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Contents

Introduction

People, politics and economy

The Republic of South Africa (SA) is a democratic state, composed of the following nine provinces:

Gauteng

Area: 17 000 square kilometres
Population: 9 018 000
Main cities: Johannesburg (capital), Pretoria, Soweto and Vereeniging

The provincial economy is driven by finance, real estate and business services (21.4%) as well as manufacturing (20.5%). Agriculture, forestry and fishing contribute the least (0.5%).

Although Gauteng is the smallest of SA's provinces, it is the most highly populated and generates the greatest wealth.

Eastern Cape

Area: 168 580 square kilometres
Population: 7 039 300
Main cities: Bisho (capital), Port Elizabeth, East London and Umtata

The provincial economy is driven by finance, real estate and business services (19.4%), general government services (18.7%) and manufacturing (16.6%). Mining and quarrying contribute the least (0.2%).

Western Cape

Area: 129 370 square kilometres
Population: 4 645 600
Main city: Cape Town (capital)

The provincial economy is driven by finance, real estate and business services (25.4%), followed by manufacturing (17.6%) and wholesale and retail trade, hotels and restaurants (14.5%). Mining and quarrying contribute the least (0.3%).

The Western Cape's economy is based on tourism, textiles, wine (the province boasts some of the best wine farms and wine routes in the world), farming and commerce. The main insurance companies are based in this province.

Northern Cape

Area: 36 830 square kilometres
Population: 902 300
Main cities: Kimberley (capital) and Upington

The provincial economy is driven by mining and quarrying (25.8%), finance, real estate and business services (11.9%) and general government services (11.0%). Construction contributes the least (1.2%).

Free State

Area: 129 480 square kilometres
Population: 2 953 100
Main cities: Bloemfontein (capital) and Welkom

The provincial economy is driven by finance, real estate and business services (15.8%), general government services (13.6%) and manufacturing (12.6%). Construction contributes the least (1.2%).

Free State is an important mining province. It has rich natural resources, good labour and access to two main rivers.

KwaZulu-Natal

Area: 92 100 square kilometres
Population: 9 651 100
Main cities: Pietermaritzburg (capital), Durban, Ulundi, Richards Bay and Newcastle. Durban is SA's busiest port.

The provincial economy is driven by manufacturing (21.8%), finance, real estate and business services (15.9%) wholesale and retail trade, leisure and travel (12.7%). Mining and quarrying contribute the least (1.6%).

North West

Area: 116 320 square kilometres
Population: 3 823 900
Main cities: Mafikeng (capital), Klerksdorp, Mmabatho, Potchefstroom and Rustenburg

The provincial economy is driven by mining and quarrying (24.9%) followed by finance, real estate and business services (13.6%) and the general government services sector (12.1)%. The electricity, gas and water industry contribute the least (1.0%).

This province boasts international standard casinos such as Sun City and the Lost City, which are favourite destinations for international and national tourists.

Limpopo

Area: 123 900 square kilometres
Population: 5 653 000
Main cities: Polokwane (capital), Mokopane, Tzaneen and Phalaborwa

The provincial economy is driven primarily by mining and quarrying (21.7%), and general government services (17.3%), followed by finance, real estate and business services (15.6%). The construction industry contributes the least (1.4%).

The province is a gateway to the Kruger National Park, the largest game reserve in SA and a popular tourist destination for South African and international tourists.

Mpumalanga

Area: 79 490 square kilometres
Population: 3 219 900
Main cities: Nelspruit (capital), Witbank, Middelburg and Ermelo

Mpumalanga focuses on mining and manufacturing and produces 85% of the country's coal.
The provincial economy is driven by manufacturing (18.6%), followed by mining and quarrying (17.9%), then finance, real estate and business services (11.4%). The construction industry contributes the least (1.4%).

Regulatory environment

SA has three spheres of government, namely the legislature, the executive and the judiciary.

The legislative authority consists of Parliament, which has two houses, the National Assembly and the National Council of Provinces.

Legal systems

SA's legal system is based on Roman Dutch law with an influence of English common law. The judiciary is independent of the executive and the legislative authority but there is inter-dependence between the three spheres (i.e. the executive, the judiciary and the legislature).

Financial services

Businesses offering financial services are subject to a regulatory system established by the Financial Advisory and Intermediary Services Act No 37 of 2002 (FAIS). The purpose of FAIS is to regulate the rendering of financial advisory and intermediary services and to provide for matters incidental thereto.

Money laundering

The Financial Intelligence Centre Act No 38 of 2001 (FICA) was enacted to establish a Financial Intelligence Centre and a Money Laundering Advisory Council with the aim of combating money laundering activities and the financing of terrorist and related activities, as well as to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities. FICA also served to amend the Prevention of Organised Crime Act No 121 of 1998, to introduce the Promotion of Access to Information Act No 2 of 2000, and to provide for matters connected therewith.

The regulated sector requires disclosure of knowledge or suspicion of money laundering to law-enforcement agencies worldwide. Appropriate advice must be sought to understand the provisions of FICA.

Competition

Competition in SA is regulated by the Competition Act No 89 of 1998, which provides for the establishment of:

- A Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers;

- A Competition Tribunal responsible for adjudicating such matters; and
- A Competition Appeal Court (for related matters).

Exchange controls

- The exchange controls in SA are monitored by the South African Reserve Bank (SARB), which is regulated by the South African Reserve Bank Act No 90 of 1989.
- For exchange control purposes, a non-resident shareholder is a foreign company, entity or person that has never been resident in SA and an emigrant shareholder is a former resident of SA.

Remittance of dividends, profits and income from SA quoted companies

- In the case of a non-resident shareholder a dividend is remittable.
- In the case of an emigrant shareholder:
    - A dividend declared out of income earned from normal trading activities subsequent to the date of emigration is remittable; and
    - A dividend declared out of capital gain or out of income earned from normal trading activities prior to the date of emigration remains subject to the blocking procedure.

Non-quoted companies and other business entities

- In the case of a non-resident shareholder, dividend distributions are remittable in proportion to the shareholding percentages.
- An entity in SA wishing to transfer a dividend or income distribution to a non-resident shareholder is required to produce an auditor's report which confirms that the amount to be transferred arises from realised/earned profits on investments owned by non-residents.
- An entity in SA wishing to transfer a dividend, profit or income to an emigrant shareholder is required to produce an auditor's report as well as a representation letter, which must be in the prescribed form. The letter must be signed by a director or senior officer of the paying entity and must state the following:
    - A dividend or income distribution is payable from income of the ordinary trading activities of the entity.

- No portion of the net income after tax out of which dividends or income distribution has been declared arises from surpluses as a result of the revaluation of assets other than trading assets.

- The net remittable income has been earned since the date of emigration.

Directors' fees and non-residents

- Authorised dealers may authorise the transfer to a non-resident director, 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.

  - The remitting company shows that the beneficiary is permanently domiciled outside the common monetary area (CMA), consisting of SA, Lesotho, Namibia and Swaziland.

