Audit • Advisory • Tax

# FINANCIAL & TAXATION

## Directory 2016/17

## ABOUT US

We are the South African member firm of the BDO International network. The global BDO network provides audit, tax and advisory services in 154 countries, with over 64,300 people working out of over 1,400 offices worldwide. Locally, we have over 800 staff across our five offices around the country, namely in Cape Town (Woodstock and Tyger Valley), Pretoria, Johannesburg and Durban all offering audit, tax and advisory services.

Our distinctive reputation for building close personal relationships with our clients is built upon our commitment to all our stakeholders that what matters to them matters to us. We work with our clients to define what exceptional client service means to them and we aim to bring insight and up to date thinking to help them meet their business objectives.

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# BUDGET HIGHLIGHTS 2016/2017

The contents of this publication incorporate the budget proposals tabled in Parliament on 24 February 2016 together with the appropriate amending legislation to date. Applicable laws, rules, proposals practices and regulations often change and have varying implementation dates. Furthermore, the information provided is only intended to serve as a general guideline, and professional advice should be sought before making any decision.

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

**Personal Income Tax Rates**

The minimum tax threshold increases from R73 650 to R75 000 for persons under the age of 65. For persons aged from 65 to 74, the minimum tax threshold increases from R114 800 to R116 150 and for persons aged 75 and older it increases from R128 500 to R129 850.

The primary rebate increases from R13 257 to R13 500. The secondary rebate for individuals aged 65 and older remains constant at R7 404. The tertiary rebate for individuals aged 75 and older also remains constant at R2 466.

No changes were effected to the maximum marginal tax bracket. The maximum marginal tax rate therefore remains constant at 41% which is still applicable to taxable income above R701 301 as was the case in the 2015/2016 year of assessment.

**Interest Income Exemption**

The domestic interest exemption remains constant at R23 800 per year of assessment for individuals aged under 65 and at R34 500 per year of assessment for individuals aged 65 and over.

**The most significant tax proposals**

The 2016 Budget was tabled during a time of a low economic growth and the threat of an impending credit downgrade. There was therefore much interest in this budget which was described as the most important since the end of the apartheid era.

The 2016 Budget sees a reduction in the budget deficit as a percentage of gross domestic product to 3.2 per cent, compared with 3.9 per cent in the 2015/2016 Budget. The tax proposals if implemented would lead to an increase of tax revenue of some R18 billion even though personal income tax relief of R5.65 billion would be provided. The lower to middle income tax brackets were adjusted to account for bracket creep.

The capital gains tax inclusion rate for individuals, special trusts and insurers' individual policyholder funds increases from 33.33% to 40% and for all other taxpayers from 66.6% to 80%. The annual capital gains tax exclusion for individuals is increased to R40 000 per year of assessment (previously R30 000).

It is proposed that the compulsory annuitisation requirement for provident fund members be postponed to 1 March 2018. The revised framework for deductions of contributions to retirement funds, including provident funds, will however continue to be implemented from 1 March 2016. Section 11(k) dealing with the deduction of contributions to pension, provident and retirement annuity funds will be amended to ensure that the deduction can be claimed against passive income. Provision will also be made to ensure that section 11(k) allows for the roll-over of excess contributions to retirement annuity funds and pension funds accumulated up to 29 February 2016. The proposed amendments will allow provident fund members above the age of 55 who are forced to transfer to a new fund due to the closure of the provident fund, to withdraw their contributions plus growth, including contributions plus growth in the new fund as a lump sum.

The tax treatment of foreign pension funds of South African tax residents will also be reviewed.

The rate of transfer duty on properties to the extent that the value exceeds R10 million, will increase from 11% to 13%.

The corporate income tax rate remains unchanged at 28%.

The general fuel levy will increase by 30 cents per litre with effect from 6 April 2016.

Excise duties on alcoholic beverages (particularly beer, ciders, fruit beverages and spirits) will increase by between 6.7% and 8.5% and on cigarettes by 82 cents per pack of 20.

From 1 October 2016 a tyre levy will be imposed on new and re-treaded pneumatic tyres at R2.30 per kilogram of tyre. The levy will replace the current fee arrangement for tyres.

The incandescent globe tax will be increased from R4 to R6 per globe with effect from 1 April 2016.

The plastic bag levy will increase from 6 cents to 8 cents per bag with effect from 1 April 2016.

The motor vehicle emissions tax will increase in the case of passenger vehicles, from R90 to R100 for every gram of emissions per kilometer above 120 gCO2/km and, for double cab vehicles, from R125 to R140 for every gram of emissions per kilometre above 175 gCO2/km.

It is proposed that a tax on sugar-sweetened beverages will be imposed from 1 April 2017 to help reduce excessive sugar intake.

To limit taxpayers' ability to transfer wealth without being taxed, it is proposed that assets transferred through a loan to a trust will be included in the estate of the founder (sic) at death, and to categorise interest-free loans to trusts as donations. Further measures to limit the use of discretionary trusts for income-splitting and other tax benefits will also be considered.

## BUDGET HIGHLIGHTS 2016/2017 (continued)

It is proposed that section 8C be amended to deal with certain employee share-based incentive schemes where restricted shares held by employees are liquidated in return for an amount qualifying as a dividend.

It is proposed that a concession be made available to exclude debt instruments subject to a subordination agreement from being regarded as section 8F hybrid debt instruments.

The wide spread use of arrangements involving a share buyback by a company from the seller and the issuing of new shares to the buyer will be reviewed to determine if additional counter measures are required.

It is proposed that the urban development zone tax incentive be made available, subject to certain criteria, to more municipalities to stimulate investment in the renovation of commercial and low-cost residential buildings in inner cities.

Amendments are proposed to ensure that all government grants not listed in the Eleventh Schedule are included in gross income and that the Eleventh Schedule will be the sole mechanism for determining whether they are taxable or not.

The proposed withholding tax on service fees will be withdrawn from the Income Tax Act and will be dealt with as a reportable arrangement in terms of the Tax Administration Act.

A six-month amnesty period will apply between 1 October 2016 and 31 March 2017 for those with undeclared offshore income and assets to regularise their affairs.

It is proposed that a mechanism be developed to allow for a refund of interest withholding tax paid where the payor writes off the interest subsequent to the withholding of the withholding tax.

It is proposed that country-by-country reporting will become mandatory for large multinationals.

An extension is proposed to the prescribed 30 day period for taxpayers within which taxpayers may object to an assessment.

## THE CALCULATION OF TAX PAYABLE - INDIVIDUALS 2017 YEAR OF ASSESSMENT

| | |
|---|---|
| Gross income | ............ |
| Less: exempt income (see pages 11 - 12) | ............ |
| Income | ............ |
| Less: deductions (see pages 12 - 14) | ---------- |
| Add: 40% of capital gain (see pages 38 - 44) | ............ |
| Less: s 18A donation deduction (see page 12) | |
| Taxable income | |
| Tax per tables (see page 6) | ............ |
| Less: rebates (see page 6) | ............ |
| Less: medical scheme fees tax credit (see page 12 - 13) | |
| Provisional tax paid (see pages 24 - 26) | |
| Foreign tax credits (see page 10) | |
| PAYE paid (see page 26) | |
| Tax due | |

# TAX RATES: INDIVIDUALS AND TRUSTS

## YEAR ENDED 28/29 FEBRUARY

### INDIVIDUALS

| **Rebates** | **2017** | **2016** | **2015** |
|---|---|---|---|
| Primary Rebate | R13 500 | R13 257 | R12 726 |
| Age Rebate * – 65 and over | R7 407 | R7 407 | R7 110 |
| Third Rebate* – 75 and over | R2 466 | R2 466 | R2 367 |
| * Additional to primary rebate | | | |
| **Tax Threshold** | | | |
| Under 65 | R75 000 | R73 650 | R70 700 |
| 65 and over | R116 150 | R114 800 | R110 200 |
| 75 and over | R129 850 | R128 500 | R123 350 |

### INDIVIDUALS AND SPECIAL TRUSTS

| **Taxable Income** | **2017** | **Tax Liability** |
|---|---|---|
| **R** | **R** | |
| 0 – 188 00 | | 18% of taxable income |
| 188 001 - 293 600 | | 33 840 + 26% of the amount above 188 000 |
| 293 601 - 406 400 | | 61 296 + 31% of the amount above 293 600 |
| 406 401 - 550 100 | | 96 264 + 36% of the amount above 406 400 |
| 550 101 - 701 300 | | 147 996 + 39% of the amount above 550 100 |
| 701 301 and above | | 206 964 + 41% of the amount above 701 300 |

### TRUSTS (Other than Special Trusts)

| Taxable Income | Rate of Tax | Effective Capital Gains Tax Rate |
|---|---|---|
| 2017 | 41% | 32.80% |
| 2016 | 41% | 27,31% |

# TAX RATES: CORPORATES

YEAR OF ASSESSMENT ENDING BETWEEN
1 APRIL 2016 - 31 MARCH 2017

## COMPANIES AND CLOSE CORPORATIONS

| Taxable Income (R) | Rate of Tax (%) |
|---|---|
| **Small business corporations** | |
| 0 - 75 000 | 0% |
| 75 001 - 365 000 | 7% of taxable income above R75 000 |
| 365 001 - 550 000 | 20 300 + 21% of taxable income above R365 000 |
| 550 001 and above | 59 150 + 28% of taxable income above R550 000 |
| **Micro businesses** | |
| **Qualifying businesses with a turnover of up to R1 million may elect to be taxed upon qualifying turnover. See page 29 for table of rates.** | |
| **Companies and Close Corporations other than certain gold mining companies and special entities referred to on this page** | 28% |
| **Public Benefit Organisations and recreational clubs** (on non-exempt income) | 28% |
| **Personal Service Providers, Companies and Close Corporations** | 28% |
| **Dividends Tax** | 15% |
| **Local branch of foreign company** | |
| Normal tax rate | 28% |
| **Long-term Insurers** | |

| | |
|---|---|
| Individual policyholder fund | 30% |
| Company policyholder, Corporate fund and Risk policy fund | 28% |
| Untaxed policyholder fund | 0% |

## INDIVIDUAL TAXPAYERS AND TAX TAKE

**Estimates of individual taxpayers and tax take: 2016/2017**

| R | % | % | % |
|---|---|---|---|
| 0 - 70 000 | 0 | 0 | 0 |
| 70 001 - 150 000 | 36.3 | 12.5 | 2.7 |
| 150 001 - 250 000 | 24.4 | 15.6 | 7.8 |
| 250 001 - 350 000 | 15.1 | 14.6 | 10.9 |
| 350 001 - 500 000 | 11.3 | 15.2 | 14.6 |
| 500 001 - 750 000 | 7.0 | 13.9 | 17.0 |
| 750 001 - 1 000 000 | 2.8 | 7.8 | 11.3 |
| 1 000 001 + 1 500 00 | 1.9 | 7.5 | 12.1 |
| 1 500 001 + | 1.3 | 12.7 | 23.5 |
| **TOTAL** | 100.0 | 100.0 | 100.0 |

## RESIDENCE AND SOURCE OF INCOME

South African residents are taxed on their worldwide income, whilst non-residents are subject to tax on their South African sourced income (subject to specific exclusions, exemptions or deductions as well as the provisions of applicable double taxation treaties).

**Definition of resident**

Individuals

A natural person is a resident if he or she:

- is ordinarily resident in South Africa; or
- is not ordinarily resident in South Africa but:
    - 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 preceding 5 years of assessment; and
    - was physically present in South Africa for a period exceeding 915 days in aggregate during the preceding 5 years of assessment.

If a person is deemed to be a resident in terms of the physical presence test above, he or she is deemed to be a resident from the first day of the relevant year of assessment.

Where a person falls within the above physical presence test, but has been outside of South Africa for a continuous period of at least 330 full days after ceasing to be physically present in South Africa, he or she will be deemed to be non-resident from the time of departure.

Furthermore, a person will not be regarded as a resident if such person is deemed to be exclusively a resident of another country for purpose of the application of a double taxation treaty.

**Companies or entities other than natural persons**

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

**Foreign branches of South African residents**

The taxable income of a foreign branch belonging to a local resident, person or entity will also be subject to South African income tax.

Losses in foreign branches cannot be offset against income from a South African source and must be carried forward for offset against foreign sourced income in the following years.

**Controlled foreign companies (CFCs)**

A controlled foreign company (CFC) generally means any foreign company where more than 50% of the total participation rights in that foreign company are directly or indirectly held or more than 50% of the voting rights in that foreign company are directly or indirectly exercisable by one or more residents.

A CFC's net income is imputed to South African residents who, together with any ‘connected persons’ in relation to themselves, hold at least 10% of the participation or voting rights in the CFC. This is subject to a number of exclusions. The most important of these are an exclusion for net income subject to a high rate of foreign tax and non-diversionary net income attributable to a foreign business establishment of the CFC. The imputation is done on the basis of the ratio of the participation rights of each resident in such CFC.

The taxable income of a CFC is determined as if the CFC were a South African taxpayer and a South African resident, subject to a number of exceptions.

**Foreign tax credits / deduction**

A resident may deduct the foreign taxes paid in respect of foreign sourced income from the South African tax attributable to that income, subject to certain limitations. Any excess credits may be carried forward for 7 years. Alternatively, relief may be claimed if a double taxation treaty applies.

Where a resident is subject to foreign tax in respect of South

African sourced income, a deduction of the foreign tax paid may be claimed, subject to certain limitations.

**Non-residents**

As stated above, non-residents are taxed on South African sourced income subject to a number of exceptions and the provisions of various double taxation treaties.

There are currently more than 70 comprehensive treaties in force and other prospective treaties are in various stages of finalisation.

Some of the more important principles relating to South African sourced income earned by non-residents are as follows:

- The profits of local branches of foreign companies are currently taxed at a rate of 28% and no dividend or similar tax is payable on the repatriation of branch profits.
- There are comprehensive transfer pricing rules (including thin capitalisation) applicable to transactions between local entities and non-resident related parties.
- Interest earned by non-residents is exempt from income tax unless a non-resident has a permanent establishment in South Africa to which the interest is attributable or if the non-resident is an individual who is present in South Africa for more than 183 days in aggregate during the 12 month period preceding the date on which the interest was received by or accrued to him or her. However, a withholding tax at 15% on certain interest paid to non-residents applies from 1 March 2015. For more detail on this withholding tax, see 'Withholding tax on interest paid to non-residents' in this guide.
- Royalty payments to non-residents are currently subject to a withholding tax of 15% (increased from 12% with effect from 1 January 2015).
- Dividends paid to non-residents are subject to a 15% dividend withholding tax from 1 April 2012.
- It is proposed that the withholding tax on cross border service fees of 15% be withdrawn from the Income Tax Act and dealt with under the provisions of reportable arrangements in the Tax Administration Act (2011).
- The above withholding taxes are subject to various exclusions and are also subject to relief in terms of double tax treaties.
- The disposal of South African immovable property by a non-resident is subject to withholding tax, subject to certain exceptions.

## TAXATION OF INDIVIDUALS

Subject to the provisions of any particular double taxation treaty, South African resident individuals are taxed on their worldwide income whilst non-resident individuals are subject to tax on income earned from a South African source. There is one set of income tax tables for all individuals, regardless of marital status or the number of dependants. Tax payable is reduced by a primary rebate applicable to all individuals and secondary and tertiary (age related) rebates.

### Married persons

Married persons are generally taxed as separate taxpayers and each spouse is taxed on his or her own income. Exceptions to this rule include:

- Any income which is received by or accrued to a spouse in consequence of a donation, settlement or other disposition by the other spouse is deemed to be income of the spouse who made such donation/settlement/disposition if done solely or mainly to avoid tax.
- Any income derived by one spouse from the other spouse or from a partnership or private company of the other spouse, or derived from a trade which is connected to a trade carried on by the other spouse, is taxed in the hands of the other spouse to the extent that the amount of income is excessive in the circumstances.
- If a couple is 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, provided that the underlying property forms part of the joint estate. Any income which does not fall into the joint estate 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 (under the age of 18 years) 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, settlement or other disposition to the child, the resultant income will be taxed in the parent's hands.

## EXEMPT INCOME

The following are the more common types of income exempt from income tax in the hands of individuals:

- Qualifying pensions received by or accrued to a resident from a non-South African source;
- The capital portion of a purchased annuity;
- Remuneration received for services rendered outside the Republic for longer than 183 days in any 12-month period, provided the 183-day period of absence includes a continuous period of more than 60 continuous days. This exemption is subject to certain exclusions;
- War and certain disability pensions;
- Dividends received from South African resident companies, subject to certain exceptions;
- Certain dividends received from non-resident companies;

- South African sourced interest earned by individuals, up to a maximum of R23 800 per tax year (R34 500 for persons aged 65 years and over);
- Interest earned by non-residents attributable to a permanent establishment of the non-resident in South Africa or earned by non-resident individuals who are absent from South Africa for at least 183 days in aggregate during the 12-month period preceding the date on which the interest was received by or accrued to the non-resident. Note, however, that from 1 March 2015 withholding tax on interest in general applies to interest payments to non-residents
- UIF and Workmens' Compensation benefits.

**Foreign employment**

Employees who are residents of South Africa are, in the absence of an exemption, subject to income tax on remuneration earned whilst they render services abroad.

Employees are exempt from income tax on remuneration earned for services rendered outside South Africa, but only if the employee is outside South Africa for more than 183 days and is absent for at least one continuous period of more than 60 days in earning the remuneration, during a 12-month cycle. This exemption is subject to certain exclusions.

Other remuneration items that relate to foreign employment may also qualify for this exemption, for example, bonuses, fringe benefits, leave pay or the relevant portion of certain share options.

## DEDUCTIONS

**Medical and disability expenses**

Medical expenditure includes:

- any contributions to a local or foreign 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 dependants.

Qualifying medical expenses do not include expenses that have been recovered from a medical scheme.

Only the person who paid an expense may claim it. Payments by an employer which are treated as taxable benefits are, however, deemed to have been paid by the employee.

**From the 2015 year of assessment, a credit-only (rebate) system applies:**

- The rebate effectively consists of two components which are aggregated:
  1. The Medical Scheme Fees Tax Credit; and
  2. The Additional Medical Expenses Tax Credit.

1 above is in respect of medical aid contributions paid by the person but does not depend on the level of such contributions i.e. it is a fixed monthly amount as follows:

› R286 where the contributions were in respect of the taxpayer only;
› R572 in respect of the taxpayer and one dependant; and
› R572 plus R192 each, in the case of additional dependants.

2 above is in respect of so-called 'excess' medical aid contributions and non-recoverable medical expenses. Taxpayers aged 65 years and older and those with disabilities or disabled dependants convert all medical scheme contributions in excess of three times the allowable contributions credit (above) plus out of pocket expenses into an additional tax credit at a conversion rate of 33.3%. In respect of taxpayers under the age of 65 years, the conversion to credit will apply to medical scheme contributions in excess of four times the allowable contributions credit (above) plus out of pocket expenses at a conversion rate of 25%.

**Entertainment**

Such expenditure may not be claimed against employment income (remuneration) where such remuneration is mainly fixed and is not in the form of commission on sales.

**Donations to Public Benefit Organisations**

Donations to qualifying Public Benefit Organisations (PBOs) are deductible up to a maximum calculated at 10% of taxable income excluding retirement fund lump sums and severance benefits. A specific mechanism allows for payroll giving whereby an employee may enjoy a reduction of PAYE withheld as a consequence of making eligible donations. Donations in excess of the 10% limit are allowed to be rolled over to future tax years.

**Home study expenses**

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

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

- in the case of other employees, his or her duties are mainly performed in the home study.

### Contributions to Pension, Provident and Retirement Annuity funds

### Treatment for 2017 year of assessment

From 1 March 2016, contributions to retirement funds by employers will constitute a taxable fringe benefit in the hands of the employees. Individual taxpayers will be allowed to deduct up to 27.5% of the greater of their remuneration (excluding lump sum benefits) and taxable income (excluding lump sum benefits) with an overall cap of R 350 000 in respect of contributions made by themselves or their employer to pension, provident or retirement annuity funds. An excess may be carried forward to the following year of assessment.

### Treatment for 2016 and prior years of assessment

Pension Funds

Any person may claim a deduction of his or her 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.

Any excess may not be carried forward to the following year of assessment.

A maximum deduction of R1 800 per annum is allowable for arrear contributions to a pension fund. Any excess over R1 800 may be carried forward to the following year of assessment.

