools, technikons, universities and other educational bodies;
  - . religious bodies;
  - . organisations which provide housing or facilities for prescribed classes of persons;
  - . entities which provide certain welfare and humanitarian services;
  - . entities which provide certain health care services;
  - . conservation, environment and animal welfare bodies;
  - . research and consumer rights bodies;
  - . certain cultural bodies;
  - . amateur sports bodies; and
  - . charitable trusts which fund PBOs;
- at least 85% of the activities, measured in cost or time spent, must be carried out in South Africa;
- the management committee must comprise at least 3 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 Social Development as a Non-Profit Organisation;
- the PBO may not carry on any trade or business unless specifically permitted in terms of section 30(3)(b)(iv) of the Income Tax Act;

- surplus funds may be invested only as prescribed; and
- if the PBO is approved in terms of section 18A as an entity, donations to which are tax deductible by the donor, 75% of its tax deductible donations must be used for the purposes of its activities within 12 months from the financial year in which they are received, unless SARS approves the accumulation of funds for a special purpose.

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;
- certain financial services; and
- child care in a creche or after-school care.

### **Zero Rated Supplies**

- the sale of a going concern between two VAT vendors;
- petrol sales, excluding aviation fuel;
- certain basic foodstuffs;
- certain goods to be used for farming purposes;
- exported goods and services, subject to prescribed requirements;
- goods supplied to a customs controlled area, subject to prescribed requirements;
- supply of gold to the South African Reserve Bank, mint or another registered bank;
- services rendered outside South Africa;
- international transportation and related services; and
- grants received from any public or local authority or constitutional institution for supplies made to another person who is not the grantor.

### **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 R30million, in which case returns are submitted monthly;
- farmers may submit VAT returns on a 6 monthly basis and property letting companies may, subject to certain requirements, submit annual VAT returns;
- businesses with turnover of less than R1 million may apply to submit returns quarterly, i.e., once every 3 months;
- a vendor is legally obliged to notify SARS as soon as annual turnover exceeds or is expected to exceed R30million;
- vendors may reclaim the VAT element of all expenditure except on:
  - . entertainment, except qualifying subsistence;
  - . 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;
- from 1 March 2005, the name, address and VAT registration number of the recipient must appear on tax invoices where the VAT inclusive total exceeds R3 000;
- 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 is 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;
- only natural persons may, provided permission has been granted by SARS, account for VAT on the payments basis; and
- non-residents can, subject to certain conditions, qualify for a VAT refund on goods purchased in South Africa.

## **GOVERNMENT INCENTIVES**

Government has long and short-term economic objectives it aims to achieve. It is impossible for these objectives to be achieved without the intervention of the private sector and these activities are therefore encouraged and rewarded by Government. At present, there are around 59 local incentives and 40 foreign incentives available to South African businesses. Incentive categories include research and development, enterprise development, competitiveness improvement and export development.

In addition to this, there are industry-specific incentives, empowerment incentives, social incentives and incentives to support specific types of transactions.

A summary of some of the available incentives are set out as follows:

- *Export Incentives*: There are several incentives to help South African companies gain access to export markets. Some of these incentives are available to exporters operating in disparate industries and others are highly industry-specific. Incentives include the Export Marketing and Investment Assistance Scheme (EMIA), Motor Industry Development Programme (MIDP), and Duty Credit Certificate Scheme (DCCS).
- *Research and Development (R&D)*: Research and development is by definition a risky endeavour for any company. Typically funded out of retained earnings or loans, the risk of success or failure is usually borne entirely by the company undertaking it. Yet, the reality is that only businesses that innovate survive. It is in recognition of this that R&D incentives exist to assist South African companies to invest in R&D projects, i.e., Support Programme for Industrial Innovation (SPII), Partnership Industrial Innovation (PII), Technology and Human Resources for Industry Programme (THRIP) and Innovation Funds (IF).
- *Capital Projects*: Any decision to make an investment in new or increased capital manufacturing capacity is not taken lightly. Significant capital is exposed in any such transaction and the impact on the business will always be significant. There are a number of significant incentives relating to investment in manufacturing capacity. Support ranges from small investments to investments of billions of Rands. This includes the Small Medium Enterprise Development Programme (SMEDP), the Foreign Investments Grant (FIG), the Skills Support Programme (SSP), the Strategic Industrial Projects (SIP) and the Critical Infrastructure Programme.
- *Competitive Behaviour*: Companies often have access to capital at optimal costs and to state of the art equipment and production facilities, and are still not competitive when compared to domestic competitors and to imports. In order to address this anomaly there is a suite of incentives designed specifically to encourage competitive practices by South African companies such as the Black Business Supplier Development Programme (BBSDP) and the Sector Partnership Fund (SPF).