Legal fees for non-residents

- Authorised dealers may approve applications for the payment of amounts due by SA residents for solicitors' and counsels' fees and court costs incurred in countries outside the CMA.

Payments by other foreign nationals who have taken up temporary residence in SA

- Foreign nationals are, for exchange control purposes, natural persons of countries outside the CMA who have taken up temporary residence in SA.

- On taking up temporary residence in SA, foreign nationals must declare possession of any foreign assets to an authorised dealer.

- Foreign nationals must also provide an undertaking to the effect that such assets will not be placed at the disposal of a third party normally resident in South Africa.

- A foreign national will also be required to provide an authorised dealer with an original and valid permit issued by the Department of Home Affairs substantiating his/her temporary residence in SA.

- Authorised dealers may permit foreign nationals to:

  - Conduct their banking on a resident basis;

  - Deal with their foreign assets in any manner;

- Conduct resident as well as non-resident banking accounts; and

- Transfer abroad funds accumulated during their stay in SA, provided that the individual can substantiate the source of such funds and that the value of such funds is reasonable in relation to their income generating activities in SA during that period.

Business structures

Companies

Companies may be public or private and are the most common investment vehicles for foreign investors operating in South Africa. They exist as separate legal entities from their shareholders and/or members. No distinction is made in the Companies Act No 61 of 1973 between companies that are locally owned and those that are foreign owned. Once formed, a company has an unlimited lifespan. Both public and private companies must be incorporated and registered with the Registrar of Companies. Companies incorporated in SA must have a registered office and maintain certain statutory and accounting records in SA. If the accounting records are maintained outside SA, the company must receive such financial information and returns as will enable the statutory financial statements to be prepared. Approval of the name of the company must be obtained from the Registrar of Companies before incorporation (the choice of name is restricted by certain criteria, such as that it cannot already exist as a company name).

Public companies may offer their shares for sale to the public, although they need not be listed on the stock exchange for the public to hold an interest in the business. Their characteristics are that the number of shareholders is unlimited, there are no restrictions on the transfer of their shares and they must file with the Registrar of Companies, a copy of their annual financial statements which are available for public inspection. Private companies, on the other hand, may not offer their shares for sale to the public. The right of transfer of their shares is restricted and the number of members is limited to 50. Private companies are not required to file their annual financial statements with the Registrar of Companies and they are thus not available to the general public. They must include the word “Proprietary” or (Pty) at the end of the registered name immediately before the word “Limited” or “Ltd”.

In both types of companies, an audit by a registered accountant and auditor is obligatory.

The Companies Amended Act No 37 of 1999 makes provision for:

- A company to acquire its own shares under certain circumstances, thereby providing a mechanism to restructure the company's capital and unlock shareholder value;
- Disclosure of a beneficial interest in securities to enable companies to ascertain who its shareholders are; and
- The mandatory appointment of a company secretary for all public companies, excluding a share block company.

For the company to buy back its own shares, the following conditions must be met:

- The company's articles of association must permit share buybacks and a special resolution must be passed by the shareholders authorising the buyback;
- The company should be solvent and liquid (otherwise the directors will be jointly and severally responsible); and
- Following the buyback, the company's share capital should not consist wholly of redeemable shares.

Registration requirements

All required registration forms may be purchased from a stationer dealing in statutory forms.

To reserve a name, a CM5 application form, bearing revenue stamps, must be submitted to the offices of the Registrar of Companies. To save time and costs, it is recommended that three to four alternative names be furnished in order of preference. A preliminary search can be conducted on the worldwide web. Following approval, the name will be reserved for a period of two months. Within this period, the documents for incorporation should be submitted. An extension of one month may be granted with the submission of the CM6 form, stamped in revenue stamps. The office of the Registrar of Companies must receive all applications for extension before the end of the first two-month period.

Standard versions of a memorandum and articles of association are included in the Companies Act. A company may choose to submit its own version. However, this retards the approval process, as it necessitates close examination by the office of the Registrar of Companies.

All companies must have an independent auditor to produce annual financial statements. At the time of incorporation, the auditor is required to sign an acceptance of office.

A registration application must be submitted by hand to the office of the Registrar of Companies in Pretoria. If no errors or omissions are made, the application will be processed in three to five business days. A complete application includes:

- Copy of approved CM5;
- Power of attorney (if attorney is used or more than one subscriber exists);
- CM22 (notice of postal address and registered office address), in duplicate;
- Memorandum and articles of association, in duplicate (one copy bound in book form and certified by a notary public);
- CM1 certificate of incorporation;
- CM2 (first page of memorandum of association), stamped with a minimum registration fee of R350, plus R5 per R1 000 of share capital or part thereof and/or R5 per 1 000 shares if no-par-value shares;
- CM44c (signature page for subscribers);
- CM46 (certified to commence business);
- CM47 for each director;
- CM29 (return of register of directors);
- CM27 (notice of company secretary) if a public company; and
- CM31 (notice of appointment of auditor) in duplicate.

Close corporations

A close corporation is a common form of business entity for smaller businesses and is created under the Close Corporations Act No 69 of 1984. A close corporation does not have directors, its business being conducted by the members, who must be natural persons (i.e. individuals) or trustees of qualifying trusts. A close corporation cannot, therefore, be owned by a company, another close corporation or an inter vivos trust in which an artificial person is a beneficiary. In a close corporation, the members have the rights and obligations of both shareholders and directors, and consequently, ownership and management of the corporation are not separated. Close corporations may have up to ten members. In general, few formal requirements are imposed on close corporations.

The capital of a close corporation is called a "contribution". A close corporation is not subject to the stringent capital maintenance rules applicable to share capital in companies. The interest of a member of a close corporation is represented by a percentage, which is established on registration of the founding statement, and which may be changed by the registration of an amended founding statement.

Members of a close corporation enjoy limited liability, which may be lost if they violate certain provisions of the Close Corporations Act.

Both the Companies Act and the Close Corporations Act allow for the conversion of a company to a close corporation and vice versa. They also provide that the legal entity continues after the conversion.

Reporting requirements for close corporations are not as onerous as for companies. A statutory audit is not required. However, a close corporation must have an accounting officer who must report that the annual financial statements are in agreement with the accounting records.

Registration requirements

Close corporations are required to register with the Registrar of Close Corporations. The reservation of a name is similar to that of a company. No auditors are required for the registration of a close corporation and lawyers are not necessary. The close corporation must appoint an accounting officer.

Due to the great number of applications received by the office of the Registrar of Close Corporations – up to 650 daily – approval takes five business days. Applications may be submitted either by mail or by hand and should include the founding statement application, the CK1 form in duplicate and an approved CK7 form, and an original letter of consent from the accounting officer.

Partnerships and sole traders

Partnerships and sole traders are subject to few statutory requirements. Partners and traders generally do not have the protection of limited liability. However, in an *en commandite* partnership (in which not all the names of the partners are disclosed), the undisclosed partners may limit their liability to third parties to the amount of their contributions to the partnership.