Retirement Annuity funds

A taxpayer may claim his or her current contributions and, provided they were included in the taxpayer's gross income as a taxable fringe benefit, the employer's contributions to a retirement annuity fund as a deduction, limited to the greatest of:

(i) 15% of income from non-retirement funding employment, excluding specified income (e.g. retirement lump sums and severance benefits);
(ii) R3 500 less any deduction for current contributions to a pension fund; or
(iii) R1 750.

Any excess may be carried forward to the following year of assessment.

The maximum deduction of arrear contributions to a retirement annuity fund is R1 800 per annum. Any excess may be carried forward to the following year of assessment.

Provident funds

Contributions to approved provident and benefit funds are not allowable as a deduction from an individual’s income.

## TAX FREE INVESTMENTS

With effect from 1 March 2015, individuals, regardless of age, are permitted to invest up to R30 000 per annum, with an overall lifetime limit of R500 000, into ‘tax-free investments’. The eligible products will include exposure to money market instruments, equities and property investments. Regulations are to be issued by the Financial Services Board governing the type of products that will be permitted. Entities that may administer such investments will be designated by notice by the Minister of Finance.

A withdrawal followed by a return to such an investment as well as transfers between products will not count towards the annual contribution limit.

Where a taxpayer contributes in excess of the annual or lifetime limit, a penalty of 40% of the excess contribution will be levied.

## SHARE INCENTIVE SCHEMES

Employees and directors are subject to tax on gains derived from rights that they obtain in terms of a share incentive scheme. Rights obtained prior to 26 October 2004 are governed by section 8A. Rights obtained on or after 26 October 2004 are governed by section 8C. Broad-based share incentive schemes are governed by section 8B (see page 45).

The more important features of section 8C are as follows:

- Employees are subject to tax on any share, share option, convertible instrument or member's interest in a close corporation that is acquired from an employer or by arrangement with the employer. The gain or loss will be determined on the vesting date (see below);
- The gain or loss is the difference between the amount paid by the employee to acquire the equity instrument and its market value on the vesting date;
- The definition of 'vesting date' differs depending on whether the instrument is restricted or unrestricted;
- Unrestricted instruments trigger a taxable event when acquired whereas restricted instruments usually trigger

such an event once the restrictions cease to have effect;
- The amount of any gain determined on the vesting of an equity instrument is taxed as income and will be subject to employees' tax.

## THE TAXATION OF FRINGE BENEFITS

### General Principles

- The taxability of the fringe benefit is unaffected, whether the benefit is granted by the employer or by an 'associated institution' in relation to the employer;
- Where the benefit is granted to any person other than the taxpayer by virtue of the taxpayer's employment, it is deemed to be granted to the taxpayer;
- Tax effects described below apply to benefits granted to an employee or to the holder of an office (e.g. a director), hereinafter collectively referred to as 'employee';
- VAT output on certain fringe benefits is payable by the employer, generally calculated as the fringe benefit value determined using the rules below multiplied by the rate of 14/114.

### Residential accommodation for foreigners working in the Republic

A taxable fringe benefit will arise if an employer provides residential accommodation to a foreign employee working in South Africa, subject to the following relief available to expatriates.

The foreign employee will be exempt from fringe benefits tax on residential accommodation for a maximum period of two years from the date of his arrival in the Republic. The residential accommodation must be provided for the purpose of performing the duties of employment.

This concession is limited to R25 000 per month. Where the value of the benefit exceeds R25 000 per month, the fringe benefit is determined by taking the value of the benefit as determined below in terms of the item 'residential accommodation', less the R25 000 exemption. If an employee is in the Republic for less than 90 days, the cap will not apply.

This special tax-free concession does not apply if a foreign employee was present in the Republic for a period exceeding 90 days during the year of assessment immediately preceding the date of arrival, in order to commence his or her duties. In that case, the use of the accommodation is taxed as per the rules set out in 'residential accommodation' below.

### Bursaries

Bona fide bursaries or scholarships granted by an employer to an employee or to an employee's relative are generally exempt in the hands of the employee. However, this exemption will not apply:

- if the bursary or scholarship is granted to any employee and the employee does not agree to reimburse the employer if the employee fails to complete the studies; or

- if the bursary or scholarship is granted to an employee's relative and the employee's 'remuneration proxy' exceeds R250 000 per annum; or
- if the bursary or scholarship is granted to an employee's relative, to so much of the bursary or scholarship as exceeds R30 000 per annum (in the case of higher education) or R10 000 per annum (in the case of basic education).

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

The taxable benefit is generally the difference between the market value of the asset and the consideration given by the employee.

Transfers of low-cost housing to certain qualifying employees are excluded from this treatment.

The fringe benefit value is reduced by R5 000 if the asset comprises:

- a bravery award; or
- a long service award (unbroken period of service of 15 years or any subsequent unbroken period of 10 years).

**Travel allowances**

Use of the employee's own vehicle

If an employee uses his or her own motor vehicle for business purposes and receives an allowance from the employer to defray expenditure, the allowance is tax-free to the extent that it is expended for business purposes.

Either actual or deemed costs relating to actual business travel may be claimed. Deemed costs are determined based on the value of the vehicle as per the table below. 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 the place of employment.

Where business travel is 8 000 kilometres or less for a year of assessment, an employee may receive a reimbursement of up to 329 cents per kilometre on a tax-free basis, provided that no other allowance or reimbursement is received by the employee in respect of the vehicle.

For PAYE purposes, 80% of the monthly travel allowance is regarded as remuneration and is subject to PAYE. However, if the employer is satisfied that at least 80% of the use of the motor vehicle will be for business purposes, only 20% of the monthly travel allowance may be subject to PAYE. If the employee has the use of a company owned fuel, garage or maintenance card, the amount used on the card is added to the travel allowance and taxed as highlighted above for PAYE purposes.

The following methods may therefore be applied in determining business travel reduction against a travel allowance received:

- a taxpayer may furnish accurate data and deduct actual costs relating to business travel. A logbook is thus required for this method. Finance charges and wear and tear are, however, limited where a vehicle costs more than R560 000, and in this case, lease payments are limited to the deemed fixed cost applicable to a vehicle with a cost of R560 000 per the table below; or
- a taxpayer may use actual business kilometres which are applied to deemed costs. A logbook is also required for this method.

Deemed costs are determined according to the following table:

| Value of the Vehicle (including VAT) R | Fixed Cost R | Fuel Cost c | Maintenance Cost c |
|---|---|---|---|
| R0 - R80 000 | 26 675 | 82.4 | 30.8 |
| R80 001 - R160 000 | 47 644 | 92.0 | 38.6 |
| R160 001 - R240 000 | 68 684 | 100.0 | 42.5 |
| R240 001 - R320 000 | 87 223 | 107.5 | 46.4 |
| R320 001 - R400 000 | 105 822 | 115.0 | 54.5 |
| R400 001 - R480 000 | 125 303 | 132.10 | 64.0 |
| R480 001 - R560 000 | 144 784 | 136.5 | 79.5 |
| Exceeding R560 000 | 144 784 | 136.5 | 79.5 |

The fixed cost is divided by the total kilometres travelled during the year of assessment. The fixed cost is pro-rated if the vehicle is not used for business purposes for the full year. The fixed cost per kilometre, fuel costs and maintenance costs are then added to arrive at a total rate per kilometre, which is applied to the actual business kilometres travelled. The fuel cost and maintenance cost components may only be claimed where the employee bears the full cost of fuel or of maintenance, respectively.

**Right of use of an employer-provided motor vehicle**

A taxable benefit accrues where an employee is granted the right to use an employer-provided motor vehicle either free of charge or for a consideration that is less than the value of the private use of that vehicle.

The monthly taxable benefit for the use of an employer-owned vehicle granted to an employee is 3.5% of the determined value of the vehicle (3.25% where the vehicle is subject to a maintenance plan). The same percentages also apply to the taxable benefit for a second or subsequent vehicle granted by an employer to an employee where the vehicle in question is not used primarily for business purposes.

Where the vehicle is held by the employer under an 'operating lease' concluded between non-connected parties in an arms-length transaction, the monthly taxable benefit is the sum of the costs incurred by the employer under the lease and the fuel costs.

The 'determined value' of the vehicle is the original cash cost to the employer (including VAT but excluding finance charges) or the retail market value thereof in the case of a lease or donation. The 'determined value' does not decrease in subsequent years. 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 12-months or more after the employer first obtained the use of the vehicle, the determined value comprises the original value as determined above depreciated by 15% per annum for each completed period of 12 months on the reducing balance method. For vehicles acquired by the employer on or after 1 March 2015, the 'determined value' is the retail market value as determined by the Minister of Finance by Regulation.

Where a logbook is maintained and the employee pays the full cost of licensing, insurance or maintenance, on assessment a pro-rata reduction is made based on actual costs.

Where a logbook is maintained and the an employee pays the full cost of fuel for private travel, on assessment a pro-rata reduction is made, based on the deemed fuel cost per the travel allowance table above.

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

- if the vehicle is available to, and is 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. a pool car); or
- if the nature of the employee's duties are such that he or she 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 or her place of residence and work; or
- private use that is infrequent or merely incidental to its business use.

For PAYE purposes, 80% of the fringe benefit as determined above (without any reduction for costs borne by the employee) is regarded as remuneration and is subject to PAYE. However, if the employer is satisfied that at least 80% of the use of the motor vehicle will be for business purposes, only 20% of the fringe benefit may be subject to PAYE.

**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 rate is determined with reference to the repurchase ('repo') rate. Where the loan is denominated in rands, the official rate is 100 basis points above the repo rate. Where the loan is denominated in foreign currency, the official rate is 100 basis points above the equivalent rate to the repo rate for that currency. Where the repo rate changes during a month, the official rate changes from the beginning of the following month. 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 or her own studies.

Where an employee has utilised the loan to produce income, the interest taxed, as above, is deductible in terms of the general deduction formula.

Where a subsidised loan has been granted to an employee, the full amount of the subsidy will be taxable in the hands of the employee if the amount of the subsidy together with the interest payable by the employee exceeds the interest on the debt calculated at the official rate.

**Subsistence allowance**

Employees who are absent from their usual place of residence for the purpose of their duties for at least one night, are entitled to the following tax-free allowances:

- where the accommodation to which that allowance or advance relates is in South Africa, an amount equal to:
    - R115 per day if the allowance/advance is paid to defray the cost of incidental subsistence expenses; or
    - R372 per day 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 of South Africa, a foreign subsistence allowance applies, which varies from country to country.

A comprehensive SARS list of foreign subsistence allowances may be viewed on our website at www.bdo.co.za/mailers/Subsistence.pdf.

**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 that is lower than the value of use.

Exclusions:

- private use that is incidental to the use of the asset for purposes of the employer's business;

- amenities enjoyed at work or qualifying recreational facilities;
- equipment or machinery used by employees for private use for short periods of time where the value of the use is negligible;
- assets consisting of books, literature, recordings or works of art; or
- private use of cellular phones, laptops and related hardware and software mainly used for business purposes.

**Residential accommodation**

If an employer provides residential accommodation that is owned by such 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 or her.

Where the employer does not own the accommodation but it is customary and necessary for the employer in the industry concerned to provide free or subsidised accommodation to its employees, the benefit is provided solely for bona fide business purposes other than the obtaining of a tax benefit and the employee does not have an interest in the accommodation, 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 or her:

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

A = the remuneration of the employee in the preceding year of assessment, including directors fees, but excluding taxable benefits from the use of a motor vehicle or residential accommodation.
If the employee was employed by 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 not employed by the current 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 = R73 650 except for the following situations where it is nil:
(i) where the employer is a private company controlled directly or indirectly by the employee or his spouse even if the employee is only one of the persons controlling the company; or
(ii) where the employee or his spouse or minor child has 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 the accommodation consists of at least four rooms and is unfurnished and power or fuel is supplied by the employer, or furnished but without the supply of power or fuel, and 19 if furnished and power or fuel is supplied.

D = the number of months during the current year in which the employee was entitled to occupation.

If the employee has an interest in the property, the value of the benefit is the greater of the amount under the formula and the total amount of the rentals payable for such accommodation by the employer together with any other expenditure defrayed by the employer in respect of such accommodation.

For years of assessment commencing on or after 1 March 2015, if an employer obtains accommodation in terms of an arm's length transaction with an unconnected person and full ownership in the accommodation does not vest in the employer, the fringe benefit value is the lower of the formula value and the expenditure incurred by the employer.

**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 an amount equal to the prevailing rate per day at which the accommodation could normally be let to a person who is not an 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, or has released an employee from an obligation to pay an amount owing by the employee to the employer. The amount of the benefit is the amount of the debt settled.

Professional subscriptions paid by the employer are, however, exempt if membership is a condition of employment, as are professional indemnity insurance premiums paid by the employer and study loans transferred under certain circumstances.

**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, which apply to meals or refreshments:

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

**Free or cheap services**

Services provided to an employee by his employer (whether the services are rendered by the employer or some other person) at no cost or for an amount lower than the cost of such services to the employer, give rise to a taxable fringe benefit in the hands of the employee. The employee is taxed on the difference between the cost to the employer of the service and the amount paid by the employee.

The following exclusions apply:

- certain circumstances where the employer is engaged in the business of conveying passengers;
- transport services conveying employees between their home and place of work;
- telephone, cellphone or other communication services if used mainly for business purposes;
- services rendered by the employer at the place of work to assist with the better performance of employees' duties or recreational facilities provided at that place; and
- travel facilities granted to the spouse or minor children of an employee who is stationed more than 250km away from his usual place of residence for more than 6 months in a tax year.

**Medical Aid contributions**

Direct or indirect contributions by an employer to a medical aid or other benefit fund are fully taxable subject to the exceptions listed below.

No taxable fringe benefit arises if:

- the employee retired due to old age, ill health or other infirmity; or
- the benefit is accrued to a dependant following the death of an employee or a retired employee.

With effect from 1 March 2014, employer contributions to medical schemes on behalf of ex-employees will be deemed a taxable fringe benefit in the hands of the ex-employees, and the ex-employee will be able to claim appropriate tax credits.In terms of Binding Class Ruling 045, a once-off contribution by an employer to the class members pension fund was deemed not to be taxable.

**Contributions to retirement funds**

With effect from 1 March 2016, the amount of contributions by an employer for the benefit of any employee to any pension fund, provident fund or retirement annuity fund is a taxable fringe benefit.

**Insurance policy premiums**

With effect from 1 March 2012, the amount of premiums paid by an employer to an insurer under an insurance policy for the direct or indirect benefit of an employee or his nominee is a taxable fringe benefit in the hands of the employee. Income continuation policy premiums taxed as above in the hands of the employee are however, no longer deductible by the employee in respect of premiums paid on or after 1 March 2015.

### Other exemptions

The following benefits are exempt from tax:

- the value of a uniform, or an allowance paid for purposes of funding a uniform, which an employee is required to wear while he or she is on duty, provided that the uniform is clearly distinguishable from ordinary clothing; and
- the 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. Included in this exemption are transportation costs, costs in respect of the sale of employee's previous residence, settling in costs and costs of renting temporary accommodation.

### Employer's obligations

The determination of the cash equivalent of any taxable benefit is to be made by the employer although the Commissioner may adjust the cash equivalent if he is of the opinion that a determination is incorrect.

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

## PROVISIONAL TAX

### Provisional tax - individuals

In the case of individuals, provisional payments are advance tax payments made in circumstances where the individual earns income that is not 'remuneration'. 'Remuneration' is a defined term and essentially covers employment and other income, such as annuities, which is subject to PAYE.

For years of assessment up to and including 2015, the following individuals who derive income that is not remuneration are nevertheless exempt from provisional tax, provided that the income or any part of the income is not derived from the carrying on of a business:

- Individuals under the age of 65 whose taxable income does not exceed the tax threshold or whose taxable income from interest, dividends, foreign dividends and rental from the letting of fixed property will not exceed R20 000; or
- Individuals who will be 65 or older on the last day of the year of assessment, whose taxable income will not exceed R120 000 for the year of assessment and where such income is only derived from remuneration, interest, dividends and/or rental from the letting of fixed property.

From the 2016 year of assessment onwards, the exemption applies to individuals, regardless of age, whose taxable income is not derived from the carrying on of a business and does not exceed the tax threshold, or whose taxable income is not derived from the carrying on of a business and whose taxable income from interest, dividends, foreign dividends and rental from the letting of fixed property does not exceed R30 000.

### First provisional tax return

Due within the first 6 months of the tax year - 31 August.

The first payment represents 50% of the tax due on the 'basic amount' less rebates, PAYE and foreign credits. The 'basic amount' is the taxable income per the most recent assessment, reduced by lump sums and capital gains. The 'basic amount' is escalated at 8% per annum when an assessment is more than a year in arrears. Consent is required to base one's calculations on an amount less than the 'basic amount'.

### Second provisional tax return

Due before the end of the tax year - 28 February.

Where taxable income is less than or equal to R1 million, the second provisional payment must be based upon an estimate of income that is not less than the lower of the 'basic amount' and 90% of actual taxable income, in order to avoid a 20% penalty.

The 20% penalty is calculated as 20% of the difference between the lesser of normal tax less rebates on the basic amount and normal tax less rebates on 90% of the actual taxable income, and the sum of the employees tax and provisional tax paid by the end of the year of assessment.

Where taxable income exceeds R1 million, an 80% level of accuracy is required between actual and estimated income for the current year, in order to avoid a 20% penalty. There is no fallback on the historical 'basic amount' as above.

The 20% penalty is calculated as 20% of the difference between normal tax less rebates on 80% of the actual taxable income, and the sum of the employees tax and provisional tax paid by the end of the year of assessment.

### Third provisional tax return

Should there be any remaining tax liability following the first and second provisional payments, then interest is charged, commencing 7 months after the tax year-end for individuals.

Therefore, in order to avoid interest, individuals may make a 3rd voluntary top-up payment by 30 September of each year.

Interest is not, however, charged on late payments of provisional taxes in respect of the third provisional payment where an individual's taxable income does not exceed R50 000.

### General

Interest and penalties paid are not tax deductible whereas interest earned on overpayments is taxable.

## EMPLOYEES TAX (PAYE)

Employers are required to deduct employees' tax according to tax deduction tables supplied by SARS 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 subject to PAYE on the greater of their actual monthly remuneration or their deemed remuneration (calculated in terms of a formula), unless they received at least 75% of their remuneration in the previous tax year in the form of fixed monthly payments of remuneration. In that case, such directors are taxed only on their actual remuneration.

## TAXATION OF LUMP SUM PAYMENTS

A lump sum benefit that is received from an employer and constitutes a 'severance benefit', is taxed on an aggregated basis together with lump sum benefits received from provident, pension and retirement annuity funds.

A 'severance benefit' is an amount received or accrued from an employer or an associated institution in respect of the termination or variation of office or employment if:

- the employee or holder of office is at least 55 years old;
- the termination or variation is due to permanent incapacity of holding the office or employment on the part of the employee or holder of office; or
- the termination or variation is a result of retrenchment (except where the employee or holder of office at any time held more than 5% of the shares or member's interests of the employer).

Severance benefits are taxed in accordance with a table that contains the same rate bands as the 'retirement, death or retrenchment' table in respect of lump sums from pension, provident and retirement annuity funds set out below.

**On retirement, death or retrenchment**

Pension Funds, Retirement Annuity Funds and Provident Funds

A maximum of one third of the taxpayer's entitlement from a pension or retirement annuity fund may be commuted to a lump sum.

With effect from 1 October 2007, the taxable portion of a lump sum from a pension, provident or retirement annuity fund as a result of death, retirement or retrenchment is calculated according to a table, after deducting:

- previously disallowed contributions; and
- transfers to approved funds.

The table applies cumulatively and is currently as follows:

**Retirement, death or retrenchment**

| Lump Sum | Tax Liability |
|---|---|
| 0 - R500 000 | 0% of each R1 |
| R500 001 – R700 000 | 18% of the amount exceeding R500 000 |
| R700 001 - R1 050 000 | R36 000 + 27% of the amount exceeding R700 000 |
| R1 050 001 and above | R130 500 + 36% of the amount exceeding R1 050 000 |

**On withdrawal from the fund**

The taxable portion of a lump sum from a pension, provident or retirement annuity fund as a result of withdrawal or resignation from the fund or certain non-approved transfers to other funds of the member, or amounts assigned to a former spouse in terms of a divorce order granted on or after 13 September 2007 is calculated according to the following table, after deducting:

- previously disallowed contributions; and
- transfers to approved funds.