## ESTATE DUTY

The general rule is that, if the deceased is ordinarily resident in South Africa at the time of death, all 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 (including limited interests such as usufructs, and off-shore assets)	R.....
Deemed property *	R.....
Gross value of property	R.....
Deductions **	R.....
Net value of estate	R.....
Abatement (w.e.f. 1 March 2006)	R...(2 500 000)...
Dutiable amount	R.....
Estate Duty thereon at 20%	R.....

\* Deemed property includes: 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 PBOs;
- the proceeds of certain insurance policies; and
- the 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 10 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 8 to 10 years of each other.

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

South Africa has entered into reciprocal agreements with various countries (e.g., 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 1 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 R50 000 per year; and
- *bona fide* maintenance payments.

### **Rates of Donations Tax**

Donations tax is payable within 3 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.

## **UNCERTIFICATED SECURITIES TAX**

Uncertificated Securities Tax (UST) is payable at a rate of 0.25% of the "taxable amount" of all listed securities on a change of beneficial ownership.

The "taxable amount" means the purchase consideration on change of ownership. If there is no consideration, or the consideration is less than fair value, UST will be payable on the closing price of the securities on the date of the transaction.

With effect from 1 January 2006 no UST is payable on the issue of listed shares.

## **STAMP DUTY**

### **Leases of Immovable Property**

With effect from 1 January 2005 stamp duty is payable on leases of fixed property at a fixed rate of 0.5% on the quantifiable amount of the lease.

The quantifiable amount is the quantifiable rent payable (excluding VAT) for the full period of the lease plus any quantifiable "other consideration" including costs of

improvements to be effected by the lessee and the amount of any liabilities of the lessor which are to be paid by the lessee.

If rentals or other considerations subsequently become quantifiable, additional stamp duty must be paid within 6 months from the end of the lessor's tax year or if the lessor is not a taxpayer then on or before 31 August each year.

Where stamp duty would be less than R500 the lease will be exempt from stamp duty.

**Marketable Securities (shares, stocks, debentures, etc)**

R

- a. With effect from 1 January 2006 stamp duty is no longer payable on the original issue of marketable securities.
- b. Registration of transfer: for every R10 or part thereof, of the consideration or fair value. 0.025

**TRANSFER DUTY ON IMMOVABLE PROPERTY**

Transfer Duty is calculated on the greater of purchase price or market value. Rates applicable from 1 March 2006:

- a. Companies, close corporations and trusts: 8%
- b. Natural persons:
  - on first R500 000 0%
  - R500 001 to R1 000 000 5% of value above R500 000
  - R1 000 001 and above R25 000 + 8% on value above R1 000 000

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 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 2 forms of levies are payable to these councils:

- **The Regional Services Council Levy (RSC):** 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.

**RSC levies will be abolished with effect from 30 June 2006.**

## **SKILLS DEVELOPMENT ACT**

The purpose 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 (SDL) they can claim skills grants from their Sector Education and Training Authority (SETA).

## **SKILLS DEVELOPMENT LEVIES ACT**

Every employer must pay skills development levies calculated at a rate of 1% of the leviable amount.

The leviable amount is the total amount of remuneration paid or payable by an employer to its employees. Businesses with a payroll of more than R500 000 per annum or with at least 1 employee registered for PAYE are required to account for SDL (effective 1 September 2005).