Under the Companies Act, any unincorporated company, association or partnership may not consist of more than 20 people, except in the case of certain professional partnerships, where there is no limitation on the number of partners. Registration is not required and there are no statutory reporting requirements, except that, for tax purposes, financial statements must be produced in sufficient detail to enable tax assessments to be made by the South African Revenue Services.

Local branch of a foreign company

With the exception of banking and insurance companies, any foreign company may establish a place of business and carry on its activities in SA without forming a separate locally incorporated company. The establishment of a branch requires registration with the Registrar of Companies as an "external company" under S32 of the Companies Act within 21 days after the establishment of a place of business in SA.

The application requirements to establish a branch include:

- A completed application form;
- A certified copy of the memorandum and articles of association of the company and a certified translation in one of the official languages of SA;
- A notice specifying the registered office and postal address of the company;
- Details of the local manager and secretary of the company as well as details of the other directors and their consent to act in the capacity; and
- A notice of name and address of the person authorised to accept service on behalf of the company.

The legal costs should be lower than for incorporation of a South African company.

A registered office must be established in SA and the company must appoint a South African resident to act as its legal representative. A local auditor must be appointed. Audited financial statements in respect of the South African branch, together with a certified copy of the most recent financial statements prepared under the requirements of its country of incorporation, must be filed with the Registrar of Companies. In certain circumstances, an exemption may be granted in respect of these filing requirements.

Local equity participation

There are no local equity requirements, except for major banking institutions where a local control is required by government policy. However, in the case of business entities with non-resident ownership equal to or greater than 75%, restrictions exist in relation to local borrowing and debt: equity ratios.

Trusts

A trust under South African common law is a contract whereby a donor donates assets to a trustee to be held in trust for the benefit of beneficiaries. A trust is effectively a contract between the donor and the trustee for the benefit of third parties.

A trust is not a legal entity, but is a person as defined for income tax purposes.
There are basically two types of trusts:

- A testamentary trust, which is created in terms of a will; and
- An inter vivos trust, which is created by contract during the lifetime of the creator.

Each type of trust provides two kinds of rights to its beneficiaries:

- Vested rights, which means that either the income or the capital of the trust must be paid to the particular beneficiary; or
- Contingent rights, which means that no particular beneficiary is entitled to any income or capital unless the trustees decide to make a distribution to him or her.

Business finance

Companies must plan properly for any business to succeed. Companies may require professional assistance in raising funds. The South African government and other organisations have done a considerable amount of work in creating avenues for the development and growth of the country's economy through the development of business.

Equity finance

Private equity

This is capital that is contributed to a new or growing business in return for part ownership of the business and a share of the profits.

Typically, private equity or venture capital investors do not want permanent ownership of the business. Such investors will want to "exit" the business within five to seven years by selling the shares they acquired, and will expect a return on investment of at least 35% per year. In other words, if they invest R1 million in the business, they will expect to receive at least R2,75 million when they sell their shares after a period of five years.

In SA, private equity fund managers are very conservative. Investors are usually banks or funds owned by families and individual entrepreneurs.

Loan funding

Micro financing and micro lending

There are a number of non-profit organisations that are active in this field, and which focus on developing entrepreneurs. There are also commercial micro finance businesses that are profit focused. Their interest rates are often very high and their conditions onerous. A government regulator, known as the Micro Finance Regulatory Council, offers borrowers some degree of protection from financial exploitation.

Community Micro Finance Network

The Community Micro Finance Network is an informal grouping of South African not-for-profit institutions primarily committed to alleviating poverty by providing financial services to the poor, particularly the very poor. It includes micro enterprise NGOs, informal savings and credit networks and financial services co-operatives. It is an initiative to facilitate interaction among, and raising awareness about, this specific group of South African institutions.

Small Enterprise Foundation

The micro finance body is working towards poverty eradication by supporting sustainable income generation, job creation and social empowerment.

Khula Micro Credit Outlets

Micro Credit Outlets (MCOs) are established in rural and pre-urban areas where there is a need for micro credit to assist the poor (women in particular) to start or expand their small businesses. Through the MCOs, very small entrepreneurs can raise loans between R350 and R3 500 in groups.

The Nations Trust

The Nations Trust provides start-up business loans to unemployed and underemployed youth (aged between 18 and 35 years) as part of its primary objective of assisting in the establishment of 3 000 sustainable youth businesses within a five-year period. The organisation's target group generally lacks or has a very basic level of business management skill and experience.

Finmark Trust

The objective of the Finmark Trust is to make financial markets work for the poor. It aims to promote and support policy and institutional development towards the objective of increasing access to financial services by the un- and under-banked of Southern Africa.

International training solutions

The Microfinance Capacity Building Programme in Africa (AFCAP) is an initiative that began operating at full strength in January 2000 and is jointly funded by the Consultative Group to Assist the Poorest (CGAP) and the British Department for International Development (DFID).

Micro Finance Regulatory Council

The MFRC regulates the money-lending industry to foster good practice in the industry and to protect consumers who use the services of micro finance businesses.

The Micro Finance Skills Project

Bankseta's Micro Finance Skills Project is proving successful in providing targeted skills training and development to the micro lending sector. Ongoing project review and research means the training programme remains focused on meeting the needs of the learners. There is no charge for the training, which takes place in Gauteng, KwaZulu-Natal, Western Cape, Eastern Cape, Mpumalanga, Limpopo, Free State, Northern Cape and North West. A minimum of eight learners is required for a workshop to be run successfully.

Loans

In general, banks in SA offer three main loan products – overdrafts, term loans and mortgages, although these products may be given different names for marketing purposes. In addition, SA's banks have subsidiaries or partners who can provide assistance with finance (such as leasing and hire purchase).

Some of the banks also offer factoring as a service, which entails advancing a proportion of the money owed by the debtors. There are also special equity funds set up by the banks to invest in small black owned businesses that do not have enough collateral for a term loan (for instance, First National Bank's Progress Fund and Absa's Incubator Fund).

Overdraft

An overdraft facility provides a flexible borrowing arrangement up to an agreed maximum, which allows a borrower to spend more money from his/her cheque account than his/her balance. The purpose of this facility is to help the borrower with his/her working capital needs – in case, for instance, the borrower needs to pay salaries but is still waiting for payment from his/her most recent job.

The interest rate charged on an overdraft is normally higher than on a term loan, but in monetary terms it is often cheaper because interest is only payable on the outstanding balance. A borrower will pay interest, an arrangement fee and sometimes an annual renewal fee. The borrower may have to provide personal assets as security.

Term loans

A term loan, as the name suggests, is a loan repayable over a fixed term. The term is usually geared to the expected life of the asset. Short-term loans apply to short-term assets like computers and cars, while long-term loans apply to items like machine tools. Interest may be fixed for a number of years (sometimes the entire term) or else may be linked to the base rate. The traditional advantage of a term loan (other than cost) has been that, provided a borrower adheres to the loan agreement, it cannot be recalled. Borrowers should check this with their banks when applying for a term loan, to ensure that there are no surprises in the small print.