The taxable portion of a lump sum upon withdrawal from a fund is taxed separately from other taxable income. The rates are currently as follows:

**Withdrawal**

| Lump Sum | Tax Liability |
|---|---|
| R0 - R25 000 | 0% of each R1 |
| R25 001 - R660 000 | 18% of the amount exceeding R25 000 |
| R660 001 – R990 000 | R114 300 + 27% of the amount exceeding R660 000 |
| R990 001 and above | R203 400 + 36% of the amount exceeding R990 000 |

The tables must be viewed cumulatively, taking into account previous retirement, retrenchment, withdrawal or severance benefits.

## TRUSTS

Trusts are separate fiscal entities and pay tax at a flat rate of 41% on income retained and not awarded to beneficiaries. Trusts do not qualify for the annual interest exemption nor the primary rebate.

From 1 March 2016, Trusts will pay Capital Gains Tax (CGT) on 80.0% of capital gains giving rise to an effective CGT rate of 32.80% (41% x 80%).

Various anti-avoidance provisions exist to combat the use of trusts for income splitting and tax avoidance structures. One such provision provides that 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.

Another provides that, if income is distributed to beneficiaries who are minor children of the donor, the income is taxed in the hands of the donor. Also, if income is distributed to a non-resident, it is taxed in the hands of the donor. Similar provisions exist in respect of capital gains accruing to a trust.

Trusts play an important part in estate planning and, if properly structured, 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 somewhat reduced.

The legislation allows for a 'special trust' to be taxed at the normal income tax rates applicable to individuals and not the 41% flat rate. A 'special trust' is a trust that is created:

- solely for the benefit of a person who suffers from a mental illness or a serious physical disability, where that person is incapacitated from earning sufficient income for his or her maintenance 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 18 as at the end of the relevant tax year.

In terms of the first interim report on Estate Duty of the Davis Tax Committee, it appears that the 'conduit pipe' treatment will cease to apply to discretionary trusts and that taxable income will in future be fully calculated at trust level. Distributions from offshore foundations will be treated as ordinary revenue. It is not clear whether or not this amendment will take effect.

## COMPANIES AND CLOSE CORPORATIONS

### Normal taxation

**Companies and close corporations**, other than for certain gold mines and the special cases described below, are taxed at a rate of 28%. From 1 April 2012 STC was replaced with a dividends withholding tax (see page 31).

**Branches of foreign companies** earning South African sourced income are taxed at 28%.

**Small business corporations** (see definition below) are taxed at the following rates:

| Taxable Income | Tax Liability |
|---|---|
| 0 - R75 000 | 0% |
| R75 001 - R365 000 | 7% of the amount above R75 000 |
| R365 001 - R550 000 | R20 300 + 21% of the amount above R365 000 |
| R550 001 and above | R51 150 + 28% above the amount above R550 000 |

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

- the entire shareholding or membership was held by natural persons throughout the year of assessment;
- the gross income did not exceed R20 million during the year of assessment;
- none of the shareholders or members at any time during the year of assessment held shares in any other company (other than listed companies, any portfolio in a collective investment scheme or qualifying body corporates, shareblock companies, certain associations of persons, venture capital companies, certain dormant entities and certain entities in liquidation or deregistration);
- not more than 20% of the gross income and capital gains consist of investment income and personal service income; and
- such company is not a personal service provider (PSP).

**Micro businesses** (see definition below) with a turnover of up to R1 million may elect to be taxed on a presumptive basis in respect of their taxable turnover. The rates of tax are as follows:

| Taxable Turnover | Tax Liability |
|---|---|
| 0 - R335 000 | 0% |
| R335 001 - R500 000 | 1% of each R1 above R335 000 |
| R500 001 - R750 000 | R1 650 + 2% of the amount above R500 000 |
| R750 001 - and above | R6 650 + 3% of the amount above R750 000 |

A **micro business** is a company, close corporation or individual (including deceased and insolvent estates where the person was a registered micro business at the time of the death or insolvency) where qualifying turnover for the year of assessment does not exceed R1 million. This amount is reduced proportionately for periods of less than a full year.

A person will not qualify as a micro business in certain circumstances, such as the following:

- it holds certain shares such as shares in unlisted companies;
- more than 20% of total receipts consist of, in the case of natural persons, income from professional services, and in the case of companies or close corporations, investment income and income from professional services;
- its business is that of a personal service provider for any portion of the year;
- the total receipts from capital disposals do not exceed R1.5 million over a three-year period;
- in the case of a company, its tax year ends other than on the last day of February or its shareholders are its shareholders are neither individuals, deceased nor insolvent estates of individuals; or
- in the case of partnerships any partner is not a natural person, or a partner is a partner in more than one partnership or the turnover of the partnership exceeds R1 million.

**Personal service providers (PSPs)** that are incorporated are taxed at a rate of 41%. PSPs that are trusts are taxed at 41%.

A personal service provider is any company or trust where any service rendered on behalf of the entity to a client of the entity is rendered personally by any person who is a connected person in relation to the entity and:

- such person would be regarded as an employee of the client if such service was rendered directly by such person to the client; or
- where those duties must be performed mainly at the premises of the client, such person is subject to the control or supervision of such client as to the manner in which the duties are performed; or
- where more than 80% of the income of such an entity (during the year of assessment) from services rendered consists of, or is likely to consist of, amounts received directly or indirectly from any one client or any associated institution as defined in the Seventh Schedule in relation to such client.

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

Any amount that is paid to a personal service provider is subject to employees' tax at the rate of 28% (in the case of a company) or 41% (in the case of a trust). If the personal service provider is in possession of a directive from SARS for a lower percentage, then employees' tax must be deducted at the percentage per the directive.

Section 23(k) prohibits deductions in respect of many types of expenses that may be incurred by a personal service provider.

**Secondary tax on companies**

STC was replaced by a dividends withholding tax at shareholder level ('DT') with effect from 1 April 2012.

STC credits in existence at 31 March 2012 are allowed to be carried forward and used to shield dividends from the dividends withholding tax for a period of 3 years from 1 April 2012. STC credits therefore expired on 31 March 2015.

**Dividends tax withholding regime**

The essential features of the DT are as follows:

- Although the tax is borne by the shareholder, it is the responsibility of the payer or appropriate intermediary to withhold the tax;
- It is levied at the rate of 15% on dividends paid, subject to the relief available in terms of double taxation treaties;
- Dividends payable to, inter alia, the following shareholders as beneficial owners of the dividend are exempt from DT:
  - › resident companies;
  - › primary, secondary and tertiary government institutions;
  - › Approved Public Benefit Organisations;
  - › certain environmental rehabilitation trusts;
  - › non-profit entities approved in terms of section 10(1)(cA);
  - › pension, provident, retirement annuity and benefit funds;
  - › pension and provident preservation funds;
  - › parastatals such as CSIR, SAIDC, SANRAL and water service providers;
  - › a shareholder in a micro business paying the dividend to the extent that the micro business's total annual dividends do not exceed R200 000;
  - › a non-resident where the dividend is paid by a non-resident company listed on the JSE;
  - › a portfolio of a collective investment scheme in securities;
  - › any person to the extent that the dividend is not exempt from income tax.

A payer must not withhold tax if:

- the beneficial owner provides a written declaration that the dividend is exempt from dividends tax, and an undertaking to notify the payer if the beneficial ownership of dividends changes; or
- the dividend is paid to a company forming part of the same SA resident group of companies; or

- the payment is to a regulated intermediary.

A regulated intermediary must not withhold tax if:

- the beneficial owner has submitted a written declaration that the dividend is exempt from dividends tax, and an undertaking to notify the payer if the beneficial ownership of dividends changes; or
- the payment is made to another regulated intermediary.

Withholding taxes could be reduced up to 31 March 2015 by STC credits available in the declaring company, subject to certain administrative requirements. Furthermore, rebates are granted in respect of foreign withholding taxes paid on certain dividends.

There are various anti-avoidance rules. These include measures to levy DT on the difference between interest charged at the 'official' rate and the interest actually charged in respect of loans to SA resident non-company shareholders or connected persons in relation to shareholders, and measures to levy DT where dividends are diverted to exempt persons after announcement or declaration of the dividend.

**Provisional tax**

Companies and close corporations are obliged to register for provisional tax purposes.

Provisional payments are advance tax payments in respect of normal tax payable for the year. Companies and close corporations are required to make their first provisional tax payment within 6 months of the beginning of their tax year and the second provisional payment before the end of the tax year.

The third provisional payment is voluntary and should be submitted 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, in order to avoid interest.

No interest is levied on companies with a taxable income of less than R20 000 in respect of late payment of the third provisional payment.

The same rules apply as for individuals relating to the estimation of provisional tax payments (see 'Provisional tax - individuals' on pages 24 - 25).

**Special corporate rules**

The South African tax system does not allow for group assessment, and each legal entity is a separate taxpayer in its own right. This approach is softened somewhat by special corporate rules, which allow for some free flow without triggering the normal tax consequences.

These rules specifically cover:

- Asset-for-share transactions;
- Substitutive share-for-share transactions;

- Amalgamation transactions;
- Intra-group transactions;
- Unbundling transactions;
- Liquidations/winding-up and deregistrations.

## CAPITAL ALLOWANCES

**Plant and machinery**

Second-hand plant or machinery used directly in a process of manufacturing or a similar process, qualifies for a depreciation allowance over 5 years (20% per annum), subject to the accelerated depreciation allowance referred to below.

New or unused manufacturing assets used as above may be written off over a period of 4 years, 40% in year 1 and 20% in the remaining 3 years. This treatment also applies to new and unused plant or machinery used for purposes of research and development, if such plant or machinery was acquired in terms of an agreement concluded on or after 1 January 2012.

Manufacturing assets acquired by small business corporations, as defined, may 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 allowance at a 50:30:20 rate over a 3-year period. The normal S11(e) write-off periods (see below) may, however, be used at the option of the small business corporation.

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 and office furniture and equipment. Farmers are also entitled to a deduction of various capital expenses against farming income.

Besides these general capital allowances, special rates apply to certain classes of assets, which do not necessarily reflect the economic life of these assets. These assets include:

- Pipelines and transmission lines;
- Rolling stock;
- Hotelkeeper's assets;
- Aircraft and ships;
- Airports and port assets;
- Approved strategic industrial projects;
- Assets used in the production of renewable energy.

In order to qualify for these allowances, the assets in question must be owned by the taxpayer. The allowances are subject to recoupment and the above allowances are not reduced where an asset was used for only part of the year.

## Wear and tear allowance

Assets owned by the taxpayer and used for trade (excluding building and assets qualifying for the above-mentioned allowances) qualify for a wear and tear allowance on the straight-line basis over the useful life of the asset.

Interpretation note 47, reissued on 2 November 2012, deals comprehensively with wear and tear allowances. The write-off period for certain key assets is listed below:

| | Years |
|---|---|
| Personal computers | |
| - hardware | 3 |
| - software | 2 |
| - mainframe computers/servers | 5 |
| Passenger cars | 5 |
| Delivery vehicles | 4 |
| Motor cycles | 4 |
| Furniture and fittings | 6 |
| Cash registers | 5 |
| Telephone equipment | 5 |
| Workshop equipment | 5 |
| Air conditioners (window type) | 6 |
| Demountable partitions | 6 |
| Dental and doctors equipment | 5 |
| Fax machines | 3 |
| Fitted carpets | 6 |
| Shop fittings | 6 |
| Photocopying equipment | 5 |
| Security systems (removable) | 5 |
| Cellular telephones | 2 |
| Containers | 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 full transcript of the interpretation note, which includes a detailed list of rates acceptable to SARS, may be viewed at www.bdo.co.za/mailers/Wearandtearallowances2014.pdf

In order to qualify for these write-off periods, a taxpayer must maintain adequate records relating to the fixed assets. The allowance is reduced proportionately if the asset is used for only part of the tax year. A shorter write-off period may be applied for.

Small items may be written-off in full during the year of their acquisition. The Commissioner regards a small item as an item costing less than R7 000, which normally functions in its own right and is not an individual item that is part of a set.

A taxpayer may change from a reducing balance method to a straight-line method in respect of existing assets. The remaining income tax value of assets will then be written off over the remaining lives of the assets, being the write-off period acceptable to SARS less the period elapsed to date.

Lessors are required to reduce the value of the asset for write-off purposes by any residual value.

**Buildings**

An annual allowance of 5% is allowed in respect of the cost of certain industrial 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 of 10% was granted where the erection of any building commenced during the period 1 July 1996 to 30 September 1999 and the building was brought into use on or 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. The rate of the allowance will be the same as the rate to which the seller was entitled, with the exception of the accelerated 10% rate.

The 2% or 5% allowance is also claimable on buildings used wholly or mainly for purposes of research and development during the tax year, the rate being dependent on the date of commencement of the erection of the building.

The allowance is not apportioned where the building or improvement was not in use for the full tax year.

**Commercial building allowance**

An allowance is available in respect of new commercial buildings or improvements to existing buildings. The allowance is equal to 5% of the cost to the taxpayer of any new and unused building owned by the taxpayer, if that building or improvement is wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer's trade.

The owner of the building qualifies for this allowance and not the occupant. If, for example, the occupant incurs the expenditure in respect of any improvements, the allowance is not available to the owner of such building (improvements by occupants to buildings may also result in other tax effects, for example, CGT or normal income tax in the hands of the owner of the building). This potential problem can simply be remedied if the occupant pays additional rental income (equal to the improvements) and the owner incurs the expenditure in respect of the improvements.

This allowance is not available for buildings used for the provision of residential accommodation.

The allowance is only available in respect of any building or improvement that was contracted for on or after 1 April 2007 if the construction, erection or installation commenced on or after that date.

To the extent that a taxpayer acquires part of a building without erecting or constructing that part, only a portion of the acquisition price may be claimed for allowance purposes.

The allowance is not apportioned where the building or improvement is not in use for the full tax year.

If a taxpayer, other than one carrying on any banking, financial services or insurance business, incurs expenditure to improve land or buildings in terms of a Public Private Partnership but Government holds the right of use of occupation, the expenditure is deducted over the period for which the taxpayer will derive income in terms of the Public Private Partnership, or 25 years, whichever is the lesser.

**Residential building allowance**

An allowance may be claimed equal to 5% of the cost of a new and unused residential unit owned by the taxpayer and used solely for the purposes of the taxpayer's trade, or of new and unused improvements to residential units, provided that erection commenced on or after 21 October 2008 or the unit or improvement was acquired on or after that date and the taxpayer owns at least 5 residential units in South Africa. Where the unit qualifies as a 'low-cost residential unit' the rate of the allowance is accelerated to 10%.

To the extent that a taxpayer acquires a residential unit representing part of a building without erecting or constructing that part or improvement, only a portion of the acquisition price may be claimed for allowance purposes.

**Urban development zone allowance ('UDZ')**

The UDZ allowance is an incentive, in the form of depreciation allowances, meant to promote the renewal of inner cities. The incentive is available in respect of buildings or parts of buildings brought into use on or before 31 March 2020.

**Sale of low-cost housing on loan account**

Where an employer sells a low-cost residential unit (as defined) to an employee or an employee of an associated institution, the employer may claim a deduction equal to 10% of any amount owing by the employee to the employer as at the end of the employer's tax year, under certain circumstances.

Certain transfers of low-cost immovable property to low earning employees are additionally not taxed as a fringe benefit in the hands of the employees.

## FOREIGN EXCHANGE PROFITS AND LOSSES

Foreign exchange profits and losses realised by companies, trading trusts and individuals trading in exchange items are largely regulated by section 24I, which provides for the deduction/ inclusion of certain specified exchange losses/profits, whether realised or unrealised and whether or not of a capital nature.

Section 25D deals specifically with the rates at which foreign receipts, accruals and expenditure are converted to Rands.

## TRADING STOCK

Trading stock on hand at year end is required to be added back to income at the lower of cost or net realisable value. It should, however, be noted that with effect from the commencement of tax years commencing on or after 1 January 2011, no taxpayer may write down the value of trading stock that consists of 'financial instruments' (as defined) to below cost.

The value of trading stock on hand at the end of the year becomes the opening trading stock for the following year and is deductible in that year.

Trading stock held by farmers is dealt with in the First Schedule of the Income Tax Act. The key differences from the general rules are, in essence, that produce is only recognised as stock when picked, harvested or reaped, and livestock is valued at nominal standard values.

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 and retention monies.

A disposal of trading stock for no consideration or an inadequate consideration, or a disposal other than in the ordinary course of trading (for example, if trading stock ceases to be held for resale or if trading stock is distributed as a dividend) will result in an inclusion in income of an amount equal to either the market value or cost of the stock (depending on the specific circumstances), less the consideration, if any, received.

Where a marketable security is lent in terms of a lending arrangement whereby a marketable security of the same kind and of the same quality and quantity will be returned to the lender within 12 months (and a number of other conditions are satisfied), the marketable security is deemed not to have been acquired by the borrower.

## VENTURE CAPITAL COMPANIES

In terms of Section 12J, any taxpayer that invests in a venture capital company (VCC), approved and registered in terms of Section 12J with SARS, can claim income tax deductions in respect of the expenditure actually incurred to acquire shares issued to the taxpayer by such VCCs, subject to certain conditions.

Section 12J VCCs are therefore intended to be a pooling vehicle for investment into SMEs or junior mining companies. The VCC's investee companies are generally referred to in this context as qualifying investee companies.

From 1 January 2015 the following are the most important amendments to the VCC regime that are effective:

- making tax deductions permanent (i.e. no recoupment and only capital gains tax at disposal) if investments in the VCC are held for a five-year minimum period; and;
- increasing the total asset limit for qualifying investee companies from R20 million to R50 million, and that of mining companies from R300 million to R500 million.

## CAPITAL GAINS TAX (CGT)

Capital Gains Tax was introduced on 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 the asset.

**The calculation of CGT**

| | |
|---|---|
| Proceeds on disposal | ………… |
| Less: Base Cost | ………… |
| Capital Gain | ………… |
| Less: Annual exclusion (if applicable) | R40 000(1) |
| Less: Previous assessed capital loss | ………… |
| Net Capital Gain (Assessed Capital loss carried forward and may not be offset against revenue gains) | ………… |
| Net Capital Gain<br>Multiplied by: Inclusion rate (40.0% / 80.0%) | ………… |

Amount of the capital gain to be included in income ……………….

Note 1: An annual exclusion of R40 000 against capital gains or capital losses applies to individuals and special trusts only. In the year of the death of an individual, the annual exclusion becomes R300 000.

**Four cornerstones for determining a capital gain or loss**

A capital gain or loss is made up of the following key elements:

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

It is, however, fundamental that before a capital gains tax calculation is performed relating to the disposal of an asset, it should be ascertained that the asset was indeed held on capital account rather than on revenue account. In other words, that the asset was held for investment purposes rather than for speculation.

**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.

**Disposal**

A 'disposal' is any event, act, forbearance or operation of law 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 in a beneficiary of an interest in a trust asset ;
- distribution of an asset by a company to a shareholder;
- granting, renewal, extension or exercise of an option; and
- a decrease in value of a person's interests in a company, trust or partnership through value shifting.

The following are the more important events that are not regarded as 'disposals':

- the transfer of an asset as security for debt;
- the issuing or cancellation of shares by a company (in the hands of the company)
- the granting of an option by a company to take up shares

or debentures (in the hands of the company);
- the issuing of units by an equity unit trust or the granting of an option to take up units;
- the issuing of a bond, debenture, note or borrowing of money from a person;
- the correction at the deeds office of incorrect property registration; and
- the lending of marketable securities in terms of a lending arrangement.

**Determination of base cost**

Assets acquired before 1 October 2001:

- the base cost will be the sum of the 'valuation date value' and qualifying costs incurred after the valuation date. The valuation date value, depending on the information and records available, can be determined by using any one of the following methods:
  - › market value of the asset on 1 October 2001. It should be noted that proof of the market valuation of certain high value assets had to be furnished to the Commissioner within a prescribed period in order to be eligible to apply this method upon the disposal of the high value asset;
  - › the time-apportionment base cost 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, selling or improving it, e.g. transfer duties, attorney's fees, improvement costs, commissions, stamp duty, etc.