# COMPARATIVE TABLE OF TAXES PAYABLE IN CERTAIN SOUTHERN AFRICAN STATES

	South Africa	Zambia	Botswana	Lesotho	Namibia	Swaziland	Mozambique	Zimbabwe
COMPANY TAX								
Manufacturing	10%/29%	35%	15%	15%	18%	30%	32%	10%/20%
Normal non-mining, local	10%/29%	35%	25%	35%	35%	30%	32%	30% + AIDS levy 3%
Non-resident Branch	34%	35%	25%	35%	35%	30%	32%	-
Mining and other	-	25%	25%	35%	55% diamond 37,5% other	30%	24%	15%
							12,8%***	
INDIVIDUAL TAX								
Maximum rate	40%	38%	25%	35%	35%	33%	32%	40%
Non-residents	-	-	-	25%	-	-	-	-
Level of taxable income at which maximum rate applies	R400 000	K60 000 000	P100 000	M30 001	N\$200 000	E75 000	MZM1 008 000 001	Z\$108 000 001 + AIDS levy 3%
OTHER TAXES								
Distributed Profits Tax	12.5%	-	-	-	-	-	-	-
CGT	10%/14.5%	-	25%	-	-	30%*	50%	20%
VAT	14%	17.5%	10%	14%	15%	-	17%	17,5%****
GST	-	-	-	-	-	14%	-	-
NRST	-	15%	15%	25%	10%	15%***	20%	15%/20%
NRTI	-	15%	15%	25%	-	10%	20%	10%
NRTF	-	-	15%/10%	10%/25%	-	15%	10%/20%	20%
Royalty Tax	12%	15%	15%	25%	10.5%	15%	20%	20%

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

\* Only on disposal of mineral rights

\*\* 12,5% for companies in Southern Africa

\*\*\* Tax free zone

\*\*\*\* Special VAT rate for Cellular telecommunications suppliers

## **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**

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

*Registered manufacturing companies and close corporations*, where the approval was granted before 1 January 2003, the rate is 18% for the first 10 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 10 years of registration, thereafter 35% applies.

For *hard 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%.

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

### **Capital Gains Tax (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;
- Double Taxation Agreements (DTA) may override these withholding taxes. There are DTA's 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 control approval.



## **Value Added Tax (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.

### **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.

### **Capital Gains Tax**

Taxed as a separate source of income at a rate of 25%.

Capital gains subject to tax include gains on all movable and immovable property of a business nature 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 75% 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 4 months of the subsequent financial 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 up to Pula25 000 is tax free (only applicable to residents), with tax being in staggered intervals up to Pula100 000.

### **Value Added Tax**

Introduced on 1 July 2002.

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

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

There are 2 categories of VAT periods, those of 1 calendar month (if turnover is over Pula12 million) and those of 2 calendar months.

## **EXCHANGE CONTROL**

### **Facilities available to South African Residents**

#### *Travel Allowances*

- R1 60 000 per calendar year per person of 12 years and older; and
- 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 1 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 R2million 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 R2million outside South Africa. A tax clearance certificate must be obtained from SARS prior to the transfer of funds. These funds may not be utilised to invest directly or indirectly back into South Africa. The Reserve Bank will also consider applications by private individuals to invest in fixed property in SADAC member countries against submission of a tax clearance certificate.

#### ***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 no longer applies 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 fulltime 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.

### **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 quoted companies out of income earned are remittable to non-resident shareholders. An emigrant shareholder will be entitled to dividends declared out of income earned after the date of emigration.

Dividends declared by non-quoted companies are remittable in proportion to percentage shareholdings, subject to certain restrictions. Dividends in favour of emigrant shareholders may be remitted subject to additional requirements.

### ***Directors Fees***

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

### ***Management and Administration Fees***

Requests 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 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.

### ***Foreign Capital Allowance***

- R2million per single person; or
- R4million per family unit.

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 1 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 3 years or as capital distributions from *inter vivo* trusts within the last 5 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.

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.

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

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

#### **Distributions from Estates**

Bequests and the cash proceeds of and inheritances due to heirs permanently resident outside South Africa may be remitted abroad.