It is quite usual for a business to have both a term loan and an overdraft. Even if a borrower does not need a large loan, it makes sense (if his/her bank is willing) to borrow at least some of the start-up capital from the bank, as this will help him/her build a track record with the bank – provided the loan is paid back in accordance with his/her agreement. This will help him/her the next time he/she is looking for a loan, perhaps to expand his/her business.

Mortgage loans

Each commercial bank applies its own policy with regard to granting a mortgage over a commercial property. The factors that are taken into consideration include the value of the buildings, based on a professional valuation undertaken by the bank, and where they are situated. Normally, South African banks lend about 70% of the value of a commercial property, but this can vary from one bank to another.

Unsecured loans

The most common way for a business to finance its working capital is through an overdraft facility. A commercial bank might be prepared to grant this on an unsecured basis depending on the financial standing of the company, taking into account matters such as whether the business has sufficient assets and cash generation ability to service the overdraft. Alternatively, the bank might require security for the loan in the form of, for example, personal guarantees by the directors, physical security such as a bond over an unbonded property, or a cession of the book debts of the company.

Discounting and factoring

South African banks are prepared to discount foreign bills, trade bills, bankers' acceptances or promissory notes. There are also a number of institutions, many of which are associated with the banks that undertake factoring, that will advance money against the borrower's debtors' book. Normally, factoring gives a better rate than a normal bank cession over a debtors' book, but this also depends on the quality of the book.

Corporate finance

The commercial divisions of the major banks offer standard lending products to medium-sized companies. There are also corporate finance divisions in the major banks, or specialised corporate finance institutions, which offer tailor-made solutions for larger or more complex needs, such as the financing requirements of multinationals or listed companies.

Export finance and guarantees

Commercial banks will assist with export credits, guarantees and letters of credit. The Credit Guarantee Insurance Corporation of South Africa administers an export credit insurance scheme on behalf of the Department of Trade and Industry (DTI).

Government intervention

The state-owned Industrial Development Corporation (IDC) provides financing to the private sector to facilitate commercially sustainable industrial development and innovation to the benefit of SA and the region. Finance is in the form of equity and medium-term loan finance. Interest rates are competitive and risk-related and are based on the prime bank overdraft rate.

The IDC offers specific financing products, including:

- Bridging finance

  This is available to entrepreneurs who have secured firm contracts except for construction contracts with government and/or the private sector and who have short-term financing needs.

- Financing of empowerment

  This is available to emerging industrialists/entrepreneurs who wish to acquire a stake in formal business by way of management buys-ins or buy-outs, leveraged buy-outs or strategic equity partnerships.

- Financing for small- and medium-sized mining and beneficiation

  This is aimed at small- and medium-sized mining and beneficiation activities and jewellery manufacturing activities.

- Financing for the development of the techno industry

  This is aimed at entrepreneurs in the IT, telecommunication, electronic and electrical industries wanting to develop or expand their businesses.

- Financing for the development of agro-industries

  This is for entrepreneurs in the agricultural, food, beverage and marine sectors wanting to expand and develop their businesses.

- Financing for the expansion of the manufacturing sector

  This is aimed at entrepreneurs wishing to develop or expand their manufacturing businesses and create new or additional capacity.

- Wholesale finance

  This is for intermediaries looking for wholesale funding to lend to individual entrepreneurs.

- Financing for the export of capital goods

  This is available to manufacturers and providers of exported capital goods or services. The aim is to provide competitive US dollar and rand financing to prospective foreign buyers of equipment.

- Import credit facilities

  This is for local importers of capital services requiring medium- to long-term import credit facilities.

- Short-term trade finance facilities

  This is for exporters looking for short-term working capital facilities to help them facilitate export orders.

- Project finance

  This is aimed at larger projects in the metals, petro and chemical, manufacturing, agricultural, minerals and mining, and energy market segments.

Financial reporting and accounting

Statutory accounting requirements and principles

South African law requires companies to keep proper accounting records in one of SA's official languages for each financial period.

There is no specific legal requirement for sole proprietors to keep accounting records. However, tax legislation requires the retention of records used in the completion of tax returns. Partnerships must keep records of all receipts and payments and all sales and purchases of goods.

Tax legislation requires that accounting records be kept for at least 15 years.

Preparation of accounts

The directors of a company must prepare a balance sheet, income statement and cash flow statement for each financial year. The annual report must include a directors' report. If a company has one or more subsidiaries, it must also prepare group annual financial statements.

The Companies Act prescribes the form and content of the balance sheet, income statement and additional information to be provided by way of notes, such as details of directors' remuneration. Accounts must be prepared in one of SA's official languages.

There is an overriding requirement for the accounts to fairly present the state of affairs and business of the company.

Reporting and accounting requirements

Reporting and accounting requirements are contained in the following references:

- The Companies Act and regulations made under it;
- Accounting standards – South African Statements of Generally Accepted Accounting Practice (SA GAAP);
- International Financial Reporting Standards (IFRS); and
- The Listing Rules issued by JSE Limited (listed companies only).

GAAP

SA GAAP is not defined by law but is considered to encompass all the official material above as well as the accounting practices that are regarded as appropriate by the accounting profession. The Companies Act requires directors to produce accounts that fairly present the state of affairs and business of the company. SA GAAP must normally be adopted in order to give a true and fair view.

IFRS

For accounting periods beginning on or after 1 January 2005, companies must adopt IFRS in their annual financial statements.

Abbreviated accounts

The Companies Act does not provide for the preparation of abbreviated accounts.

Audit requirements

All companies must have their accounts audited

The auditor must examine the accounts and accounting records of the company and prepare a report for the company's members. The report, included in the published report and accounts, must contain an opinion on whether or not the company's annual accounts have been properly prepared in accordance with the Companies Act and whether or not they fairly present the state of affairs and business of the company. The auditor will consider whether or not the information given in the directors' report is consistent with the annual financialstatements and accompanying notes. If, in the auditor's opinion, the accounts or directors' report do not comply with the Companies Act, the auditor will qualify this in the report.

Who can act as auditor?

The eligibility for acting as auditor is set out in the Companies Act. Eligibility is also governed by ethical considerations. An auditor must be independent of the company. Therefore a person cannot be appointed as an auditor if he/she is:

- A director, officer or employee of the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A director, officer or employee of any company performing secretarial work for the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A partner or employer or employee of a director or an officer of the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A person who, personally, or whose partner or employee habitually or regularly performs the duties of secretary or bookkeeper of the company, its holding company, subsidiary or fellow subsidiary of such a company;
- A person who at any time during the financial year was a director or officer of the company, its holding company, subsidiary or fellow subsidiary of such a company; and
- A person not qualified to act as such under the Public Accountants' and Auditors' Act.