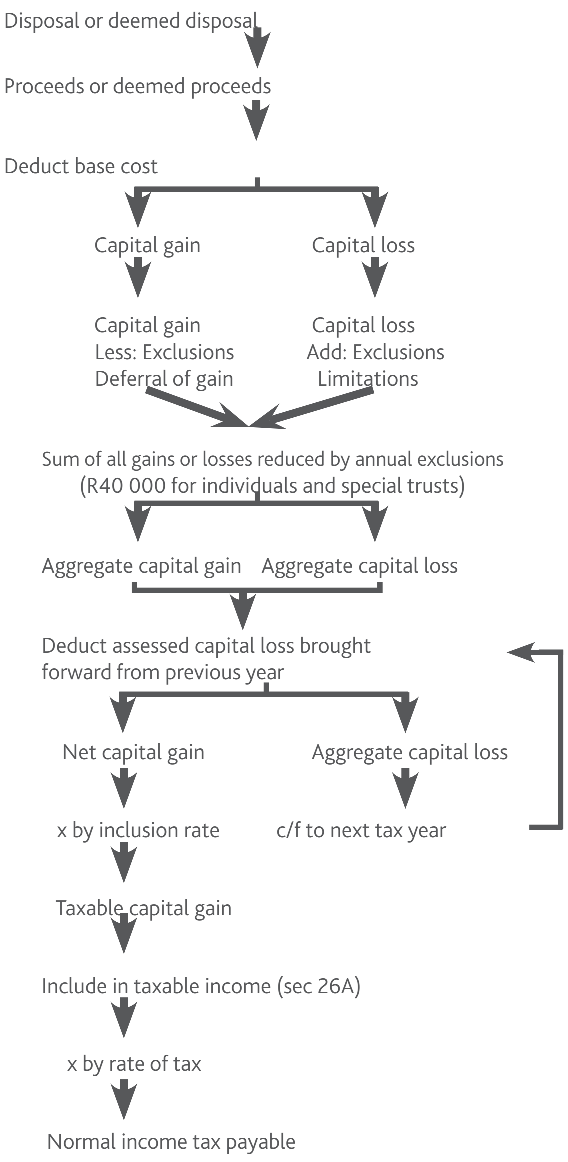
The following are examples of costs that are excluded from the base cost:

- costs of maintaining, repairing or protecting assets
- borrowing costs
- raising fees
- rates and taxes, and
- insurance.

The above costs may, however, be claimed if the asset was used wholly and exclusively for business purposes and such costs were not otherwise claimed for income tax. Also, one third of borrowing costs relating to listed shares may be claimed.

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 plus subsequent qualifying costs.

## CGT BASIC FRAMEWORK



**Inclusion rates**

| Type of Taxpayer | Inclusion rate (%) | Statutory tax rate (%) | Effective tax rate (%) |
|---|---|---|---|
| Individuals | 40 | 0 - 41 | 0 - 16.4 |
| Standard companies | 80 | 28 | 22.4 |
| Trusts | | | |
| • Unit | N/A | N/A | N/A |
| • Special | 40 | 0 - 41 | 0 - 16.4 |
| • Other | 80 | 41 | 32.8 |
| Retirement Funds | N/A | N/A | N/A |
| Life assurers | | | |
| • Ind policyholder fund | 40 | 30 | 12 |
| • Co policyholder fund | 80 | 28 | 22.4 |
| • Corporate fund | 80 | 28 | 22.4 |
| • Untaxed policyholder fund | 0 | 0 | 0 |
| • Risk policy fund | 80 | 28 | 22.4 |

**Death**

The annual exclusion available to individuals during the year of death is R300 000.

**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 situated in South Africa.

**Withholding tax regime for non-residents**

A capital gain made by a non-resident on the disposal of 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 are as follows:

| | |
|---|---|
| Individuals | 5.0% |
| Corporates | 7.5% |
| Trusts | 10.0% |

The withholding tax does not apply to property sales for proceeds of R2 million or less. Also, a directive may be obtained to withhold a lesser amount.

**Triggering of CGT**

Certain events are deemed to be disposals for CGT purposes, whilst certain other events will give rise to simultaneous disposals and acquisitions, e.g. when a person commences or ceases to be a resident for South African tax purposes; change in the nature of the holding of an asset from personal use to business or *vice versa*; death, etc.

**Exclusions**

Capital gains or losses arising from the disposal of, *inter alia*, the following items are disregarded for CGT purposes:

- the first R2 million of a gain or loss upon disposal of a primary residence;
- the disposal of personal use assets of individuals or special trusts;
- 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;
- certain gains made by approved PBOs;
- qualifying gains and losses made by unit trust funds;
- gains of up to R1.8 million during an individual's lifetime from the disposal of a small business asset by reason of reaching the age of 55 or for reasons of ill-health or death, provided certain other requirements are met; and
- donations and bequests to approved PBOs.

**Rollover or deferrals**

In the case of the following events, 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 a period of 12 months;
- re-investment in replacement assets that are brought into use within a period of 12 months;
- transfers between spouses, including as inheritances; and
- disposal of assets using the special corporate rules.

**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;
- In most cases, losses suffered on transactions with connected persons. These losses are ring-fenced and can only be offset against capital gains resulting from dealing with that same connected person;
- losses on disposal of options in respect of certain assets; an
- losses on disposal of certain shares.

**Assets held in foreign currency**

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

**Foreign currency assets and liabilities**

'Currency' is excluded from the definition of an 'asset' and is therefore not subject to the normal CGT rules. Complex rules that applied in determining capital gains and losses made by a resident due to exchange rate fluctuations in respect of the disposal or acquisition of 'foreign currency assets' or the settlement or part settlement of a 'foreign currency liability' were repealed with effect from 1 March 2011.

## DISPOSAL OF SHARES - 3 YEAR RULE

Amounts received or accrued (other than dividends or foreign dividends) in respect of an equity share (with certain exceptions) are deemed to automatically be capital in nature if the period of ownership is at least 3 years.

The application of section 9C, unlike its predecessor (section 9B), is not optional.

The application of section 9C extends beyond listed shares it also applies to shares in private companies, interests in close corporations and collective investment schemes (in securities and hedge fund collective investment schemes).

There are, however, various exclusions from section 9C, such as shares in non-resident companies (other than shares in non-resident SA listed companies), shares in share block companies and hybrid equity instruments.

It is important to note that amounts received or accrued in respect of equity shares that were not held for the required three year period may also be capital in nature, depending upon a taxpayer's intention. The onus of proof is on the taxpayer under these circumstances. Factors such as the holding period and the frequency of share disposals will be considered in establishing intention.

## THE TAXATION OF FOREIGN DIVIDENDS

A new dispensation for the taxation of foreign dividends became effective for dividends received or accrued on or after 1 March 2012 for individuals and on or after 1 April 2012 for companies.

In terms of the new regulations, residual foreign dividends that are not fully exempt from income tax by virtue of one of the exemptions listed below are subject to tax at a maximum effective rate of 15%.

The following foreign dividends are exempt or partially exempt from income tax:

- A foreign dividend declared by a company that is listed on the JSE, provided that the foreign dividend is not a dividend *in specie*;
- A foreign dividend to the extent that the profits from which the foreign dividend is distributed have been or will be included in the resident's income in terms of the controlled foreign company rules (s 9D);
- A foreign dividend received by or accrued to a company where the foreign dividend is paid or declared by another foreign company that is a resident in the same foreign country as the first company;
- A foreign dividend paid to a person who owns 10% or more of the equity share capital and voting rights in the foreign company, provided that the foreign dividend is in respect of an equity share;
- The last two exemptions above do not apply in respect of foreign dividends from foreign collective investment schemes, to so-called 'funnel scheme' dividends or to foreign dividends in circumstances where the foreign dividend is deductible for income tax purposes by the declaring company in the jurisdiction in which its place of effective management is located;
- A foreign dividend declared by a company that is listed on the JSE received by or accrued to a South African resident company where the dividend consists of the distribution of an asset *in specie*.

## BROAD-BASED BLACK ECONOMIC EMPOWERMENT

The Broad-Based Black Economic Empowerment (BBBEE) Act 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 upon ownership credentials.

### Broad-based employee share plans

Section 8B is designed to promote empowerment of employees through share ownership. These provisions, whilst applicable to employees in general, could assist taxpayers in meeting their black economic empowerment objectives.

In essence, employees may acquire over a period of 5 years, in aggregate up to R50 000 worth of shares from the employer or associated companies either for free or 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 (this is despite the 3 year rule contained in section 9C which characterises the proceeds upon the disposal of a share after 3 years as capital).

Loans to employees to acquire qualifying equity shares are free of fringe benefits tax, as is the acquisition of the shares.

A company is entitled to a deduction of the market value of any qualifying equity shares granted to employees, limited to a maximum of R10 000 per employee per annum. Any excess may be carried forward and claimed in the following tax year.

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

- equity shares in the employer or an associated institution must be acquired by employees for a consideration that does not exceed the par value of the shares;
- employees who participate in any other share plan of the employer or associated institution must not be allowed to participate;
- at least 80% of the other permanent or full-time employees are entitled to participate (i.e. other than employees who participate in any other share plan of the employer);
- employees who acquire the shares are entitled to all the dividends and have full voting rights in respect of the shares acquired;
- no restrictions may be imposed on the disposal of the shares other than:
    - › restrictions imposed by legislation or where an employee is guilty of poor performance or misconduct;
    - › a right of any person to acquire those equity shares from the employees at market value; or
    - › a restriction in terms of which that employee may not dispose of those equity shares for a period (which period may not extend beyond 5 years from the date of grant).

The value of the equity shares acquired in terms of the plan may not exceed R50 000 in aggregate over a five-year period.

## HEADQUARTER COMPANY REGIME

The aim of this regime is to make South Africa attractive as a jurisdiction to hold investments into African countries.

The definition of 'headquarter company' is fairly complex but the main features are:

- The company must be a South African resident;
- Throughout the current year of assessment, each shareholder must have held 10% or more of the equity shares and voting rights in the company;
- As at the end of the current year of assessment and all previous years, 80% or more of the cost of total assets

must have been attributable to investments in foreign companies in which the company held at least 10% of the equity share capital and voting rights (a 'qualifying investee');

- Where the gross income of the headquarter company exceeds R5 million for a given year of assessment, 50% or more of the 'gross income' (ignoring taxable foreign exchange differences) of the company for that year of assessment must consist of rental, dividends, interest, royalties or fees from qualifying investees or proceeds from the disposal of the headquarter company's interests (including intellectual property interests) in qualifying investees.

Headquarter companies are subject to income tax on worldwide income in line with other residents of SA.

A company meeting the requirements of a headquarter company must make an election to be taxed as a headquarter company for a given year of assessment.

If the headquarter company incurs interest on a loan from a non-resident shareholder or royalties in respect of intellectual property provided by a non-resident shareholder, it can deduct the interest or royalty expense to the extent that it earns interest or royalties, respectively, from a qualifying investee. Any undeducted balance of the interest or royalty expense will be carried forward to the following year of assessment.

Headquarter companies are not subject to the dividends tax in respect of dividends that they declare.

Dividends received from headquarter companies are treated as 'foreign dividends', and will be exempt from Income Tax, as the participation exemption will apply to each shareholder.

A headquarter company is not subject to transfer pricing rules in respect of loans to a qualifying investee or the granting of the use of intellectual property to a qualifying investee. It is also not subject to transfer pricing rules in respect of loans from non-residents that are on-lent to such qualifying investees. Interest on such loans will also not be subject to the withholding tax on interest. A headquarter company is also not subject to transfer pricing rules in respect of the use of intellectual property provided by non-residents provided that the intellectual property is used only for purposes of granting the use thereof to qualifying investees.

Certain 'equity' loans provided by headquarter companies to qualifying investees are also not subject to transfer pricing rules.

The controlled foreign company (CFC) inclusion regime does not apply to shares held by headquarter companies but may apply to South African shareholders of the headquarter company.

Headquarter companies are not subject to capital gains tax arising from the disposal of equity shares in a qualifying investee.

The sale of shares in a qualifying investee of a headquarter company is potentially subject to exemption from capital gains tax.

## WITHHOLDING TAX ON INTEREST PAID TO NON-RESIDENTS

This withholding tax applies to interest that is paid or that becomes due and payable to or for the benefit of a non-resident on or after 1 March 2015.

The withholding tax is a final tax and is levied at the flat rate of 15% subject to relief in terms of double taxation treaties.

It applies to any interest received by or accrued to a non-resident that is from a SA source, that, is not specifically exempted in terms of one of the exemptions contained in the provision.

The following are the most important exemptions:

- Interest in respect of Government or listed debt instruments;
- Interest in respect of bank or Reserve Bank debts: note, however, that there is a specific anti-avoidance provision to the effect that this exemption does not apply in the case of 'back to back' loans;
- Interest payable by a headquarter company if certain conditions are met;
- Interest payable in terms of the Financial Markets Act;
- Interest that is taxable in the hands of the non-resident for income tax purposes.

## TAX EXEMPT ENTITIES

While certain entities (for example Pension, Provident and Benefit Funds) qualify for tax exemption automatically, others, for example Public Benefit Organisations and Recreational Clubs must apply for tax exemption, which exemption only applies to non-trading income.

**Public Benefit Organisations (PBOs)**

Public Benefit Organisations seeking exemption from income tax must comply with the requirements for tax exemption set out in section 30. In addition to partial exemption from income tax, PBOs enjoy special tax treatment in other respects. Included in the special treatment is that there is no donations tax or estate duty on donations or bequests to approved PBOs, no transfer duty on purchase of fixed property in certain cases, no stamp duty or securities transfer tax in certain cases and no capital gains tax on assets disposed of to a PBO.

The income tax relief afforded to PBOs is only partial and is subject to the PBO being approved by SARS. PBOs are subject to tax on part of their trading income, although non-trading income is exempt. PBOs are also exempt from CGT in respect of disposals of non-trading assets.

Public Benefit Organisations (PBOs) seeking approval for exemption must comply with certain provisions, the most important of which are:

- the sole object of the entity must be to carry on one or more public benefit activities in the following categories:
  - Welfare and humanitarian;
  - Healthcare;
  - Land and housing;
  - Education and development;
  - Religion, belief or philosophy;
  - Cultural;
  - Conservation, environment and animal welfare;
  - Research and consumer rights;
  - Sport (non-professional);
  - Provision of funds and resources to other PBOs;
  - Support services to other PBOs;
  - Hosting international events.
- the management committee must comprise at least three persons who are not related to each other and no one person may control the entity;
- no funds may be distributed to any person other than in the course of a public benefit activity.

Foreign charities operating as an agency or branch within South Africa and that meet similar criteria to local organisations may also be granted exemption.

In terms of Section 18A, donations to certain PBOs that carry on the public benefit activities contemplated in Part II of the Ninth Schedule are deductible up to a limit of 10% of the donor's taxable income. Any disallowed excess contribution is rolled forward to the succeeding tax years.

Employees may also enjoy PAYE reduction where donations are made by way of salary or wage reduction (payroll giving).

PBOs also enjoy preferential VAT treatment in certain respects.

**Recreational clubs**

A recreational club is any company, society or other association of which the sole or principal object is to provide social and recreational amenities or facilities for its members.

Recreational clubs previously enjoyed complete exemption from income tax. Now approved recreational clubs are subject to a system of partial taxation in terms of section 10(1)(cO), for years of assessment commencing on or after 1 April 2007. All club income is subject to income tax, unless it is exempt in terms of 10(1)(cO). This includes an exemption for income from membership fees and certain business activities if integrally related to the provision of recreational activities.

The Commissioner will approve a recreational club for these purposes if certain conditions are met, e.g. the management committee must consist of at least three persons who are not related to each other and no one person may control the entity. The recreational club may also not distribute surplus funds other than on dissolution, to certain tax exempt bodies.

**Small business funding entities**

Prior to 1 March 2015, funding entities that support small, medium and micro-sized entities (SMMEs) are afforded relief from taxation only through the Venture Capital Company regime and possibly the Public Benefit Organisation regime (the latter may apply if the recipients are 'poor and needy').

In order to assist such entities, receipts and accruals of a 'small business funding entity' derived otherwise than from business or trading activities will be exempt from income tax. Trading income may also be exempt in terms of similar criteria to those for Public Benefit Organisations.

In order to qualify for the exemption, the entity will have to be approved by SARS in terms of certain prescribed criteria, which are similar to those that apply to Public Benefit Organisations.

Dividends paid to approved small business funding entities will be exempt from the dividends tax.

Amounts accruing to a SMME from an approved funding entity will be exempt from income tax in the hands of the SMME. However, the SMME is prohibited from claiming deductions or allowances in respect of expenditure incurred from such funding provided. The base cost of assets acquired using such exempt funding must also be reduced by the amount of the funding.

**Body corporates**

All levy income is exempt and other income up to R50 000 per annum is exempt from tax.

## VALUE - ADDED TAX (VAT)

VAT is levied at 14% on the value of all goods and services supplied by vendors. The main exceptions are as follows:

**Exempt supplies, for example:**

- non-fee based financial services unless zero-rated, e.g. by export. This includes interest charged and the transfer of debt and equity securities;
- rental of residential accommodation in terms of an agreement for the letting and hiring of the accommodation. This exemption does not apply to 'commercial accommodation', e.g. accommodation provided in a hotel or guest house;

- educational services;
- local passenger transport by road or rail;
- trade union contributions;
- share block and body corporate levies;
- child care in a crèche or after-school care;
- the sale or letting of land outside South Africa; and
- certain supplies by certain Public Benefit Organisations.

**Zero rated supplies, for example:**

- the sale of a going concern between two registered vendors;
- petrol sales;
- 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 any registered bank;
- certain services rendered outside South Africa;
- international transportation and related services;
- certain services rendered to non-residents, but subject to prescribed requirements;
- certain services rendered by welfare organisations; and
- certain services related to warranties.

**Essential features**

- Enterprises whose taxable supplies have exceeded R1 million in the previous period of 12 months are obliged to register for VAT;
- Additionally, enterprises where there is a contractual obligation in writing in terms of which the value of taxable supplies in the next 12 month period will exceed R1 million are obliged to register for VAT;
- Also, non-resident suppliers of 'electronic services' as prescribed by the Minister by Regulation under certain circumstances become liable to register for VAT at the end of any month where the total value of taxable supplies made by them has exceeded R50 000;
- enterprises making taxable supplies of less than R50 000 in any period of 12 months are not permitted to register for VAT;
- VAT returns are generally submitted on a 2-monthly basis unless taxable supplies in any period of 12 months has exceeded or is likely to exceed R30 million, in which case returns are submitted monthly. There are, however, also 4-monthly, 6-monthly and annual VAT periods;
- a vendor may claim the VAT element of all incoming taxable supplies from registered VAT vendors, subject to the vendor being in possession of a valid tax invoice when making the claim, but for the following exceptions:

› entertainment expenditure (which excludes, *inter alia* certain qualifying subsistence expenditure and expenditure of an entertainment business);
› the supply of passenger vehicles (including hiring);
› club subscriptions; and
› goods or services acquired by a superannuation scheme.

- input tax credits may not be claimed on expenditure relating to exempt supplies;
- the name, address and VAT registration number of the recipient must appear on tax invoices (together with other required information) where the VAT inclusive total exceeds R5 000;
- a notional input tax credit may be claimed on the purchase of second-hand goods, including immovable property, subject to prescribed requirements;
- all fee-based financial services (with the exception of certain premiums on life policies, contributions to retirement funds and the buying or selling of derivatives or the granting of options) are subject to VAT;
- certain vendors, the value of whose taxable supplies made in a 12-month period has not exceeded and is not likely to exceed R2.5 million, may apply to account for VAT on a payments basis; and
- non-residents may, subject to certain conditions, qualify for a VAT refund on goods purchased in South Africa. Such refunds do not apply to services.

## GOVERNMENT INCENTIVES

At present there are a number of incentives available to South African businesses. Incentive categories include research and development, enterprise development, export development, industry specific incentives and investment incentives. The incentive programmes are administered and managed by the Industrial Development Incentive Administration Division (IDIAD) within The Department of Trade and Industry (DTI). The five main incentive clusterings used by the DTI are the Broadening Participation Cluster (BCP), Competitiveness Investment Cluster (CIC), Manufacturing Investment Cluster (MIC), Services Investment Cluster (SIC) and Infrastructure Support Cluster (ISC). For more information, see the IDIAD 2013-14 Incentive Performance Report.

In addition to the incentives listed below, it has been proposed that the Government will consider expanding incentives for labour-intensive projects in Industrial Development Zones and Special Economic Zones. A few of the available incentives are set out below.