## PRIME BANK OVERDRAFT RATES

Effective Date	Rate %
15.08.05	10.50
16.08.04	11.00
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	18.50
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
<b>Accounting Records</b>		
Books of prime entry		
<ul style="list-style-type: none"> <li>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.</li> </ul>	15	5
<ul style="list-style-type: none"> <li>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.</li> </ul>	5	
<b>Employee Records</b>		
<ul style="list-style-type: none"> <li>Expense accounts, payrolls, employee tax returns etc.</li> </ul>	5	
<b>Statutory and Share Registration Records</b>		
<ul style="list-style-type: none"> <li>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.</li> </ul>	Indefinitely	
<ul style="list-style-type: none"> <li>Branch registers, registers of directors attendance, debenture holders, directors and officers, directors' interests, members pledges and bonds, etc.</li> </ul>	15	
<ul style="list-style-type: none"> <li>Cancelled share transfer forms</li> </ul>	12	



## RETENTION OF RECORDS (continued)

	Retention Period (Years)	
	Originals	Originals if Microfilmed
<b>Other Documents</b>		
<b>Customs and Excise Act</b>		
<ul style="list-style-type: none"> <li>Documentation for export incentive scheme claim.</li> </ul>	5	
<b>Compensation for Occupational Injuries and Diseases Act</b>		
<ul style="list-style-type: none"> <li>Records of wages paid, time worked and payment for piece work and overtime, and of any particulars prescribed for at least 4 years after the date of last entry in those records.</li> </ul>	4	
<b>Insolvency Act</b>		
<ul style="list-style-type: none"> <li>The insolvent's record of his transactions should be kept for no less than 3 years</li> </ul>	3	
<b>Occupational Health and Safety Act</b>		
<ul style="list-style-type: none"> <li>The following records must be kept in terms of OHS Act:               <ul style="list-style-type: none"> <li>- a copy of the Act (if there are more than 19 employees);</li> <li>- an incident register;</li> <li>- certificate of compliance;</li> <li>- first aid certificate (valid for 3 years).</li> </ul> </li> </ul>	5	
<b>Value Added Tax Act</b>		
<ul style="list-style-type: none"> <li>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.</li> </ul>	5	
Information in book form – 5 years from last entry.		
Computerised records must be kept in printout form, not just on disk or tape.		
<b>Capital Gains Tax</b>		
All records pertaining to capital transactions		
<ul style="list-style-type: none"> <li>- Where a taxpayer was never required to register</li> </ul>	5	
<ul style="list-style-type: none"> <li>- 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</li> </ul>	4	

TAX TIME/TABLE 2006												
Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Provisional taxes:												
Individuals		28 (2nd)						31 (1st)	29 (3rd)			
Trusts		28 (2nd)						31 (1st)	29 (3rd)			
Companies & CCs												
Dec year - end						30 (1st/3rd)	31 (1st/ 3rd)					29 (2nd)
Jan year - end	31 (2nd)							31 (1st)	29 (3rd)			
Feb year - end		28 (2nd)							29 (1st/3rd)			
Mar year - end			31 (2nd)	28(2nd)						31 (1st/3rd)		
Apr year - end					31 (2nd)						30 (1st/3rd)	
May year - end						30 (2nd)	31 (2nd)					29 (1st/3rd)
Jun year - end								31 (2nd)				
Jul year - end	31 (1st/3rd)								29 (2nd)			
Aug year - end		28 (1st/3rd)										
Sep year - end			31 (1st/3rd)							31 (2nd)		
Oct year - end				28 (1st/3rd)								
Nov year - end					31 (1st/3rd)						30 (2nd)	
PAYE	6	7	7	7	5	7	7	7	7	6	7	7
VAT	25	24	24	25	25	23	25	25	22	25	24	22
RSC levies	20	20	20	20	19	20	20	18	20	20	20	20
UIF	6	7	7	7	5	7	7	7	7	6	7	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	28											
Companies and CCs												
- Dec year - end	28											
- Feb year - end												
- Jun year - end	29											
IRP5 certificates - issue date												
IRP5 certificates - reconciliation date	28											

## NOTES

## NOTES

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The information contained in this booklet is accurate at the time of publication, 16 February 2006, but should not be acted upon without professional advice.

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