Other services that an auditor may provide

An auditor may provide secretarial and bookkeeping services to a private company, no shares of which are held by a public company, subject to the approval of all the shareholders in writing and the disclosure of this in the auditor's report.

Taxation

Overview of taxes in SA

The system of taxation in SA is based on a combination of direct and indirect taxation. Direct taxes are imposed on persons (natural and legal "persons", being individuals, trusts, companies, close corporations and deceased estates) and include donations tax, estate duty, capital gains tax and secondary tax on companies. Indirect taxes are levied on transactions, for example value added tax, which is a tax on sales, customs and excise duties and stamp duties.

SA's income tax is based on residence. This means that residents are, subject to certain exclusions, taxed on their worldwide income, irrespective of whether that income was earned outside SA. Non-residents are taxed on their income from sources within, or deemed to be within SA. Foreign taxes are credited against SA tax payable on foreign income, and SA has concluded double taxation agreements with many other countries.

A resident is defined in the Income Tax Act as any:

- Natural person who is ordinarily resident in SA; or
- A natural person who is not ordinarily resident, but who is physically present in SA for a period or periods exceeding: 91 days in aggregate during the year of assessment under consideration; 91 days in aggregate during each of the five years of assessment preceding the year of assessment under consideration; and 915 days in aggregate during the five preceding years of assessment.; or
- Juristic persons i.e. a company, corporation or trust that is incorporated, established, or formed in the Republic or which has its place of effective management in SA.

A resident excludes:

- A natural person, who was previously regarded as a resident, if physically absent from SA for a continuous period of at least 330 days from the date of departure;
- A natural person who is deemed to be exclusively a resident of another country for the purposes of the application of any double taxation agreement;
- Residents earning employment income abroad;
- Foreign pension payments;
- Non-remissible amounts; and
- Certain portfolios of a collective investment scheme.

Due to the fact that tax systems differ between states, it is possible that double taxation may occur in the collection of taxes between two states. The result of double taxation would be negative on any economy as it would result in a deterrent to investment and business. To encourage trading between countries, SA has entered into a number of double taxation agreements to prevent the double taxation of income of South African as well as foreign taxpayers.

Administration

The Minister of Finance releases an annual budget for SA during February each year. In the budget the expenditure of government for the following year is outlined as well as any changes to the tax system, or tax breaks.

The assessment and collection of taxes is administered by the South Africa Revenue Services (SARS), which was established by legislation to collect revenue and to ensure compliance with tax law. SARS is an administratively autonomous organ of state, which is outside the public service, but which falls within the public administration. Therefore, although the National Treasury outlines the tax regime, it is actually managed by SARS.

The main functions of SARS are to:

- Collect and administer all national taxes, duties and levies;
- Collect revenue that may be imposed under any other obligation;
- Protect against illegal importation of goods; and
- Facilitate trade.

Income tax

The tax system in SA is governed in terms of the Income Tax Act No 58 of 1962 (sometimes referred to as the ITA). The country has a residence-based system, which means that residents are, subject to certain exclusions, taxed on their worldwide income. Non-residents are taxed on their income from a South African source. Tax is levied on taxable income, which is gross income less allowable deductions. There are four forms of tax regulated in terms of the ITA, namely normal tax, secondary tax on companies, donations tax and withholding tax. Other forms of taxes are discussed below:

- Companies are taxed at a rate of 28%. In addition to this, secondary tax (STC) is levied on companies at a rate of 12.5% on all income distributed by way of dividends.

- This rate will reduce to 10% in respect of dividends declared on or after 1 October 2007. STC will be replaced with a withholding tax on dividends in 2008.

- Small-business corporations (a close corporation or a private company, with only natural persons as members or shareholders) whose gross income does not exceed R14 million (2006: R6 million) in a year of assessment benefit from a graduated tax rate of 0% on the first R43 000 taxable income, 10% from R43 001 to R300 000 taxable income and R25 700 + 29% in excess of R300 001 taxable income. Certain investment expenditure can be written off in the year in which it is incurred.

Note: These rates are applicable for the 2008 financial year. Current rates are included in the Supplementary Information Section of this document.

Normal tax

Every year normal tax for individuals is calculated for the period known as “the year of assessment”, which commences on 1 March each year and concludes on the last day of February of the following year. For a company the year of assessment will be the same as its financial year.

Tax rates

The rate of tax applicable to an individual depends on the taxable income of the person. An individual’s taxable income is the gross income, less any exempt income. Deductions and allowances are subtracted from income while any taxable capital gains are added to it. The final sum is the taxable income of the person concerned. The table of prevailing rates is set out in the supplementary information appended to this document.

For income tax purposes, a company is treated as a person. Normal tax is payable by South African companies on their worldwide taxable income, at 29%. This tax is payable by public and private companies and close corporations.

Note: These rates are applicable for the 2008 financial year. Current rates are included in the Supplementary Information Section of this document.

Donations tax

Donations tax is levied on the transfer of assets and is aimed at imposing a tax on persons who donate their assets to others so as to avoid liability for income tax or estate duty. Donations tax is levied at 20% of the value of any property disposed of gratuitously by a South African resident or domestic company, excluding donations exempt from the tax. The tax is payable within three months of the donation taking effect.

Exempt donations include:

- Donations by natural persons up to R100 000 per annum after 1 March 2007 (previously R35 000);
- Donations by companies not considered as public companies up to R10 000 per annum after 1 March 2002;
- Donations between spouses not separated;
- Bona fide maintenance payments;
- Donations to Public Benefit Organisations;
- Donations where the donee will not benefit until the death of the donor;
- Donations made by companies that are recognised as public companies for tax purposes;
- Donations cancelled within six months of the effective date;
- Property disposed of under and in pursuance of any trust; and
- Donations between companies forming part of the same group of companies.

Withholding taxes

Certain payments made by South African residents to non-residents are subject to withholding taxes. There are three main withholding taxes, namely, withholding taxes on royalties, withholding taxes on payments for fixed property acquired and withholding taxes on non-resident entertainers and sports persons.

Royalties

Royalties paid to non-residents are subject to a withholding tax of 12%. The amount of tax may differ where double taxation agreements exist between SA and the non-resident's country. Double taxation agreements provide relief in respect of royalties and know-how withholding taxes. SA has no withholding tax on dividends or interest. Residents require the approval of both the Department of Trade and Industry and exchange control for payments of a royalty to a non-resident.

Immovable property

Where a person acquires immovable/fixed property situated within the Republic from a non-resident, the purchaser must withhold an amount, to be determined in relation to the property sold, which must be paid over to SARS. For a natural person the withholding tax is 5%. For a company and trust, the withholding tax is 8%.

Note: These rates are applicable for the 2008 financial year. Current rates are included in the Supplementary Information Section of this document.

Entertainers and sports persons

There is a withholding tax on any amount received by or accruing to a non-resident entertainer or sports person. The tax is final tax. It does not apply to a person who is an employer of a South African resident, or any person who is physically present in SA for periods exceeding 183 days in any 12-month period.