**Research and development**

Support programmes provided by the Department of Trade and Industry (DTI) are aimed at encouraging research and development activities by large companies and Small and

Medium Enterprises (SMEs). The Support Programme for Industrial Innovation (SPII) serves to promote technology development in industries within South Africa for the innovation of competitive products and/or processes.

Three options are available:

- Product Process Development (PPD): a taxable non-repayable grant of 50% - 85% of qualifying costs incurred in pre-competitive development activity associated with a specific development project up to a maximum grant of R2 million.
- SPII Matching Scheme: a taxable non-repayable grant of 50% - 75% of qualifying costs incurred in pre-competitive development activity associated with a specific development project up to a maximum grant amount of R5 million.
- SPII Partnership Scheme: a taxable conditionally repayable grant of 50% of qualifying costs with a maximum grant amount of R10 million.

**Enterprise development**

The Black Business Supplier Development Programme (BBSDP): This programme supports the development of established black-owned enterprises. The BBSDP is a cost-sharing grant available to black-owned enterprises and provides grants to a maximum of R1 million for tools, machinery and equipment, and to improve corporate governance, management, marketing, productivity and use of modern technology. The focus is on black-owned enterprises that are VAT registered and have the potential ability to supply goods and services to public and private sector corporations, as well as government departments on a sustainable basis. The administration of this programme falls under the Department of Small Business Development.

The Black Industrialists Scheme (BIS): This is a cash grant available to majority-black owned and black-managed manufacturing projects (start-up or existing) that will subsidize between 30% and 50% of the cost of Machinery & Equipment, Buildings, Commercial Vehicles and certain 3rd-party service projects. The minimum investment requirement is R 30 million and applicants must obtain grant approval from the DTI before commencing with the project. The BIS grant is capped at R50million.

Incubation Support Programme (ISP): This programme aims to provide funding for incubators that can generate revenue through the provision of services and initiatives that can be self-sustainable. The ISP will be available on a cost-sharing basis between the Government and private sector partners. It is available for infrastructure and business development services necessary to mentor and grow enterprises to ensure that within two to three years they will graduate to a level of self-sustainability by providing products and services to the market.The programme is effective from 1 September 2012 to 31 March 2022.

**Export development**

Various incentives to encourage exports are available. These include:

- Export Marketing and Investment Assistance scheme (EMIA): The DTI may subsidise expenses relating to primary export market research, individual inward-bound trade missions, exhibits at international pavilions and individual exhibitions, outward selling trade and investment recruitment missions and inward buying and investment missions. The EMIA programme may also provide sector specific assistance to initiatives aimed at growing exports and is available to historically disadvantaged businesses, SMMEs and 'other businesses'.
- Capital Projects Feasibility Programme (CPFP): A cost-sharing scheme providing a contribution to the cost of feasibility studies that are likely to lead to projects outside South Africa that will increase local exports and stimulate the market for South African capital goods and services.

**Industry-specific incentives**

Targeted support is available to selected industry sectors which include:

- Film incentive: a revised film and television production incentive intended to increase local content generation and improve location competitiveness for filming in South Africa;
- Business Process Services (BPS) aims to attract investment and create employment in South Africa through off-shoring activities by providing a tax exempt grant for each offshore job created and maintained by an entity performing BPS activities.
- Automative Investment Scheme define (AIS) and People-Carrier Automotive Investment Scheme (P-AIS).

**Investment incentives**

Incentives to encourage investment in certain targeted sectors of the economy include:

- Critical Infrastructure Programme (CIP): a cost-sharing grant established to assist industrialists engaged in the development or upgrading of critical infrastructure, such as roads, rail links, water pipelines, telecommunication networks, etc. The grant of up to 30% (capped at R30 million) of development costs is available to approved enterprises on completion of the infrastructure project concerned;
- The Manufacturing Competitiveness Enhancement Programme (MCEP) was launched on 15 May 2012 and offers a cash grant to existing manufacturing and engineering businesses and Conformity Assessment Bodies that wish to increase competitiveness through

capital investment and green technology projects, as well as through certain 3rd party service projects such as quality management system implementation and accreditation. The MCEP was suspended in October 2015 and is currently not accepting applications.

The Aquaculture Development and Enhancement Programme (ADEP) was launched on 15 December 2012 and offers a cash grant to fish hatcheries and fish farms as well as operations involved in the production, processing and preserving of aquaculture fish that wish to spend money on one or more of the following:

- Machinery and equipment (owned or leased)
- Bulk infrastructure
- Owned land and / or buildings
- Leasehold improvements to rented buildings
- Commercial vehicles and work boats (owned or leased – limited to 50% of total asset spend)
- Aquaculture feed (limited to 5% of total asset investment)
- Research and development
- Competitiveness improvement activities (e.g. process improvement; accreditation; training)

Maximum grant payable per entity: R40 million

The Clothing and Textile Production Incentive (PI) offers a cash grant to existing manufacturing businesses (and design houses) in the clothing, textile and leather goods sector for qualifying investments in machinery and equipment (historical and future). The PI no longer offers an interest subsidy for working capital facility. This grant is calculated using the applicant's Manufacturing Value Addition (MVA), defined as:

Sales for the last financial year
Less material input costs
Less sales value of bought-in finished goods
Less sales value of imported goods
Less outsourced CMT costs
=MVA
The MVA is then multiplied by 7.5%

- Tax allowance incentive for industrial projects (S12I): The S12I incentive is designed to support Greenfield projects (i.e. new industrial projects that utilise only new and unused manufacturing assets), as well as Brownfield projects (i.e. expansions or upgrades of existing industrial projects). The projects have to be approved by the Minister of Trade and Industry. The manufacturing of certain products, for example, wine, spirits, beer, tobacco, arms and ammunition does not qualify for the allowance. The provision gives allowances for both capital investment and training. Certain minimum investment in manufacturing assets is required, for example, for Greenfield projects, the minimum is R50 million. The project must significantly contribute to the Industrial Policy Programme of South Africa having regard to:

- Upgrading an industry within South Africa (via innovative process, cleaner production technology and improved energy efficiency);
- Providing general business linkages within South Africa;
- Acquiring goods and services from small, medium and micro enterprises;
- Creating direct employment within South Africa;
- Providing skills development in South Africa; and
- In the case of a Greenfield project, its location within an Industrial Development Zone.

The provision gives additional tax allowances over and above the allowances already available in the Act. The capital investment allowances are 55% (or 35% if the project does not have preferred status) of the cost of new and unused manufacturing assets used in an industrial policy project. This additional tax allowance increases to 100% (or 75% if the project does not have preferred status) where the project is carried out in an Industrial Development Zone or a Special Economic Zone. The S12I allowances that may be claimed on any project have certain ceilings, for example R900 million in the case of a Greenfield project with preferred status and R550 million in the case of a Brownfield project with preferred status.

The additional training allowance is equal to the cost of training provided to employees in connection with the project, to a maximum of R36 000 per employee, limited to R30 million for a project with preferred status, or R20 million for a project without preferred status, in a 6-year period.

In terms of the Special Economic Zones Act of 2013 which is yet to become effective, certain companies operating in Special Economic Zones are granted special tax incentives.

These are:

- A 15% corporate income tax rate for 'qualifying companies';
- The Employment Tax Incentive, allowing for a rebate from Employees' Tax in respect of workers earning less than R60 000 per annum;
- An accelerated depreciation allowance for new and unused buildings or improvements to buildings in these areas; and
- VAT and customs duty relief.

## EMPLOYMENT TAX INCENTIVE ACT

The Employment Tax Incentive Act was promulgated during December of 2013. The objective of the Act is to support employment growth by focusing on labour market activation, especially in relation to young work-seekers, i.e. those aged between the ages of 18 and 29 years. If the employment commenced on or after 1 October 2013 and if the workers are paid remuneration of less than R6 000 per month, the employer may qualify to benefit from the incentive.

**Main features**

In a nutshell, the effect of the legislation is that employers that are registered for Employees' Tax may reduce the Employees' Tax payable to SARS without affecting the wage paid to the qualifying employees. The amount of the reduction in Employees' Tax depends on the remuneration (as defined for PAYE purposes) paid to the qualifying employees. The benefit reaches a maximum level of R1 000 per month per qualifying employee (for remuneration of between R2 001 and R4 000 per month), decreasing to zero (for remuneration of R6 000 per month and above). The scale of benefits per month halves after the first 12 months of employment of a qualifying employee.

So, for example, if an employer employs a qualifying employee who earns remuneration of R4 000 per month, the employer would pay the R4 000 per month to the employee but would obtain a credit of R1 000 per month for the first 12 months of that qualifying employee's employment, assuming that the remuneration was a constant R4 000 throughout this period, to offset against the total Employees' Tax liability (in respect of all of its employees). For the second 12 months of that qualifying employee's employment, the credit would halve to R500 per month,  assuming that the employee continued to earn remuneration of R4 000 per month during this period.

The incentive has been made exempt from Income Tax in the hands of the employer by virtue of a specific exemption provision.

**Qualification requirements**

The legislation came into effect on 1 January 2014 although it is retroactive in that it applies to new employment that commenced on or after 1 October 2013. The incentive has a limited lifespan of three years and ceases to apply after 1 January 2017, though this could possiblly be extended for another year. However, benefits only apply for the first 24 months of a qualifying employee's employment.

In short, a 'qualifying employee' is an employee who is either:

- Not younger than 18 years old and not older than 29 years old at the end of the relevant month in respect of which the incentive is claimed;
- Employed by an employer operating within a Special Economic Zone (regardless of age) – Special Economic Zones have not yet been designated; or
- Employed by an employer operating in an industry designated by the Minister of Finance by notice in the Government Gazette. No such industries have yet been designated.

In addition, the employee must:

- Not be a ‘connected person’ (as defined in the Income Tax Act) in relation to the employer;
- Not be a domestic worker;
- Either be in possession of a South African identity card or an asylum seeker’s permit;
- Have been employed by the employer or an ‘associated person’ (as defined) on or after 1 October 2013 in respect of employment commencing on or after that date;
- Be paid at least the minimum wage applicable to the employer or the equivalent of R2 000 for a full month (where there is no minimum wage relevant to the employer); and
- Earn remuneration of less than R6 000 per month (or equivalent if the period of employment is less than a full month) for the month in which the credit is claimed.

Employers are prohibited from claiming the incentive in circumstances where they have outstanding tax returns or tax debts (other than tax debts not exceeding R100 or tax debts in respect of which payment arrangements have been made with SARS).

**Excess credits**
Where the incentive credit exceeds the Employees’ Tax payable during a particular month, the excess is rolled over as a credit to the following month. If an employer does not claim the credits in any particular month (for example in ignorance of the legislation), then the amount of the unclaimed credits is rolled over as a credit to the next month. If the employer becomes disqualified from claiming credits by virtue of having an outstanding tax return or tax debt as discussed above, then credits continue to accumulate during the period of disqualification. SARS will pay out credits due at the IRP 501 reporting date in cash, provided that the employer is in good standing.

**Anti-displacement rules**
The Act contains so-called ‘anti-displacement’ rules, designed to prevent the dismissal of older, non-qualifying employees in circumstances that constitute an automatically unfair dismissal in terms of the Labour Relations Act and the replacement of such employees with qualifying employees. In such circumstances a cash penalty of R30 000 per displaced employee becomes payable and the employer may be disqualified from receiving the incentive, presumably on a prospective basis.

## ESTATE DUTY

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

However, it should be noted that assets owned by the deceased prior to his or her first becoming ordinarily resident in South Africa or inherited from a non-resident, may be deducted in calculating the net value of the estate (see below).

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*** | R (3 500 000) |
| Dutiable amount | R……………… |
| Estate Duty thereon at 20% | R……………… |

* Deemed property includes certain insurance policies on the life of the deceased as well as any accrual claim the deceased's estate may have against a surviving spouse.

** The most important deductions are:
- funeral expenses and administration costs;
- debts due at date of death, which includes the income tax and CGT liability of the deceased for the period prior to death;
- charitable bequests;
- assets owned by the deceased prior to his or her first becoming ordinarily resident in South Africa or inherited from a non-resident; and
- property and deemed property passing to a surviving spouse (as defined).

*** If the deceased was the spouse of one or more previously deceased persons, this abatement will be calculated as follows: R3 500 000 x 2, less the section 4A abatement/s claimed in the estate/s of the previously deceased person/s. If the deceased was only one of the spouses of the previously deceased person, the abatement will be apportioned between the spouses of that person.

To limit the practice of avoiding estate duty through retirement contributions, the Estate Duty Act was amended with effect from 1 January 2016 to include retirement contributions made on or after 1 March 2015 which were not allowed as a deduction or exemption in the hands of the deceased for income tax purposes, in the dutiable amount of the estate.

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 the deceased was not ordinarily resident in South Africa at the date of his or her death, only those assets located in South Africa will be subject to estate duty.

South Africa has entered into reciprocal agreements (double taxation agreements) with Botswana, Lesotho, Swaziland, Zimbabwe, the UK and the USA for the avoidance of double estate duty being payable in respect of the same property.

**Rates**

Estate duty is payable on the dutiable amount of the estate at the rate of 20%.

## DONATIONS TAX

Donations tax is payable on the value of any gratuitous disposal of property, including the disposal of property for inadequate consideration, by any South African resident as defined. Public companies as defined for income tax purposes are exempt from donations tax.

A donation is also a disposal for capital gains tax (CGT) purposes except if the asset donated is cash, and generally triggers CGT, based on the market value of the property less its CGT base cost.

**Rate of donations tax**

Donations tax is payable within 1 month of the date of donation at a flat rate of 20% on all donations made.

**Principal exemptions**

- Donations between spouses (as defined);
- Donations to approved public benefit organisations;
- The donation of assets outside South Africa, subject to certain conditions;
- Casual donations up to R10 000 per year by donors other than individuals;
- Donations by individuals not exceeding R100 000 in aggregate per year of assessment that are not otherwise exempt; and
- Bona fide maintenance payments that are considered reasonable by the Commissioner for SARS.

## SECURITIES TRANSFER TAX

In terms of the Securities Transfer Tax Act, which came into effect on 1 July 2008, Securities Transfer Tax ('STT') is payable on a change of beneficial ownership of securities at a rate of 0.25% of the 'taxable amount' of all listed or unlisted securities.

The 'taxable amount' means the purchase consideration on change of ownership (including cancellation or redemption). If there is no consideration or if the consideration is less than fair value, STT is payable on the market value or the closing price of the securities on the date of the transaction.

'Securities' include a member's interest in a close corporation.

No STT is payable on the issue of shares.

The cancellation or redemption of a security (including share buy-backs and redemptions) is regarded as a change in beneficial ownership and is therefore subject to STT.

Transfer, redemption or cancellation of securities will be exempt from STT in certain circumstances, e.g:

- transfer to an heir or legatee;
- cancellation on liquidation;
- transfer to a PBO;
- transfer of shares in a share block company;
- transfer of shares constituting a transaction subject to transfer duty; and
- restructuring transactions in terms of the corporate restructuring rules.

## STAMP DUTY

**Leases of immovable property**

The Stamp Duties Act, which imposed stamp duty only on leases for periods exceeding five years, was repealed with effect from 1 April 2009.

However, stamp duty remains payable on leases of fixed property executed before 1 April 2009 at a fixed rate of 0.5% on the quantifiable amount (as defined) of the lease. The stamp duty is subject to a maximum amount equal to 8% of the value of the property.

No stamp duty was payable on leases for periods (including renewal periods) of 5 years or less. A lease that may continue for an indefinite period was deemed to be for a period of 5 years, and thus was not dutiable.

## TRANSFER DUTY ON IMMOVABLE PROPERTY

Transfer duty is levied on the greater of the purchase price or market value on the transfer of immovable property in the Republic. The indirect acquisition of residential property by way of the acquisition of shares, a member's interest in a close corporation or a contingent right in a discretionary trust is subject to transfer duty.

The following are the rates applicable to acquisitions of immovable property acquired under purchase agreements concluded on or after 1 March 2015, irrespective of the juristic nature of the acquiror:

**Value of property:**

| | |
|---|---|
| R0 - R750 000 | 0% |
| R750 001 to R1 250 000 | 3%of the value in excess of R750 000 |
| R1 250 001 to R1 750 000 | R15 000 + 6% of the value in excess of R1 250 000 |
| R1 750 001 - R2 250 000 | R45 000 + 8% of the value in excess of R1 750 000 |
| R2 250 001- R 10 000 000 | R85 000 + 11% of the value in excess of R2 250 000 |
| 10 000 001 and above | R 937 500 + 13% of the value exceeding R 10 000 000 |

Transfers between spouses on divorce and transfers to heirs (including trusts and companies) from a deceased estate are exempt from transfer duty.

## CARBON TAX

As part of the 2013 Budget proposals, it was announced that a carbon tax will be introduced as part of South Africa's efforts to mitigate the effects of climate change. By pricing the external costs associated with carbon dioxide ($CO_2$) emissions, incentives will be created to change behaviour and encourage energy-efficiency measures. Government proposes to phase the tax in over time. On 2 November 2015 the National Treasury published the Draft Carbon Tax Bill for public comment.

## SKILLS DEVELOPMENT LEVY

The skills development levy (SDL) is a levy payable by an employer based on its 'leviable amount'. 'Leviable amount' is remuneration for employees' tax purposes less certain prescribed exemptions. The funds collected from this levy are used to finance a national skills development programme.

All employers (subject to certain exemptions) are required to pay 1% of their leviable amount on a monthly basis to SARS. The actual remuneration paid or payable to directors must be included.

No SDL is payable by employers with a payroll of less than R500 000 per annum or by any public service employer, approved public benefit organisations and certain national and provincial entities.

## TAX ADMINISTRATION ACT

The Tax Administration Act (Act 28 of 2011) consolidates administrative provisions relating to taxing statutes into a separate act. It came into effect on 1 October 2012 (except for certain provisions dealing with interest). The Act deals, inter alia, with the following matters:

- Powers and duties of SARS and SARS officials;

- The office of the tax ombud;
- Registration;
- Returns and records;
- Reportable arrangements;
- Information gathering, including search and seizure protocols;
- Confidentiality of information;
- Advance rulings;
- Assessments;
- Dispute resolution protocols;
- Tax liability and payment;
- Recovery of tax;
- Interest;
- Refunds;
- Write off or compromise of tax debt;
- Administrative non-compliance penalties;
- Understatement penalties, including a permanent voluntary disclosure programme;
- Criminal offences; and
- Registration of tax practitioners and the reporting of unprofessional conduct.

The Act also contains transitional provisions.

## EXCHANGE CONTROL

Exchange controls are monitored and administered by the Financial Surveillance Department (formerly the Exchange Control Department) of the South African Reserve Bank.

**Facilities available to South African residents**

### Discretionary allowance

Private individuals are entitled to a single discretionary allowance of R1 million per calendar year.

The discretionary allowance is available to all individuals over the age of 18 years. It is in addition to the existing foreign investment allowance described below.

The discretionary allowance may be used for any legal purpose abroad and no supporting documentation has to be furnished to the Authorised Dealer attending to the transfer except in the case of the allowance being used for travel purposes.

SA individuals are permitted to transfer abroad for investment purposes up to R1 million per calendar year as part of their Discretionary Allowance without the requirement to obtain a Tax Clearance Certificate.

**Travel allowances for visits outside the Common Monetary Area (CMA)**

Adults - the travel allowance forms part of the discretionary allowance referred to above.

Persons under the age of 18 - R200 000 per calendar year.

Travel facilities may be provided in any authorised form. If transferred to a bank account, the allowance may only be transferred to the traveller's account and not the account of a third party.

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

Travellers proceeding on visits outside the CMA are permitted to export up to R25 000 per person in South African Reserve Bank notes. This is not regarded as being part of the travel allowance.

**South African residents temporarily living abroad**

Such persons qualify for:

- a subsistence allowance in terms of the discretionary allowance as referred to above (if over the age of 18);
- a subsistence allowance not exceeding R200 000 per calendar year (applicable to children under the age of 18);
- exportation of household goods and personal effects and motor vehicles with a maximum insured value of R1 million.

**Study facilities**

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

The facilities comprise:

- full amount of tuition and academic fees for the academic year, transferred directly to the institution concerned;
- discretionary allowance as referred to above to cover travelling and related costs; and
- exportation of household goods and personal effects up to the value of R200 000 per student.

**Business travel facilities**

Authorised dealers may approve applications by businesses for omnibus travel facilities for up to R20 million per calendar year for allocation at the discretion of the business. Representatives of the business using this facility also qualify for the travel allowances referred to above.