Secondary tax on companies (STC)

STC is a tax on dividends which have been declared and is payable by the company (which is considered a resident of SA), at 12.5%. This rate reduces to 10% in respect of dividends declared on or after 1 October 2007. The reason for the imposition of this tax is to discourage companies from declaring dividends. In this way, profits are retained by the companies. STC is payable by the company in addition to the normal tax imposed on companies. Dividends received can be set off against the dividend declared and STC is payable on the net dividend. STC will be replaced with a withholding tax on dividends in 2008.

Note: These rates are applicable for the 2008 financial year. Current rates are included in the Supplementary Information Section of this document.

Branch profits tax

Where a South African resident company has a branch in another country through which it trades, that branch will be regarded as a South African company trading in that foreign country. The South African company will be subject to tax on the income of the branch. This branch profits tax is currently 33%.

SITE, PAYE and provisional tax

Employers are required to withhold employees' tax from their employees and to pay such employees' tax over to SARS on behalf of the employee. The amount of tax payable by each employee is calculated in terms of tables provided by SARS (related to income received by the employee). Employees' tax is subject to either Standard Income Tax on Employees (SITE) or Pay as you Earn (PAYE). These payments are considered to be advance payments of normal tax payable by an employee and are usually deducted on a monthly basis.

SITE excludes individuals who earn less than the prescribed limit from submitting assessments. Employers are therefore responsible for ensuring that an employee who earns below the prescribed limit pays over the correct tax to SARS. SITE is calculated on earnings up to the prescribed limit and employees earning over the prescribed limit are required to submit tax returns and have assessments on their income. Where the remuneration exceeds the prescribed limit in terms of SITE, the employee will, in addition, be subject to PAYE.

Where a taxpayer earns income other than that due to him as remuneration, he may be liable for advance payments of normal tax known as provisional tax. Provisional tax is generally applicable to companies, directors of private companies (being residents), members of close corporations (being residents) and persons who derive income that is not remuneration.

Capital gains tax

Capital gains tax (CGT) has been applicable in SA since October 2001 when it became part of the Income Tax Act. CGT is a tax on capital gains made on the disposal (or deemed disposal) of assets and applies to a resident's worldwide assets and to a non-resident's immovable property or assets of a permanent establishment in the Republic. Disposal for the purposes of CGT includes, but is not limited to, any event, act, forbearance or operation of law that results in the creation, variation, transfer or extinction of an asset. An example of a deemed disposal is emigration.

CGT also affects assets acquired prior to October 2001 and disposed of after 1 October 2001. In such a case, the gain is calculated as the gain after this date.

Value added tax

Value added tax (VAT), introduced by the Value Added Tax Act No 89 of 1991, is a tax on sales and is also levied on all imports of goods, unless specifically excluded by the VAT Act.

The VAT system distinguishes between three types of supply:

- Standard-rated supplies – supplies of goods and services subject to the VAT rate at the time of supply (currently 14%);

- Exempt supplies – supplies of certain services not subject to VAT; and
- Zero-rated supplies – supplies of certain goods or services subject to VAT at zero percent.

Any person (individual, company, trust, partnership or an estate of a deceased or insolvent person) who carries on an enterprise must register as a vendor if its turnover (value of taxable supplies which are standard- and zero-rated) during a twelve-month period exceeds R300 000. A vendor is able to claim a deduction of input tax levied on him/her from output tax charged by him/her when he/she submits a VAT return. Input tax is defined in the VAT Act as a tax charged and payable by:

- A supplier on the supply of goods or services made by that supplier to the vendor; or
- The vendor on importation of goods by him (subject to import duty).

Customs duty and excise duty

Where goods are imported into or exported from South Africa, customs duties are levied on the importer or exporter. Both customs duties and VAT are payable on all goods purchased abroad and brought into the Republic.

The Southern African Customs Union (SACU) agreement was entered into so as to facilitate trade between SA and its neigbours – Botswana, Lesotho, Namibia and Swaziland. These five countries apply the same customs and excise legislation and duties on imported and locally manufactured goods, as well as the same import duties on imported goods.

Certain locally manufactured goods and their imported equivalents are subject to excise duty – notably tobacco and liquor, and there is an ad valorem duty on cosmetics, televisions, audio equipment and motor vehicles. Relief is available on specific farming, forestry and manufacturing activities.

Estate duty

Estate duty is a duty on the transfer of wealth, payable on the death of a person, and is based on the value of the deceased's assets at his/her date of death. The duty is levied at a flat rate of 20% and is calculated on the dutiable amount of the estate after deducting the exemption from estate duty (currently R3 500 000) of the net value of the deceased's estate. The estate of persons who died prior to 1 March 2006 was exempt up to R2 500 000 only.

The estate consists of all property including deemed property (e.g.life insurance policies and pension fund payments). Bequests to a surviving spouse are exempt from estate duty. Where the deceased is a South African resident, estate duty is applicable to property regardless of its source. Non-residents are only liable for estate duty in terms of property located in SA.

Note: These rates are applicable for the 2008 financial year. Current rates are included in the Supplementary Information Section of this document.

Other taxes

Stamp duty

Stamp duty is an indirect tax that is charged on instruments as defined in the Stamp Duties Act No 77 of 1968. The taxpayer is obliged to determine whether stamp duty is payable on the instrument, and may be liable for interest and penalties on late payment. An instrument is subject to stamp duty if that instrument is executed in SA or outside SA and relates to the transfer or hypothecation of property situated in SA or to any matter or thing to be performed or done in SA.

Transfer duty

Transfer duty is imposed on the transfer of immovable property. Graduated rates apply where natural persons purchase the property.

Transfer duty is payable by companies, close corporations or trusts at a flat rate of 8% on the full purchase consideration. No transfer duty is chargeable if the transaction is subject to VAT. Where a registered vendor purchases property from a non-vendor, the VAT notional input tax credit is limited to the quantum of transfer duty payable. A notional input tax credit is only claimable to the extent to which the purchase price has been paid.

Uncertified securities tax

Uncertified securities tax is levied, at that rate in respect of the issue of, and every change in beneficial ownership in, any securities, to the value of 0.25 percent of the taxable amount of such securities.

Fringe benefits tax

This is a tax on any cash equivalent of taxable benefits granted to employees. The determined value for the fringe benefit is the cash cost excluding VAT. Examples of taxable benefits are the use of a company-owned vehicle, medical aid contributions, holiday accommodation, low interest/interest-free loans, subsistence allowances, long-service awards and residential accommodation supplied by the employer.

Taxation of property/land

Sale of property/land

Where a resident's property is sold, the sale is subject to transfer duty. Should the seller be a VAT vendor, the sale will be subject to VAT at the standard rate. If the seller is found to be dealing in land, he/she will be taxed on the profits and may not raise a capital argument.

Rental income/leasing

In terms of SA GAAP, a lease is defined either as an operating lease or as a finance lease and will be treated as the asset of the lessee.

In terms of the Income Tax Act certain assets which are subject to both a finance lease and an operating lease are treated as the assets of the lessor, and therefore, the lessor, where appropriate, will claim the tax allowances in terms of s11(e) or 12.

The rental derived from the use of the asset is deducted by the lessee in terms of s11(a) (in the production of income) and will be included in the lessor's gross income.

Building allowances – industrial buildings

There are certain allowances granted in respect of the cost of certain buildings that are used in the course of the taxpayer's trade. The allowance differs according to the year of commencement of building improvements.

The building must be used wholly or mainly for the purpose of carrying on the taxpayer's trade during the year. Where the property is leased, the lessor may claim the allowance if the tenant uses the building wholly or mainly for the purpose of carrying on its trade during that year.

Improvements or building construction that is effected within the specified urban development zones may entitle the taxpayer to an allowance, subject to compliance with certain requirements.

Taxation of farming income

The Income Tax Act does not define farming income. However there are several cases where the requirements should include an intention to farm and a reasonable prospect of profit.

Farming income is that which is derived from pastoral, agricultural or other farming activities. Farmers who are not companies are also allowed to average their farming income in determining their tax liability.

A farmer may elect to be taxed in terms of a rating formula as his/her income may fluctuate from year to year. Should the farmer make an election, he/she will be taxed on his/her average taxable income in the current and preceding four years. It must be borne in mind that this formula will be binding in future years and he/she will not be permitted to make use of the provisions relating to government livestock reduction schemes, rating formula for plantation farmers and provisions relating to sugar cane farmers.

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

- Expenditure which is not restricted to taxable income from farming, eg:
  - Eradication of noxious plants and prevention of soil erosion.
- Expenditure which is restricted to taxable income from farming, eg:
  - Dipping tanks, building of roads and bridges for farming operations;
  - Dams, irrigation schemes, boreholes, pumping, plants and fences;
  - Additions, erections of, extensions and improvements to farm buildings;
  - Costs of preparing the land and the planting of trees, shrubs and perennial plants; and
  - Carrying of electrical power from main power lines to farm machinery and equipment.

The excess expenditure over taxable income from farming is carried forward to the next year of assessment. Machinery, implements, utensils and articles for farming purposes are written off over a three-year period on a 50:30:20 basis.

Permanent structures

An allowance has been introduced to encourage the development of infrastructure. This allowance applies to new and unused structures that are used directly by the owner in the production of his/her income and in the carrying on of his/her sole business in the transportation of persons, goods, things or natural oils or refined by-products of such natural oils, or the transmission of electricity or any telecommunication signal. The allowance only applies if the structures were contracted after 28 February 2000.

A 20-year tax write-off for newly constructed or upgraded commercial buildings is being introduced in the 2008 financial year.

Allowances for plant, machinery and equipment used in manufacture

Where a taxpayer purchases equipment that is used in a process of manufacture, such equipment may be written off. It is not allowed as a deduction under s11(a) as it is a capital expenditure.

In the case of new and unused plant and machinery, accelerated allowances are brought into use.

Taxation of non-South African income

Individuals

A resident of SA is subject to tax on all income received or accrued, regardless of its source. A person is considered a resident for tax purposes where he/she is ordinarily resident in SA or where he/she is physically present for a certain period. A person may earn income outside SA, either directly or indirectly, from employment, trading, pensions, trusts, shares, fixed property (rental income), controlled foreign companies or collective investment schemes.

Companies

A company is considered a tax resident if it is incorporated in SA, or if its place of effective management is in SA (i.e. the day-to-day activities are conducted in SA by senior management of the company). Companies may earn income from their subsidiary companies or other branches. A subsidiary company is taxable in its own right in terms of the taxation laws of the country in which it operates. A controlled foreign company (CFC) may be taxed in SA. Where an SA resident company carries on trading through a foreign branch, the SA company will be considered to be trading in the foreign country and will therefore be subject to tax in SA.

Foreign companies

Where a South African resident holds shares in a foreign company, income earned may be dealt with as income arising from either a CFC or a foreign company that is not a CFC.

CFCs

- Where a company is a CFC, the income earned is treated as being attributed to the South African resident in the proportion of the participation rights of the resident in the company to total participation rights of the company. Dividends distributed out of such profits of the foreign company will constitute the gross income of the resident. This receipt may be exempt.

- A CFC means a foreign company where one or more residents hold more than 50% of the total participation and voting rights in that foreign company, whether directly or indirectly. Where a resident and connected persons hold at least 10%, but not more than a qualifying percentage of the participation rights, they may elect that the foreign company is deemed a CFC.

Exemptions from CFCs include:

- The net income of a CFC that is derived from an active bona fide business establishment situated outside SA;

- Income otherwise taxed in SA at normal rates;

- Foreign dividends received by the CFC from another CFC to the extent that the income from which the dividend is declared has already been included in the resident's taxable income; and

- Net income attributable to interest, royalties or similar income payable to the CFC by other foreign companies forming part of the same group of companies.

Foreign dividend income

- With effect from years of assessment commencing on or after 1 June 2004, foreign dividends received from a non-resident company, including deemed dividends, are taxable, unless:

    - The shareholder holds more than 25% of the equity of the distributing company;

    - The distributing company is a listed company and residents hold more than 10% of its equity share capital;

    - The distributing company is a CFC and the dividends do not exceed amounts deemed to be the resident shareholder's income under the CFC rules;

    - The profits from which the dividends were declared are taxable in SA or arose from dividends declared by a resident company;

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

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

Rebate

Where a resident has to include in his/her taxable income any foreign sourced income or capital gain, a proportionate amount of the net income of the CFC, foreign dividends or other amounts attributed in terms of the Income Tax Act, a rebate in respect of any foreign taxes paid or payable in respect of such amount to a foreign government, is allowed. The rebate is limited to the foreign tax payable and may not exceed:

$$\text{Total SA normal tax} \times \frac{\text{Foreign income}}{\text{Total taxable income}}$$

Capital gains

These provisions do not apply to gains where a CFC has made a capital gain (not on a financial instrument or intangible asset) and the gain relates to an asset of the business establishment of the CFC. These provisions also do not apply to gains made by foreign companies that form part of the same group of companies as the CFC.

Carrying on business in SA

Source

A non-resident is a person who is not resident in SA as defined in terms of schedule 1 of the Income Tax Act. A non-resident who carries on business in SA is subject to South African taxation on the profits (from SA sources) of such business. The 'source' can generally be determined by the place at which such business is conducted.

Where a double taxation treaty applies, the profits will only be taxable in SA where they are earned by a permanent establishment of the non-resident located in SA.

The Organisation for Economic Co-Operation and Development (OECD), a model tax treaty, on which many double taxation agreements have been based, defines a permanent establishment as a fixed place of business through which the business of an enterprise is wholly or partly carried on. In terms of Article 5, permanent establishment includes:

- A place of management;
- A branch;
- An office;
- A factory;
- A workshop; and
- A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

SA branches of foreign companies

An external company is a foreign company that has a branch in SA, but its effective place of management is located outside SA. A company will be required to register as an external company and will be bound by the provisions relating to external companies contained in the Companies Act. An external company is subject to tax in SA. STC is payable by any company which is resident in SA. External companies are exempt from STC as they are not incorporated in SA and do not have their effective place of business in SA.