**Foreign investment by South African residents**

Individuals

Private individuals over the age of 18 years are permitted to invest an amount of R10 million per calendar year outside the CMA. 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 the SADC member countries against submission of a tax clearance certificate.

In addition to this dispensation, applications by private individuals to invest outside the SADC will be considered, including the purchase of property. Private individuals wishing to avail themselves of this dispensation must first approach SARS to obtain a tax clearance certificate in the prescribed format, which must accompany their application to the Reserve Bank.

**South African resident companies**

Requests to invest overseas are considered on merit. The investor will be required 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. Authorised Dealers can currently approve new outward foreign direct investments provided that the total cost does not exceed R1 billion per company per calender year. Applications for investments exceeding R1 billion have to be submitted to the Financial Surveillance Department of the South African Reserve Bank for approval.

Dividends declared and paid by foreign subsidiaries after 26 October 2006 may be retained offshore and utilised for any purposes, except for loans into the CMA. Dividend proceeds may also be used to acquire 10% to 20% equity and/or voting rights, whichever is the greater, in a foreign target entity which may hold investments and/or make loans to any CMA country.

In terms of the 2013 Budget proposals, it was announced that each JSE listed entity will be entitled to establish one subsidiary to hold African and offshore operations (HoldCo), which will not be subject to foreign exchange restrictions. This dispensation has now been extended to also include unlisted entities. This will incentivise companies to manage their African and offshore operations from South Africa, maximising the benefits to South Africa's economy. Following a pilot, this dispensation may be extended to other entities.

The HoldCos will be subject to the following conditions:

- They must operate as South African tax residents, and be incorporated and effectively managed and controlled in South Africa;
- Transfers from the parent company to HoldCo will be allowed up to R2 billion per calendar year for listed entities and R1 billion per calendar year in the case of unlisted entities. Additional amounts may be considered on application to the Reserve Bank;
- HoldCos will be allowed to freely raise and deploy capital offshore, provided these funds are without South African

guarantees. Additional domestic capital and guarantees will be allowed on funding genuine foreign direct investment (FDI) in the same manner as the current FDI allowance;

- HoldCos will be allowed to operate as cash management centres for South African multinationals. Cash pooling will be allowed without any restrictions. Local income generated from cash management will be freely transferable;
- HoldCos may choose their functional currency or currencies, and operate foreign currency accounts and a rand-denominated account for operational expenses;
- Only one wholly owned HoldCo per JSE-listed entity or unlisted entity will be allowed. In future, conditions for jointly owned HoldCos, multiple HoldCos and subsidiaries of non-listed entities may be prescribed; and
- Appropriate governance and transparency arrangements will be required.

A complementary tax incentive will be considered to allow HoldCos to use foreign functional currency for tax accounting. This would ensure that a HoldCo is not taxable on currency gains and losses arising in the course of foreign functional currency treasury operations.

### Institutional Investors

Long-term insurers, pension funds and fund managers may invest 25% of total assets offshore. Collective investment schemes and investment managers may invest 35% of the total retail assets under management offshore.

### 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 approval from the Department of Trade and Industry (on behalf of the Exchange Control authorities).

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

The payment of royalties to non-residents is generally not approved where the royalties stem from intellectual property initially devised in South Africa.

### Non-residents

Non-residents may freely invest in the Republic, provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arm's length, at fair market-related prices, and are financed in an approved manner. Such financing would require prior exchange control approval.

## Capital transactions

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

## Dividends

Dividends declared by listed companies 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 unlisted companies are remittable in proportion to percentage shareholdings. 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, provided the application is accompanied by a copy of the resolution of the board of the remitting company, confirming the amount to be paid to the beneficiary.

## Management and administration fees

Authorised dealers may approve payment of management and administration fees payable to unrelated non-resident parties (neither of the parties having any direct/indirect interest or shareholding in one another), taking into account the reason for the fees, nature of the services and the basis of calculation. Fees calculated on the basis of a percentage of turnover, income, sales or purchases are generally not approved.

## Emigrants from South Africa

Emigrants qualify for:

- a cash allowance;
- an annual foreign capital allowance; and
- exportation of certain items.

Cash allowance

Emigrants qualify for a cash allowance equal to the annual discretionary allowance available to South African residents. This allowance may only be granted once and not more than 60 days prior to departure.

Foreign capital allowance

- up to R10 million per calendar year per single person; or
- up to R20 million per calendar year per family unit, less any amount invested in terms of the foreign investment allowance

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

Application may also be made for the export of both listed and unlisted securities based on their market value at the time of utilising the foreign capital allowance. The relevant securities must be restrictively endorsed.

**Exportation of goods**

Emigrants may export household and personal effects and motor vehicles within the overall insured value of R2 million.

**Further regulations**

- Foreign assets held by an emigrant are not deducted from the facilities mentioned above; and
- Emigrants must declare whether any assets were received as donations or gifts in excess of R100 000 within the last 3 years or as capital distributions from inter vivo trusts within the last 3 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.

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, subject to the adherence to prescribed procedures where the legatee is an emigrant.

## NAMIBIA

**Tax year**

The tax year-end for individual taxpayers is 28/29 February of each year. Companies and close corporations follow their financial reporting period (usually a year).

**Individual tax rates**

| Taxable income (N$) | Tax rate (N$) |
|---|---|
| Up to 50 000 | Not Taxable |
| 50 001 - 100 000 | 18% for each N$ above 50 000 |
| 100 001 - 300 000 | 9 000 + 25% for each N$ above 100 000 |
| 300 001 - 500 000 | 59 000 + 28% for each N$ above 300 000 |

| | |
|---|---|
| 500 001 - 800 000 | 115 000 + 30% for each N$ above 500 000 |
| 800 001 – 1 500 000 | 205 000 + 32% for each N$ above 800 000 |
| Over 1 500 000 | 429 000 + 37% for each N$ above 1 500 000 |

Contributions to pension, provident and retirement annuity funds and premiums on educational policies are tax deductible up to N$ 40 000 per annum.

**Company tax rates**

Non-manufacturing, and non-mining companies (including branches of foreign companies and insurance companies) and close corporations are taxed at a rate of 32%.

Registered and approved manufacturing companies and close corporations are taxed at a rate of 18% for the first 10 years, and at a rate of 32% thereafter.

Hard rock mining companies (other than diamond mining, oil and gas extraction) are taxed at a rate of 37.5%.

Diamond mining taxable income is taxed at 55%.

Retirement funds are exempt from income tax.

Petroleum companies are taxed at 35%

Long Term Insurance Companies are taxed at 12.8% (40% of Gross Investment Income taxed at 32%)

**Capital Gains Tax (CGT)**

There is no CGT system in Namibia. Certain capital gains are, however, specifically included in Gross Income.

**Withholding tax**

- Dividends: 10% if the beneficiary is a company holding more than 25% capital in the Namibian company and 20% in all other cases;

The following income tax amendments became effective on on 30 December 2015:

- **Interest:** Interest paid to a non-resident person will now attract a withholding tax at a rate of 10%. This will ensure that taxes are collected on interest arising in Namibia. The withholding tax must be paid by the 20th of the month following the month in which the interest is paid. The payment needs to be accompanied with a return.
- **Royalties:** The current effective rate for withholding tax on royalties will now be fixed at 10%. This will include the

right to use industrial, commercial or scientific equipment. The withholding tax must be paid within 20 days after the end of the month during which the liability is incurred or the said payment is made.

- **Services:** The reduction of withholding tax on services rendered by non-residents from 25 % to 10 %. For this purpose "non-resident" means a person, company partnership, board or trust that is not a resident person. A new definition for resident person has been included and branches of external companies are specifically defined as residents for withholding tax on services purposes.

Double Taxation Agreements (DTA) may override these withholding taxes. There are DTA's with Botswana, France, Germany, India, Malaysia, Mauritius, South Africa, Romania Russian Federation, Sweden and the United Kingdom.

**Estate duty / donations tax**

There is currently no estate duty nor donations tax.

**Transfer pricing and thin capitalisation**

Transfer pricing legislation was introduced with effect from 14 May 2005. The legislation regulates international goods or service transactions between connected persons, and permits revenue to disallow certain expenditure/adjust income if the contract price is less or more than the price would have been between parties dealing at arm's length.

Thin capitalisation rules were also introduced in 2005. These regulate the financial assistance granted by non-residents to connected Namibian companies. Interest paid on that portion of any foreign connected party loan that is considered to be excessive is denied as a deduction.

**Value Added Tax (VAT)**

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

The amendments to the VAT Act take effect on 1 January 2016.

**VAT Registrations and cancellation of registrations**

- The VAT registration threshold for compulsory VAT registration is increased from N$ 200 000 to N$ 500 000.
- Application for voluntary VAT registration may be considered if the applicant expects to make taxable supplies which will exceed N$ 200 000 in a 12 month period.
- The VAT period applicable for persons registered

voluntarily, will be 6 and not 2 calendar months. Upon written application the Commissioner of Inland Revenue can allow a different VAT period.

**Import VAT accounts**

Security may be requested before the importation of goods on a VAT import account and on such additional conditions as may be prescribed by the Commissioner by notice for the granting or refusal of such an account. A trader whose VAT import account has been cancelled as a result of tax law transgressions will have to pay the import VAT when importing the goods at the border.

**Liability of shareholders for tax debts**

The shareholders of companies and members of close corporations will be liable to pay unpaid tax to the extent that the tax debt arose during the time that the person was a shareholder or a member. Shareholders and or members will be held jointly or severally liable for the unpaid tax.

**Financial services**

Financial services rendered to a non-resident who is outside of Namibia at the time the services are supplied will be an exempt supply in future.

**The following income tax amendments became effective on 30 December 2015:**

**Corporate Income Tax**

The reduced tax rate for non-mining and non-manufacturing companies of 32% is effective for years of assessment commencing on or after 1 January 2015. This will also apply to close corporations.

**Restraint of Trade Taxation**

Restraint of trade payments earned by individuals and companies will no longer be considered to be capital of nature, but will be included in gross income.

An allowance in respect of expenditure incurred on restraint of trade payments will be allowed.

**Mineral Licences and Rights**

Gross income includes the proceeds from the sale of a mineral licence, mineral right, petroleum licence or petroleum right and also any alienation or transfer of ownership of any share or member's interest in a company that holds a mineral licence, mineral right, petroleum license or petroleum right , whether directly or indirectly. The acquisition cost of the mineral licence or right and the petroleum licence or right may be deducted but this cost may not create a loss.

### Non-resident shareholders tax

The due date for payment has been changed to 20 days following the month the tax has been paid. Specific penalties and interest provisions in respect of late payment of this tax have been introduced.

### Collection/Payment of tax balances

Payments will first be allocated to tax, then to penalties and then only to interest. Furthermore, provisions have been introduced for the collection of taxes where there are grounds to believe that a person will leave Namibia.

### Third parties appointed liable for tax

The Minister is granted powers to collect tax debts from third parties. Shareholders of companies and members of close corporations are liable to pay the unpaid tax to the extent that the tax debt arose during such time that the person so served as a shareholder or member. In the case of more than one person, such persons will be liable jointly and severally to pay the unpaid tax.

Provisions have been made to assign liability for tax debts to financial managers in certain circumstances.

## BOTSWANA

### Tax year

Companies and individuals are assessed on an annual basis as at 30 June.

### Company tax rates

| | |
|---|---|
| Resident companies | 22% |
| Resident manufacturing companies (Approved*) | 15% |
| Non–resident companies | 30% |
| International Financial Services Centre (IFSC) Companies (Income from approved transactions) | 15% |
| International Financial Services Centre (IFSC) Companies (Income from unapproved transactions) | 22% |
| Foreign dividends | 15% |

| | |
|---|---|
| Pension and Provident Fund not approved by the Commissioner General | 7.5% |
| All other persons not mentioned above excluding individuals | 22% |

* A specific application must be submitted to the Ministry of Finance and a Development Approval Order obtained to qualify for the special rate applicable to manufacturers.

On 23 January 2015 amendements to the VAT Act proposed in 2014 were gazetted and now effective. The following are the amendments:

- VAT compulsory registration threshold is now BWP1,000,000
- Voluntary VAT registration is allowed if taxable revenue is between P500,000 and P1,000,000;
- VAT registration is no longer accepted if revenue is below P500,000 and BURS can de-register VAT registered vendors whose revenue is below P500,000;
- Certain foodstuffs are now zero-rated for VAT, e.g fresh vegetables and fruits, bread, milk, etc;
- Supply of tractors for farming to farmers is now exempt for VAT.

**Capital Gains Tax**

Capital Gains Tax is charged on gains arising on the disposal of certain assets, irrespective of whether the taxpayer is a resident or not, at a maximum of 22%.

Capital gains subject to tax include gains on all movable and immovable property of a business carried on in Botswana and investments in shares or debentures of a company.

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

- principal private residence if owned for at least 5 years;
- shares and debentures of a public company if held for at least one year; and
- plant and machinery, but not buildings, in respect of which annual allowances have been granted, subject to income tax 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% of net gains on movable property will be taxable.

Capital losses may be carried forward for a maximum of one year.

**Withholding tax**

- Dividends 7.5%;
- Payment of interest to a non-resident is subject to WHT of 15% on payment;
- 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, but the withholding tax does not apply to construction related services.
- 4% WHT is deductible on payments for livestock purchased for slaughter or for feeding for slaughter.

NB – subject to Double Tax Agreements

**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. The scheme 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**

The maximum tax rate for individuals is 25%, which applies to income of Pula144 000 and more.

According to the sliding scales, the first Pula36 000 is tax-free (only applicable to residents).

**Value-Added Tax**

Introduced on 1 July 2002.

The standard rate of 12% applies to taxable supplies. Certain services or supplies are either zero-rated or exempt.

Compulsory registration is required for those persons whose taxable turnover is in excess of P1,000,000 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.

## MOZAMBIQUE

The tax year coincides with the calendar year. Companies may, however, be granted approval to adopt their financial year end as their tax year end.

**Corporate Income Tax (Imposto sobre os Rendimentos das Pessoas Colectivas - IRPC)**

Resident companies are taxed on worldwide income whilst non-residents are subject to tax only on income that has its source in Mozambique.

**Corporate tax rates**

The rate of IRPC is 32%, subject to the following exceptions:

| **Specific categories** | **Rate** |
|---|---|
| Agricultural or livestock activities, until 31 December 2015 | 10% |

| | |
|---|---|
| Income subject to withholding tax at source (e.g. interest, certain dividends and royalties) | 20% |
| Entities that do not have headquarters, effective management nor a permanent establishment in Mozambique | 20% |
| Entities that do not have headquarters, effective management nor a permanent establishment in Mozambique where income is derived from rendering services relating to international telecommunication and transport as well as assembling and installation of equipment related to the latter entities. Also applies to construction and rehabilitation of electric energy infrastructures in rural zones and rental of fishing vessels for fishing and cabotage. | 10% |
| Withholding tax on dividends from shares listed on the Maputo Stock Exchange | 10% |
| Expenses not duly documented and those of a confidential or illegal nature (unsubstantiated payments) | 35% |

**Individual tax (Imposto sobre as Rendimentos das Pessoas Singulares - IRPS)**

Resident individuals are taxed on their worldwide income whilst non-residents are taxed on their Mozambique sourced income.

Income is taxed under separate schedules for:

- employment;
- trade and business;
- capital gains;
- real estate;
- other income.

The top marginal rate is 32%.

**Value - Added Tax (Imposto sobre o Valor Acrescentado - IVA)**

VAT is chargeable on the supply of goods and services in Mozambique as well as upon the importation of goods.

Exemptions from VAT include certain education, health and banking activities as well as supplies related to certain public benefit organisations.

The standard rate of VAT is 17% but subject to a number of exceptions, including:

- zero rating of qualifying exports;
- a fractional rate for items subject to a fixed pricing regime, such as fuel;
- a 5% rate under a simplified system whereby the supplier is denied input credits.

**Double taxation agreements**

Comprehensive double taxation agreements are in force with Italy, Mauritius, Portugal, United Arab Emirates, South Africa, and Macau, Botswana, Vietnam and India.

**Estate duty / donations tax**

The rate varies between 2 and 10% depending on the closeness of the relationship to the beneficiary / donee. For example, payments to direct descendants would attract tax at 2%, whereas payments to unrelated parties would attract tax at 10%.

## ZAMBIA

### BUDGET OVERVIEW

The October 2015 Zambia Budget Address for the year 1 January 2016 to 31 December 2016 was delivered to the National Assembly by the Minister of Finance and National Planning, Honourable Alexander B. Chikwanda, MP on Friday 9 October 2015.

The theme for this year's budget is: "Fiscal consolidation to safeguard our past achievements and secure a prosperous future for all"

The slowdown in the Eurozone and in the Chinese economy has lowered the demand for copper and this has negatively impacted on the Zambian economy - whose mainstay is copper. The fall in the price of this commodity has put pressure on the value of the kwacha and resulted in a lower growth of the economy. Inflation has been pushed up in the last few months.

The country is also faced with the reality of climate change, particularly the rainfall pattern, thereby adversely affecting the energy and agricultural sectors.

These challenges are expected to continue in 2016 and new challenges are anticipated, such as high interest rates on dollar denominated loans.

Government had embarked on an expansionary fiscal stance for the past four (4) years which will need to be moderated in the current global economic environment.

## BUDGET HIGHLIGHTS FOR 2016

### DIRECT TAXES

- PAYE tax bands and exempt thresholds remain the same as in 2015
- Property Transfer Tax rate on land and shares reduced to 5%
- Withholding tax on interest earned on discount income removed and maintains its applicability on coupon income
- Capital allowances on implements, machinery and plant in the energy sector increased to 50% from 25%
- Tax losses for businesses in the energy sector to be carried forward for 10 years
- 15% withholding tax introduced on income earned from the provision of management and consultancy services by resident consultants
- Landlords to now account for withholding tax at 10% subject to approval by the Commissioner General
- Different due dates for submitting manual income tax and provisional tax returns provided.

### VALUE-ADDED TAX

- Intending trader period for electricity generation increased from (2) two years to (4) four years
- Removed VAT on Non-Life Insurance and introduced a levy on all insurance premiums at 3%

### CUSTOMS AND EXCISE

- Excise duty on clear beer reduced from 60% to 40%
- Customs duty on green houses and rose seedlings removed
- Suspended customs duties on transmission apparatus for television and radio for two (2) years.
- Customs duty on Pitch Coke and Petroleum Coke removed
- Removed customs duty on Wattle Extract and Chrome Powder
- Increased specific customs duty rate on motor vehicles excluding buses and trucks from K2,000 to K6,000
- A surtax of K2, 000 on all imported motor vehicles older than 5 years of manufacture has been introduced
- Customs duty on all motor vehicles excluding buses and trucks, ambulances, prison vans and hearses increased to 30%
- Excise duty on plastic carrier bags for shopping increased from 10% to 20%

## THE BUDGET IN DETAIL

### DIRECT TAXES

All of the following measures will take effect from 1st January, 2016.

## PERSONAL TAX RATES

All other PAYE rates remain the same.

| Income bands per annum | Income bands per month | Tax rate (%) |
|---|---|---|
| First K36,000 | First K3,000 | 0 |
| Next K9,600 | Next K800 | 25 |
| Next K25,200 | Next K2,100 | 30 |
| Balance over K70,800 | Balance over K5,900 | 35 |

## PROPERTY TRANSFER TAX RATE ON LAND AND SHARES

The Property Transfer rate has been reduced from 10% to 5%.

This measure is intended to increase activity and encourage proliferation in property transfer market.

## RESTRUCTURING THE TAXATION OF INTEREST ON

The measure removes the withholding tax on discount income but maintains it on the coupon income.

It is intended to reduce the complication of pricing bonds on secondary market and hence promoting growth in the secondary market.

## NEW MEASURES IN THE ENERGY SECTOR

- Capital allowances have been increased to 50% from 25% on implements, machinery and plant used for generation of electricity.
- Losses for businesses carrying on electricity power generation can now be carried forward for 10 years.

The measure is intended to encourage new entrants in power generation industry.

## WITHHOLDING TAX ON RESIDENT CONSULTANTS

- Withholding tax on the provision of management and consultancy services by resident consultants has been introduced at 15%.
- Withholding tax on foreign consultants remains at 20%.

This measure is intended to widen the tax base.

## ACCOUNTING OF WITHHOLDING TAX ON RENTALS BY LANDLORDS

Currently, the obligation to withhold tax and remit to ZRA is with the tenant. To address some of the challenges existing in the administration and compliance of the tax, the landlord can now account for WHT, subject to the approval of the Commissioner General.

## DISCOUNT ON THE APPLICABLE CORPORATE TAX RATES IN THE YEAR OF LISTING ON THE LUSAKA STOCK EXCHANGE

This measure clarifies that only companies whose shares are listed on the Lusaka Stock Exchange qualify for 2% discount on their corporate tax rate in their first year of listing.

## REDUCTION ON THE APPLICABLE CORPORATE TAX RATES FOR LISTED COMPANIES THAT ACHIEVE ONE THIRD OWNERSHIP OF LISTED SHARES BY INDIGENOUS ZAMBIANS

The clarification is that a discount of 5% on the applicable tax rate is given to listed companies who achieve one third ownership of their listed shares by indigenous Zambians. The discount is applicable as long as the threshold is maintained.

## SUBMISSION OF MANUAL AND ELECTRONIC RETURNS

Due dates for manual and electronic submissions have been provided as follows:

- For manual filing of Income Tax return is 5th June, and Provisional Income Tax return is 5th March.
- Electronic filing of returns is maintained on 31st March for the Provisional Income Tax returns and 30th June for Annual Income Tax return.

Late submission of returns will attract penalties.

The measure is intended to encourage the uptake of electronic filing of returns.

## CLARIFICATION ON TREATMENT OF WITHHOLDING TAX ON WINNINGS FROM GAMING, LOTTERIES AND BETTING WHEN IT ARISES BY VIRTUE OF EMPLOYMENT HELD

The measure clarifies that where promotion by employer is exclusive for employees, and the recipient is the employee, tax applicable on winnings will be pay-as-you-earn (PAYE) and not withholding tax.

## AMENDMENTS TO REPLACE THE WORDS 'CHARITIES' AND 'DOMESTIC TAXES' WITH THE WORDS 'PUBLIC BENEFIT ORGANIZATIONS' AND 'DOMESTIC TAXES'.

This is simply to provide for consistency in the Property Transfer Act (PTT) where these terms have been changed.

## INCREASES IN CONSIDERATION FEES FOR LAND TO BE ACQUIRED BY NON-ZAMBIANS

This measure seeks to increase the consideration fee for any category of land to be acquired by non-Zambians. The fee will be relative to market value.

Consideration fees for high cost residential, commercial and industrial land have also been increased.

This measure takes effect at midnight of 9th October 2015.

## VALUE ADDED TAX ACT

All of the following measures will take effect from 1st January, 2016.

### RATE OF VAT

The VAT rate remains unchanged at 16%.

### INTENDING TRADER SCHEME IN ELECTRICITY GENERATION

This measure increases the period of claim of Value Added Tax (VAT) from two (2) years to four (4) years for an intending trader involved in the generation of electricity.

### REMOVAL OF VAT ON NON-LIFE INSUARANCE AND INTRODUCTION OF A LEVY ON ALL INSURANCE PREMIUMS

Currently, Non-life premiums attract VAT at the rate of 16% while life premiums are VAT exempt.

This measure removes VAT on non-life premiums and introduces a levy on all premiums of 3%.

This is not the final tax.

### REPLACEMENT OF THE USE OF CASH REGISTERS WITH FISCAL CASH REGISTERS

This amendment is intended to make the use of Fiscal cash registers mandatory for VAT registered traders.

### REALIGNING PROVISION OF VAT EXEMPTION ORDER REGARDING FINANCIAL SERVICES

The measure clarifies on financial services and products that qualify for VAT exemption. It further removes duplications and will update the list of services that qualify in the exemption order.

### CLARIFICATION ON BUSINESSES SOLELY INVOLVED IN SUPPLY OF EXEMPT OUTPUTS

The clarification is that businesses that are solely involved in the provision of exempt supplies are not eligible to form part of the VAT group.

### INTRODUCTION OF A SECRECY PROVISION IN THE VAT ACT

The Amendment aims to harmonize the confidentiality provisions with those in the Income Tax Act and Customs and Excise Act.

## DELETION OF THE WORD 'WHEAT' FROM EXEMPTION ORDER 2014

The word "Wheat" appears in the exemption order of 2014 erroneously. This Amendment seeks to remove it from that exemption order as it was zero rated from 1st January 2013.

## ALIGNING PROVISIONS OF VAT ZERO RATING ORDER TO THE VAT ACT CONCERNING VAT REFUND SCHEME FOR TOURISTS

This measure removes zero rating of exports for tourists from zero rating order as this was replaced by a tourist refund scheme.

## CUSTOMS AND EXCISE

All of the following measures will take effect from 1st January, 2016.

## REDUCTION OF EXCISE DUTY ON CLEAR BEER

Excise duty on clear beer has been reduced from 60% to 40%. This is to restore the competitiveness of the locally produced clear beer, which will induce investment in the industry and assist in curbing vices such as smuggling and the mushrooming of illicit alcoholic beverages.

## REMOVAL OF CUSTOMS DUTY ON GREEN HOUSES AND ROSE SEEDLINGS

In order to encourage further investment in non-traditional exports, which is one of the potential foreign exchange earners for the country, customs duty rates on green houses and rose seedlings, of 15% and 5% respectively, have been removed.

## SUSPENSION OF CUSTOMS DUTIES ON TRANSMISSION APPARATUS FOR TELEVISION AND RADIO

Customs duties on transmission apparatus for television and radio have been suspended for two (2) years. This is intended to facilitate the upgrading of existing infrastructure for digital migration and also to promote investment in community-based television and radio stations.

## REMOVAL OF CUSTOMS DUTY ON PITCH COKE AND PETROLEUM COKE

Customs duty on pitch coke and petroleum coke, of 5% and 15% respectively, have been removed. These forms of coke are alternative sources of energy used in the manufacturing industry.

## REMOVAL OF CUSTOMS DUTY ON WATTLE EXTRACTS AND CHROME POWDER

Customs duty on wattle extracts and chrome powder, of 5% and 15% respectively, has been removed. These are essential ingredients in the treatment of leather.

## INCREASE OF EXCISE DUTY ON SHOPPING PLASTIC CARRIER BAGS

Excise duty on plastic carrier bags for shopping has been increased from 10% to 20%. This is intended to re-enforce the initial aim of imposing excise duty on plastic carrier bags for shopping as a way of discouraging their use.

## INCREASE OF MINIMUM SPECIFIC CUSTOMS DUTY RATE ON MOTOR VEHICLES

The minimum specific customs duty rate on motor vehicles excluding buses and trucks has been increased from K2,000 to K6,000. The rates have not been revised since 1996.

## INTRODUCTION OF A SURTAX ON IMPORTED MOTOR VEHICLES OLDER THAN FIVE (5) YEARS FROM THE YEAR OF MANUFACTURE

A surtax of K2,000 on all imported motor vehicles older than 5 years from the year of manufacture has been introduced.

## INCREASE OF CUSTOMS DUTY ON MOTOR VEHICLES

Customs duty on all motor vehicles excluding buses, trucks, ambulances, prison vans and hearses has been increased to 30%. This measure is intended to raise revenue for the Government.

## LOW QUALITY IMPORTS

In order to discourage low quality imports, promote local manufacturing through value addition and adjust for inflation, the following measures have been proposed:

- **Increase of customs duty on imported refined edible oil**
  Customs duty has been increased from K2.20 to K4.00 per litre
- **Increase of excise duty on cigarettes**
  Excise duty on cigarettes from K90 to K200 per mille (1,000 cigarettes).
- **Introduction of export duty on unprocessed wood and semi-processed wood**
  Export duty of 40% and 20% has been introduced on unprocessed and semi-processed wood respectively. Further, customs duty on wood and wood products has been increased to 40%.
- **Valuation of duty on tobacco products**
  The valuation for duty purposes of assessing excise duty on snuff, pipe tobacco, cigars and cigarette tobacco when manufactured in Zambia has been amended.

## TIME REQUIRED FOR A TAXPAYER TO KEEP RECORDS FOR TAX ASSESSMENT PURPOSES

The number of years for keeping tax assessment records under the Customs and Excise Act has been increased from 5 years to 6 years. This is aimed at aligning the provisions of the Customs and Excise Act with the related provisions in the Income Tax Act.

## INTRODUCTION OF A PENALTY FOR LATE CLEARANCE OF GOODS ALLOWED INTO THE COUNTRY FOR IN-BOND CARRIAGE

A penalty of 3,000 fee units per day for the late clearance of goods allowed into the country for in-bond carriage to another customs port for further entry after expiry of the statutory limit of 15 days has been introduced.

## FEES PAYABLE FOR CUSTOMS OFFICERS TO PERFORM OFFICIAL CUSTOMS WORK BEYOND THE DEFINED WORKING HOURS

Fees payable by taxpayers for customs officers to perform official customs work beyond the defined working hours under the Ports of Entry and Routes Order, 2003 have been harmonized with the Customs and Excise (General) Regulations, 2000.

## INTRODUCTION OF A STANDARD VALUATION METHOD FOR SECOND HAND MOTOR VEHICLES

A standard valuation method of secondhand motor vehicles has been introduced to ensure that the amount of tax payable is consistent for similar motor vehicles. This will foster predictability, transparency and uniformity in the valuation of second hand motor vehicles.

## PROVISION OF RULES FOR SELF-ASSESSMENT

Rules for self-assessment as may be prescribed by the Commissioner General have been provided to further reduce compliance costs and enhance trade facilitation by incorporating products of modernization of revenue administration.

## PROVISION OF CLASSIFICATION CODES FOR COPPER BLISTER, MINERAL ORES AND MINERAL CONCENTRATES

Tariffs for mineral ores and mineral concentrates have been sub-divided to ensure enhanced monitoring of mineral production and export.

## LIABILITY FOR AN OFFENCE COMMITTED BY A CORPORATE BODY TO BE EXTENDED TO THE DIRECTORS

A provision to extend liability for an offence committed by a body corporate has been introduced to extend to the directors or principal officers of the body, where such offices have knowledge of the offense.

## ACCREDITATION OF EMPLOYEES OF CLEARING AGENTS

Employees of clearing agents that directly handle customs business have to be accredited to ensure professionalism and safeguard government revenue.

## IMPORTS BY THIRD PARTIES ACTING ON BEHALF OF ORGANISATIONS LISTED IN THE THIRD SCHEDULE OF THE CUSTOMS AND EXCISE ACT

The treatment of consumable items imported by third parties acting on behalf of organisations listed in the Third Schedule of the Act has been harmonized and will be treated as if the consumables are self-imported by the listed organisations.

## HOUSEKEEPING MEASURES

## PROVISION FOR THE MINISTER TO PRESCRIBE PARAMETERS FOR THE COMMISSIONER GENERAL TO ADJUST SPECIFIC RATES

This measure is intended to provide for a structured and predictable adjustment mechanism for all the specific tax rates.

## INCREASE OF ASYCUDA FEE

ASYCUDA fee (to be paid on entry of goods) has been increased from K125 to K325.

## CROSS-CUTTING CHANGES

The Income Tax Act, Customs and Excise Act and the Value Added Tax Act have been amended to align with changes made under the Mines and Minerals Development Act, the Tax Appeals Tribunal Act and the National Pension Scheme **Act.**

# ZIMBABWE

## BUDGET OVERVIEW

The Finance Minister, Honourable Patrick Chinamasa presented the 2016 National Budget Statement on the 26th of November 2015, under the theme **"Building a Conducive Environment that attracts Foreign Direct Investment".**

The highlight of the Tax Measures has been the introduction for the first time in Zimbabwe of Transfer Pricing Regulations. Other salient features of the taxation proposals in the 2016 National Budget Statement are summarized below:-

## WITHHOLDINGS TAXES

### Withholding Tax on Contracts

Current legislation provides for ZIMRA to recover the 10% withholding tax that a taxpayer fails to collect, in the absence of a tax clearance certificate. It is proposed to amend Section 80 of the Income Tax Act to provide for withholding agents to recover from the payee the 10% withholding tax payable under contract that should have been withheld and paid to the Commissioner.

The recovery shall not however, extend to penalty and interest charges.

The withholding tax can only be recovered within 24 months from the date on which payment should have been made.

## INCOME TAXES

With effect from 1 January 2016, an amount received by way of pension or annuity by persons who have not attained the age of 55 years of age is exempt from tax to a minimum value of USD 10,000 or one third of the total value of the pension or annuity up to a maximum of USD60,000.

### Tax Exemption on Long Term Deposits

With effect from 1 January 2016, it is proposed to exempt from tax, interest earned on deposits with tenure of more than 12 months.

The rate of withholding tax on a fixed term deposit of at least 90 days is reduced from 15% to 5%.

### Offsetting Refunds across Tax Heads

With effect from 1 January 2016, legislation will provide for any tax refunds against tax liabilities assessed on other tax heads through amendment of the Income Tax Act, Capital Gains Tax, Customs and Excise and the Revenue Authority Acts.

**Transfer Pricing**

With effect from 1 January 2016, it is proposed to amend the Income Tax Act (Chapter 23:06) by insertion of a new Section 98B and a new Schedule Thirty Fifth to provide taxpayers with sufficient guidance on the tax treatment of transactions between related parties.

For purposes of the new section, persons engaged in business transactions, operation or scheme with an associated person, the amount of taxable income derived by a person that engages in that transaction shall be consistent with the arm's length principle.

**The primary methods to be used in arriving at an acceptable transfer price are:-**

- Comparable Uncontrolled Price Method
- Resale Price Method
- Cost Plus Method

**The other methods shall be-**

- Transaction Net Margin Method and
- Transactional Profit Method

The Commissioner may accept a different transfer pricing method if the above methods cannot be reasonably applied.

ZIMRA has advised that the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators are a relevant source of interpretation, although recourse may be made to the UN Practical Manual on Transfer Pricing for developing countries.

It should be noted that the transfer pricing regulation will also apply to domestic transactions.

Clients are advised to review management and intercompany charges such as administration fees to see if they are at arm's length.

**STAMP DUTIES**

**Stamp duty on Policies of Insurances**
It is proposed to retrospectively reduce stamp duty on policies of insurance to US0,01 with effect from 1 February 2009 to 30 July 2015.

This measure seeks to condone the underpayment of stamp duty made by insurance companies.

However with effect from 1 August 2015, the gazetted rate of

### Tobacco Levies on Growers

It is proposed to reduce tobacco levy from 1.5% to 0.75% with effect from 1 January 2016.

## EXPORT TAX AND ROYALTIES

### Royalties on Gold

With effect from 1 January 2016, it is proposed to introduce a reduced royalty rate of 3% on incremental output of gold using the previous year's production as a base year.

### Mining Fees and Charges

With effect from 1 January 2016, it is proposed to review further selected mining fees and charges in order to promote formalisation of illegal mining, marketing of minerals and advance the beneficiation agenda.

## VALUE ADDED TAX

### VAT on Short-Term Insurance

VAT on short term insurance was introduced with effect from 1 September 2015. In view of the constrained capacity facing the industry, the VAT payable on short-term insurance is now restricted to commission earned by agents or broker, and not on the value of insurance policy.

The supply of short–term insurance shall be deemed to be a supply of financial services by the agents or brokers and not by the insurance or reinsurance company on behalf of which the agents or brokers buy and sell insurance policies.

### VAT Exemption on Selected goods

With effect from 1 January 2016, it is proposed to exempt from VAT, goods that include protective clothing, milk, eggs, vegetables, fruits, rice, cereals and margarine.

### VAT Zero rating Soya Bean

It is proposed to zero rate soya bean for the period 1st February 2009 to 31st July 2012 to provide relief to farmers who operated on the assumption that soya bean was zero rated for VAT purposes for that period.

### VAT Fiscalised Recording of Taxable Transactions

With effect from 1 December 2015, a Project Monitoring Committee comprised of the Ministry of Finance and Economic Development and ZIMRA will be set up to expedite finalisation of the platform to receive data from fiscal devices to enable monitoring of transactions in real time. The Committee will co-opt suppliers of fiscalised devices on a need basis.

## CUSTOMS & EXCISE DUTIES

In his speech, the Minister spelt out a number of administrative measures to enhance efficiency in customs administration, curbing customs revenue leakages, as well as the use customs duties to protect the local industry.

The Minister's Statement was silent on the effective dates for most of the Customs interventions.

We believe Statutory Instruments shall be gazetted to specify the effective dates of the specific customs measures.

We highlight below the Minister's broad customs proposals**.**

### Rates of Special Excise Duty on Second Hand Motor Vehicles

- With effect from 1 January 2016, it is proposed to amend section 172D of the Customs and Excise Act, Chapter 23:02 to provide a new basis for the determination of Special Excise Duty on the sale of second hand motor vehicles.
- Special Excise Duty on the sale of second hand motor vehicles will now be based on the number of years the vehicle has been in use and the relevant vehicles engine capacity. In general, the lesser the number of years a vehicle has been in use, the more the fixed amount of Special Excise duty would be payable. An important determinant of the duty amount would also be the vehicles' engine capacity.
- The new proposed method of duty determination replaces the use of a flat rate of 5% that applied under the same section.
- We tabulate the proposed rates below;

| AGE OF VEHICLE (Yrs.) | | | | | |
|---|---|---|---|---|---|
| **Engine Capacity** | **0 -4** | **5 -10** | **11 -15** | **16 -20** | **Above 20** |
| **Excise Duty Payable (US$)** | | | | | |
| 1000cc | 300 | 150 | 75 | 50 | 50 |
| 1001-1500 | 400 | 200 | 100 | 75 | 50 |
| 1501-2000 | 500 | 250 | 150 | 100 | 50 |
| 2001-2500 | 600 | 300 | 200 | 150 | 50 |
| 2501-3000 | 600 | 400 | 200 | 150 | 50 |
| 3001-3500 | 600 | 400 | 200 | 150 | 50 |
| + 3501cc | 600 | 400 | 200 | 150 | 50 |

### Advance Cargo Manifest

- It is proposed to extend Advance Passenger and Cargo Manifest to road and rail transport carriers with effect from 1at of January 2016.
- A transporter who fails to adhere to the requirements of the manifest will be fined an amount of not less than US$5,000.

### Travellers' Rebate

It is proposed to reduce the duty free allowance of the travellers' rebate to US$200 per calendar month from the current rebate of US$300 over the same period.

### Remission of Duty

It is proposed to limit the daily remission of duty from US$50 to US$10 with effect from 1 January 2016.

### Automated Verification of Rebate of Duty

It is proposed that ZIMRA should install by June 2016, an IT system capable of timeously detecting the frequency of travel for purposes of the travellers' rebate.

### Efficiency at Beitbridge Border Post

- To facilitate trade and curb opportunities for rent seeking activities, and non-payment of duty, it is proposed that Government will identify a company to install a Closed Circuit Television System that will be used to monitor adherence to border procedures by ZIMRA and other agencies.
- An independent Border Post expert is proposed to be engaged to reorganise Beitbridge Border Post.

### Alignment of Operating Hours at Kazungula Border Post

With effect from 1 January 2016, it is proposed that Kazungula Border Post will operate from 6am to 8pm. This will result in the alignment of operating times as well enhance flow of commercial traffic between Zimbabwe and Botswana.

### Fines and Border Post Congestion Controls

- Proposals to remove unauthorised persons from Customs Controlled Area, the use of the Green Routes, the Electronic Single Window Facility, and recognition of Authorised Economic Operators were made to decongest ports of entry. Implementation timelines will vary from immediate effect to the 1st quarter of 2016.
- Increased fines will be applicable to those parking at Customs controlled areas in excess of permissible parking time.

### Penalties on Cancellation of Bills of Entry

It is proposed to increase the Bill of Entry cancellation fee from US$10 to US$50with effect from 1st January 2016. This is intended to minimise duplicate entries in ZIMRA's ASYCUDA system.

## CUSTOMS PRODUCTIVE SUPPORT MEASURES

### Rebate of Duty on Capital Equipment

It is proposed to extend a rebate of duty on capital equipment imported by the mining, agriculture, manufacturing and energy sectors for equipment valued at US$1 million and above, with effect from 1st January 2016.

Capital equipment imported under the facility will not be liable to Customs Duty and VAT.

### Duty on Motor Vehicles Imported by Government

It is proposed to remove selected motor vehicles and buses imported by Government and School Development Associations from the Duty Free Certificate Facility with effect from 1st January 2016.

### Rebate of Duty

### Luggage Ware Manufacturers Rebate

With effect from 1 January 2016, it is proposed to introduce a manufacturers' rebate to approved manufacturers for a period of two years.

Duty free importation will be extended to specified inputs.

### Agricultural Implements Manufacturers Rebate

It is proposed to introduce a specific duty of US$5 per kg on plough beam with effect from 1 January 2016.

### Soap Manufacturers

It is proposed to introduce a specific duty of US$0.5 per kg with effect from 1 January 2016.

### Textile Industry

It is proposed to increase duty on selected fabric that can be produced locally from 10% to 40% + US$2.50/kg, with effect from 1st January 2016.

### Clothing Manufacturers' Rebate

With effect from 1 January 2016, it is proposed to extend the rebate of duty on imported raw materials for use in the manufacture of clothing by a further two years. The selected input base is proposed to be been widened.

### Suspension of Duty Facilities

- It is proposed to extend suspension of duty facility on motor vehicles imported by safari operators for a further period of two years with effect from 1st January 2016.
- The suspension of duty on wheat flour facility is proposed to be extended for a further period of 12 months coupled with a reduction in the wheat flour quota from 5000mt to 4000mt per month, effective 1st January 2016.
- It is proposed to extend the ring-fenced duty free importation of milk powder to approved dairy processors by a further two years, with effect from 1st January 2016. Proposals to register new dairy farmers to benefit from the duty suspension facility were tabled.

### TAX RATES

Employment Income Tax Bands

No adjustments were made for the tax bands for individuals on income earned from employment, hence tax will be calculated as follows:

## INDIVIDUAL TAX RATES FROM EMPLOYMENT INCOME

| 2016 Annual Paye Table | | | | |
|---|---|---|---|---|
| **1 January 2016 - 31 December 2016** | | | | |
| **Band of Taxable Income** | **Amount** | **Tax rate** | **Tax** | **Cumulative Tax** |
| **US$** | **US$** | **%** | **US$** | **US$** |
| 1 - 3 600 | 3,600 | 0% | | - |
| 3 601 - 18 000 | 14,400 | 20% | 2,880 | 2,880 |
| 18 001 - 36 000 | 18,000 | 25% | 4,500 | 7,380 |
| 36 001 - 60 000 | 24,000 | 30% | 7,200 | 14,580 |
| 60 001 - 120 000 | 60,000 | 35% | 21,000 | 35,580 |
| 120 001 - 180 000 | 60,000 | 40% | 24,000 | 59,580 |
| 180 001 - 240 000 | 60,000 | 45% | 27,000 | 86,580 |
| 240 001 and more | - | 50% | | |

| Annual Ready Reckoner Table: 1 January 2016 - 31 December 2016 | | | | |
|---|---|---|---|---|
| **Band of Taxable Income** | | **Tax rate** | | **Cumulative Band Deduct** |
| **US$** | | **%** | | **US$** |
| 1 - 3 600 | Multiple By | 0% | Less | - |
| 3 601 - 18 000 | Multiple By | 20% | Less | 720 |
| 18 001 - 36 000 | Multiple By | 25% | Less | 1,620 |
| 36 001 - 60 000 | Multiple By | 30% | Less | 3,420 |
| 60 001 - 120 000 | Multiple By | 35% | Less | 6,420 |
| 120 001 - 180 000 | Multiple By | 40% | Less | 12,420 |
| 180 001 - 240 000 | Multiple By | 45% | Less | 21,420 |
| 240 001 and more | - | 50% | Less | 33,420 |

| Monthly Table:<br>1 January 2016 - 31 December 2016 | | | | |
|---|---|---|---|---|
| **Band of Taxable Income** | **Amount** | **Tax rate** | **Tax** | **Cumulative Tax** |
| **US$** | **US$** | **%** | **US$** | **US$** |
| 1 - 300 | 300 | 0% | | - |
| 301 - 1 500 | 1,200 | 20% | 240 | 240 |
| 1 501 - 3 000 | 1,500 | 25% | 375 | 615 |
| 3 001 - 5 000 | 2,000 | 30% | 600 | 1,215 |
| 5 001 - 10 000 | 5,000 | 35% | 1,750 | 2,965 |
| 10 001 - 15 000 | 5,000 | 40% | 2,000 | 4,965 |
| 15 001 - 20 000 | 5,000 | 45% | 2,250 | 7,215 |
| 20 001 and more | - | 50% | | |

| Monthly Ready Reckoner Table:<br>1 January 2016 - 31 December 2016 | | | | |
|---|---|---|---|---|
| **Band of Taxable Income** | | **Tax rate** | | **Cumulative Band Deduct** |
| **US$** | | **%** | | **US$** |
| 1 - 300 | Multiple By | 0% | Less | - |
| 301 - 1 500 | Multiple By | 20% | Less | 60 |
| 1 501 - 3 000 | Multiple By | 25% | Less | 135 |
| 3 001 - 5 000 | Multiple By | 30% | Less | 285 |
| 5 001 - 10 000 | Multiple By | 35% | Less | 535 |
| 10 001 - 15 000 | Multiple By | 40% | Less | 1,035 |
| 15 001 - 20 000 | 5,000 | 45% | Less | 1,785 |
| 20 001 and more | - | 50% | Less | 2,785 |

## COMPARATIVE TABLE OF TAXES PAYABLE IN CERTAIN SOUTHERN AFRICAN STATES

| | South Africa | Zambia | Botswana | Lesotho | Namibia | Swaziland | Mozambique | Zimbabwe |
|---|---|---|---|---|---|---|---|---|
| COMPANY TAX | | | | | | | 10% [N19] | |
| Manufacturing/IFSC/ Innovation Hub | 28% - 15%[N1] | 35% | 15% [N10] | 10% [N12] | 18% [N16] | 27.5% | 32% | 20% [N21] |
| Normal non-mining, local | 28% | 35% | 22% | 25% | 32% | 27.5% | 32% | 25% + AIDS levy 3% |
| Non-resident branch | 28% | 35% | 30% | 25% | 32% | 27.5% + 15% | 32% [N20] | |
| Mining and other | 28% [N2] | 10% - 40% [N8] | ≥22%[N11] | 25% | 37.5% | 27.5% | | 15% - 25% |
| INDIVIDUAL TAX | | | | | | | | |
| Maximum rate | 41% | 35% | 25% | 30% | 37% | 33% | 32% | 50% + AIDS levy 3% |
| Non-residents | | | 25% | | | | 20% | |
| Level of taxable income at which maximum rate applies | ZAR701,300 | ZMW70,801 | BWP144,000 | LSL54,770 | NAD1,500,000 | SZL200,000 | MZM1,512,000,001 | USD240,000 |
| OTHER TAXES | | | | | | | | |
| Remitance tax iro branches of foreign companies | - | 15% | - | 25% [N13] | - | 15% [N17] | - | 15% |
| CGT | 16.4% 22.4% [N3] | - | 22% | 0%/25% [N14] | - | 37.5% [N18] | 0 | 20%/5% [N22] |
| VAT | 14% | 16% | 12% | 14% | 15% | 14%/25% | 17% | 15% |
| NRST / WHT / Dividends Tax | 15% [N4] | 15% | 7.5% | 25% [N15] | 10-20% | 15% [N17] | 20% | 15%/10% [N23] |
| NRTI / WHT Interest | 15% [N5] | 15% [N9] | 15% | 25% | 10% | 15% | 20% | 0% |
| NRTF / WHT fees | - [N6] | 20% | 15% | 10/25% | 10% | 15% | 10/20% | 15% |
| NRTR / WHT Royalties / Royalty Tax | 15% [N7] | 20% | 15% | 25% | 10% | 15% | 20% | 15% |

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

N1 Qualifying company in a special economic zone
N2 Gold mining according to formulae
N3 Individuals and special trusts - 16.4%; companies - 22.4%; other trusts - 32.8%
N4 STC was replaced by the Dividends Tax with effect from 1 April 2012. The Dividends Tax is not applicable to the distribution of branch profits
N5 non-residents are taxed from 1 March 2015 at a rate of 15%
N6 A withholding tax on cross-border service fees has been proposed. It would come into effect from 1 January 2016 at the rate of 15%
N7 The rate increased from 12% to 15% with effect from 1 January 2015
N8 E.g. farming-10%, non-traditional exports, manufacture of organic & chemical fertilizers - 15%, Banks - 35%. Telecommunication Companies - First ZMW250,000 at 35%, balance taxed at 40%, Mining companies pay tax at 30% and then at a variable rate above 8% of gross sales
N9 Interest to individuals on Treasury Bills - 15%, interest to non-resident contractors (MFEZ) - 20%
N10 The 15% is for income from approved activities. Unapproved activities 22%
N11 A special formula is used to calculate the tax rate, it cannot be below the normal company rate
N12 0% for certain manufacturing companies which export exclusively outside SACU countries
N13 taxed at a 25% rate in addition to corporate income tax payable on the chargeable income of the branch.
N14 Part of business income
N15 Applies to branch profits as well.
N16 taxed at a rate of 18% for the first 10 years, and at a rate of 32% thereafter
N17 12,5% for companies in Botswana, Lesotho, Mozambique, Namibia & South Africa
N18 Only on disposal of mineral rights
N19 Agriculture and stockbreeding - 10% until 31 December 2015
N20 Tax-free zone operators and enterprises
N21 20% rate for manufacturing applies where at least 50% of goods are exported from Zimbabwe.
N22 The rate of CGT on specified assets acquired prior to 1 February 2009 is 5%
N23 Reduced rate applies to listed shares in Zimbabwe

## RETENTION OF RECORDS

Set out below is a summary of certain recommended or statutory retention periods:

| | Retention Period (years) Originals |
|---|---|
| **Close corporations** | |
| • Accounting records, including supporting schedules to accounting records and ancillary accounting records | 15 |
| • Annual financial statements, including annual accounts and the report of the accounting officer | 15 |
| • Amended founding statement (forms CK 2 and CK 2A) | Indefinite |
| • Founding statement (Form CK 1) | Indefinite |
| • Minute books as well as resolutions passed at meetings | Indefinite |
| • Microfilm image of any original record reproduced directly by the camera – the 'camera master' | Indefinite |
| **Companies** | |
| • General rule: Any documents, accounts, books, writing, records or other information required to be kept in terms of the Companies Act (Act 71 of 2008) ("the Act') and other public regulation | 7 or longer (as specified in other public regulation) |
| • Memorandum of Incorporation and alterations or amendments, Rules and Registration Certificate | Indefinite |
| • Record of directors and past directors, after the director has retired from the company | 7 |
| • Copies of accounting records as required by the Act | 7 |
| • Copies of annual financial statements required by the Act | 7 |
| • Notice and minutes of all shareholder meetings including resolutions adopted and documents made available to holders of securities | 7 |
| • Copies of reports presented at the annual general meeting of the company | 7 |
| • Written communication to holders of securities | 7 |
| • Minutes and resolutions of directors' meetings, audit and directors' committees | 7 |
| • Securities register and uncertificated securities register | Indefinite |
| • Members register in case of a non-profit company | Indefinite |
| • Register of company secretary and auditors | Indefinite |
| • A change in the record's location must be notified to the Commission. | |
| • If security register and accounting records are kept electronically, certain extra requirements apply such as to keep adequate precautions etc. | |

| | Retention Period (years) Originals |
|---|---|
| **Other documents** | |
| **Customs and Excise Act** | |
| • Documentation for export incentive scheme claims. | 5 |
| • Other shipping documents. | 2 |
| **Compensation for Occupational Injuries and Diseases Act** | |
| • Records of wages paid, time and piece work and overtime records, accident records, etc. | 7 |
| **Insolvency Act** | |
| • The insolvent's records of his transactions. | 3 |
| **Occupational Health and Safety Act** | |
| • A copy of the Act; an incident register, factory register, certificate of compliance (electrical) etc. | Permanently |
| • Record of employees exposed to asbestos fibres. | Minimum of 40 |
| **Value - Added Tax Act** | |
| • Books of account, records of the supply of goods to or by the vendor; invoices; tax invoices; credit and debit notes; bank statements; deposit slips; stock lists and paid cheques. | 5 |
| Information in book form – 5 years from last entry. | |
| Computerised records must be kept in printout form, not just on disk or tape. | |
| **Capital Gains Tax** | |
| All records relating to capital transactions | |
| • If a person is not required to render tax returns - from the end of the relevant year of assessment. | 5 |
| • For taxpayers - from the date of submission of the relevant tax return. | 5 |
| **Income Tax Act** | |
| • Accounting records from date of submission of the return incorporating the information | 5 |
| **Microfilmed records** | |
| • Microfilmed record of an original reproduced directly by the camera ('the camera master') | Permanently |
| • If a microfilm copy, certified as required by statute, has been made, original records may be destroyed after 3 years. | |

## PRIME BANK OVERDRAFT RATES

| Effective Date | Rate % |
|---|---|
| 29.01.2016 | 10,25 |
| 20.11.2015 | 9,75 |
| 24.07.2015 | 9,50 |
| 18.07.2014 | 9.25 |
| 29.01.2014 | 9.00 |
| 19.07.2012 | 8.50 |
| | |
| 19.11.2010 | 9.00 |
| 10.09.2010 | 9.50 |
| 26.03.2010 | 10.00 |
| | |
| 14.08.2009 | 10.50 |
| 29.05.2009 | 11.00 |
| 04.05.2009 | 12.00 |
| 25.03.2009 | 13.00 |
| 06.02.2009 | 14.00 |
| | |
| 12.12.2008 | 15.00 |
| 13.06.2008 | 15.50 |
| 11.04.2008 | 15.00 |
| | |
| 07.12.2007 | 14.50 |
| 12.10.2007 | 14.00 |
| 17.08.2007 | 13.50 |
| 08.06.2007 | 13.00 |
| | |
| 08.12.2006 | 12.50 |
| 13.10.2006 | 12.00 |
| 03.08.2006 | 11.50 |
| 08.06.2006 | 11.00 |
| | |
| 15.04.2005 | 10.50 |
| | |
| 16.08.2004 | 11.00 |
| | |
| 18.12.2003 | 11.50 |
| 20.10.2003 | 12.00 |
| 16.09.2003 | 13.50 |
| 14.08.2003 | 14.50 |
| 12.06.2003 | 15.50 |
| | |
| 13.09.2002 | 17.00 |
| 14.06.2002 | 16.00 |
| 14.03.2002 | 15.00 |
| 15.01.2002 | 14.00 |
| | |
| 25.09.2001 | 13.00 |
| 16.07.2001 | 13.50 |
| 18.06.2001 | 13.75 |
| | |
| 14.01.2000 | 14.50 |
| | |
| 04.10.1999 | 15.50 |
| 02.08.1999 | 16.50 |
| 19.07.1999 | 17.00 |
| 14.07.1999 | 17.50 |
| 25.06.1999 | 18.50 |
| 19.04.1999 | 19.00 |
| 09.03.1999 | 20.00 |
| 13.02.1999 | 21.00 |
| 08.01.1999 | 22.00 |
| | |
| 07.12.1998 | 23.00 |
| 09.11.1998 | 23.50 |
| 19.10.1998 | 24.50 |

## COMPARATIVE RATES

### Companies Income Tax

| Years of assessment ending on or after | Rate |
|---|---|
| 1 April 1993 | 40% |
| 1 April 1994 | 35% |
| 1 April 1998 | 30% |
| 1 April 2005 | 29% |
| 1 April 2008 | 28% |

### Branches of foreign companies

| Years of assessment ending on or after | Rate |
|---|---|
| 1 April 1999 | 35% |
| 1 April 2005 | 34% |
| 1 April 2008 | 33% |
| 1 April 2012 | 28% |

### STC

| | Rate |
|---|---|
| Dividends declared on or after 17 March 1993 | 15% |
| Dividends declared on or after 22 June 1994 | 25% |
| Dividends declared on or after 14 March 1996 | 12.5% |
| Dividends declared on or after 1 October 2007 | 10% |

Replaced by a dividend withholding tax at 15% with effect from 1 April 2012.

### SARS interest rates (prescribed rates)

| Date from | Interest payable on outstanding taxes | Interest receivable on overpayment of provisional tax |
|---|---|---|
| 1 September 2003 | 14% | 10% |
| 1 October 2003 | 13% | 9% |
| 1 December 2003 | 11.5% | 7.5% |
| 1 November 2004 | 10.5% | 6.5% |
| 1 November 2006 | 11% | 7% |
| 1 March 2007 | 12% | 8% |
| 1 November 2007 | 13% | 9% |
| 1 March 2008 | 14% | 10% |
| 1 September 2008 | 15% | 11% |
| 1 May 2009 | 13.5% | 9.5% |
| 1 July 2009 | 12.5% | 8.5% |
| 1 August 2009 | 11.5% | 7.5% |
| 1 September 2009 | 10.5% | 6.5% |
| 1 July 2010 | 9.5% | 5.5% |
| 1 March 2011 | 8.5% | 4.5% |
| 1 May 2014 | 9.0% | 5.0% |
| 1 November 2014 | 9.25% | 5.25% |
| 1 November 2015 | 9.5% | 5.5% |
| 1 March 2016 | 9.75% | 5.75% |

**Acceptable rates on employee loans for fringe benefit purposes (official rates)**

| Date | Rate |
|---|---|
| 1 December 2003 | 9.5% |
| 1 March 2004 | 9% |
| 1 September 2004 | 8.5% |
| 1 September 2005 | 8% |
| 1 September 2006 | 9% |
| 1 March 2007 | 10% |
| 1 September 2007 | 11% |
| 1 March 2008 | 12% |
| 1 September 2008 | 13% |
| 1 March 2009 | 11.5% |
| 1 June 2009 | 9.5% |
| 1 July 2009 | 8.5% |
| 1 September 2009 | 8% |
| 1 October 2010 | 7% |
| 1 March 2011 | 6.5% |
| 1 August 2012 | 6.0% |
| 1 February 2014 | 6.5% |
| 1 August 2014 | 6.75% |
| 1 August 2015 | 7% |
| 1 December 2015 | 7.25% |
| 1 February 2016 | 7.75% |

With effect from 1 March 2011, the official rate is determined with reference to the repurchase ('repo') rate. Where the loan is denominated in rands, the official rate is 100 basis points above the repo rate. Where the loan is denominated in foreign currency, the official rate is 100 basis points above the equivalent rate to the repo rate for that currency. Where the repo rate changes during a month, the official rate changes from the beginning of the following month.

**February 2016**

## MEMBER FIRMS WORLDWIDE

Albania • Algeria • Angola • Anguilla • Argentina • Armenia • Aruba • Australia Austria • Azerbaijan • Bahamas • Bahrain • Barbados • Belarus • Belgium Bolivia • Bosnia Herzegovina • Botswana • Brazil • British Virgin Islands • Brunei Darussalam • Bulgaria • Burundi • Cambodia • Canada • Cape Verde Islands Cayman • Islands • Chile • China (PRC) • Colombia • Comoros • Costa Rica Croatia • Curaçao • Cyprus • Czech Republic • Denmark & Faeroe Islands Dominican Republic • Ecuador • Egypt • El Salvador • Estonia • Ethiopia • Fiji Finland • France • French Guiana • French Polynesia • Georgia • Germany Gibraltar • Greece • Greenland • Guatemala • Guernsey • Honduras • Hong Kong • Hungry • Iceland • India • Indonesia • Ireland • Isle of Man • Israel • Italy • Ivory Coast • Jamaica • Japan Jersey • Jordan • Kazakhstan • Kenya • Korea • Kosovo • Kuwait • Kyrgyzstan Latvia • Lebanon • Liechtenstein • Lithuania • Luxembourg • Macao • Macedonia Madagascar • Malawi • Malaysia • Malta • Mauritius • Mexico • Moldova Mongolia • Montenegro • Montserrat • Morocco • Mozambique • Myanmar Namibia • Netherlands • New Zealand • Nicaragua • Niger • Nigeria • Norway • Oman • Pakistan Panama • Paraguay • Peru • Philippines • Poland • Portugal • Puerto Rico Qatar • Romania • Russia • Rwanda • San Marino • Saudi Arabia • Serbia Seychelles • Sierra Leone • Singapore • Slovak Republic • Slovenia • South Africa Spain • Sri Lanka • St Kitts & Nevis • St Lucia • St Maarten • St Vincent & the Grenadines Suriname • Sweden • Switzerland • Taiwan • Tajikistan • Tanzania Thailand • Togo • Trinidad & Tobago • Tunisia • Turkey • Turkmenistan • UAE • Uganda Ukraine United Kingdom • Uruguay • USA • Venezuela • Vietnam • Zambia • Zimbabwe

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