Where a South African resident carries on trading through a foreign branch, the South African company will be considered to be trading in the foreign country. The taxable income of the branch will be taxable in SA subject to s25d, s20 and s20a.

Interest

Interest received by or accrued to any company managed or controlled outside SA is exempt from tax unless such company carries on business in SA (i.e. branches of foreign companies).

Temporary residents

A foreign national who temporarily resides and works in SA will be taxed on his/her remuneration from a South African source. Double taxation agreements may exempt the foreign national's remuneration from South African taxation. The foreign national should not be present in SA for a period exceeding 183 days in a year of assessment and a foreign employer should pay his/her remuneration.

Transfer pricing and thin capitalisation

- Section 31 deals with the determination of taxable income in respect of international transactions. This section provides for transfer pricing as well as thin capitalisation and allows SARS to adjust the price payable in respect of a supply or acquisition of goods or services in terms of any international agreement between connected persons. This section was introduced as an anti-avoidance measure. Section 31 will be applied where the consideration for the goods or services is not market value in the circumstances.

- in terms of thin capitalisation, Section 31 provides that where disproportionately large loans are made to companies in relation to the equity of that company (a 3:1 ratio is applied), SARS may disallow the interest expense on the portion of the loan which it considers to be excessive.

Foreign personnel

Immigration Act

The Immigration Act No 13 of 2002 governs the entry and stay of foreign investors or business in South Africa.

Passport requirements

- Any person who wishes to enter SA must be in possession of a valid passport or emergency travel document. The passport/travel document must contain at least two blank pages and must be valid for a period sufficient to cover the holder's stay in SA.

- Passports must be submitted with all applications, but may not be retained by the Department of Home Affairs.

Work permits

The Director General of Home Affairs (DG) may issue work permits to a foreigner if the foreigner falls within a specific professional category or specific occupational class.

General work permit

A general work permit may be issued by the DG if the prospective employer:

- Satisfies the DG that, despite diligent search, he/she has been unable to employ a person in SA with qualifications or skill and experience equivalent to those of the applicant;

- Produces certification from a chartered accountant (CA) that the terms upon which the foreigner will be employed, including salary and benefits, are not inferior to those prevailing in the market segment for citizens and residents;

- Submits a certificate from a CA setting out the job description and confirming that the position exists and that it is intended to be filled by such foreigner.

The applicant must:

- Submit his/her qualifications for evaluation by the South African Qualifications Authority (SAQA);
- Produce the following documents in support of the evaluation:
    - A certified copy of all degree and diploma qualifications;
    - A certified copy of the academic transcripts to the degree and diploma certificates; and
    - Payment of the proceedings fee to SAQA;
- If over the age of 18 years, also submit a police clearance in respect of all countries in which he has resided for a period of longer than one year since his/her eighteenth birthday; and
- Submit proof in the form of certification from a CA or his/her employer that he/she is still employed and confirming the terms and conditions of his/her employment, including a job description.

Intra-company work permit

An intra-company work permit may be issued to a foreigner who is employed abroad by a business operating a South African branch or subsidiary or who is, by reason of his/her employment, required to work in SA for a period not exceeding two years. However, the following requirements should be met:

- A CA acting on behalf of the employer must certify:
    - That the employer needs to employ the foreigner in SA;
    - The job description; and
- The employer must provide an undertaking ensuring that the foreigner complies with the provisions of the Immigration Act.
- The employer must also furnish financial guarantees for deportation and other costs should such foreigner fail to depart when no longer required to stay in SA.

Retired person’s permit

Period

A foreign national who intends to retire in SA must use a retired person’s permit for a period of up to four years.

Requirements

The applicant must be entitled to a pension, or retirement annuity (i.e. retirement income). This retirement income should provide him/her with a minimum income for the rest of his/her life and must originate from his/her country of usual residence.

Proof

The applicant must provide proof of:

- The fact that he/she intends to retire in SA and has the right to a retirement income of at least the prescribed minimum income for the rest of his/her life;
- In the case of temporary or permanent residence:
  - Retirement income of not less than R20 000 per month; or
  - Assets realising a minimum net income of R20 000 per month.

Documentation and security

The applicant must produce:

- Evidence of assets outside SA with a net value of not less than R7.5 million coupled to a once-off evaluation payment to the DG;
- Proof of payment to the Department of Home Affairs of a non-refundable deposit of R75 000 which is payable upon approval of the application;
- Proof of payment to the Department of Home Affairs of a security deposit which is refundable upon the applicant either attaining permanent residence or finally leaving the country;

- A yellow fever vaccination certificate where the applicant intends to travel through a yellow fever endemic area, save for situations where the applicant will be travelling in direct transit through such areas; and

- A police clearance certificate, medical and radiological certificate.

Business permits

- A business permit may be issued by the Director General (DG) to a foreigner intending to establish or invest in, or who has established or invested in, a business in SA.

- An appropriate permit for the duration of the business permit may be issued to the members of such foreigner's immediate family.

- A business permit may be issued to a foreigner provided the DG:

    - Elects to reduce or waive the prescribed financial or capital contribution requirements for the businesses where it is in the national interest, or when so requested by the Department of Trade and Industry; or

    - Undertakes to comply with any relevant registration requirement set out in any law administered by SARS.

The holder of a business permit may not conduct work other than work related to the business in respect of which the permit has been issued.

A business permit may be issued to a foreigner provided he/she invests a prescribed financial or capital contribution in the business or provides evidence that he/she will fulfil the financial or capital contribution requirements within 24 months of the permit being issued.

Corporate permits

A corporate permit may be issued by the DG to a corporate applicant allowing the applicant to employ foreigners after considering the following:

- A certificate issued by a CA stating that foreigners are employed by the applicant on terms and conditions that are not inferior to those applicable to South African employees taking into account collective bargaining agreements;

- An undertaking by the applicant that it will take prescribed measures to ensure that the foreigners employed in terms of the corporate permit will at all times comply with the provisions of the Immigration Act;

- An undertaking that it will immediately notify the DG if it has reason to believe that any foreigner employed by it in SA is no longer in compliance with the provisions of the Immigration Act;

- Financial guarantees in the prescribed amount which have been provided to defray deportation and other costs should the corporate permit be withdrawn or certain foreigners fail to leave SA when no longer subject to corporate permit;

- After consultation with the Departments of Labour and Trade and Industry, the DG shall determine the maximum number of foreigners to be employed in terms of a corporate permit by a corporate applicant;

- A person visibly suffering from or who admits to suffering from infectious, contagious or any other diseases may also be required to produce a medical certificate. Immunisation for yellow fever is a requirement if the journey starts or entails passing through the yellow fever belt of Africa or South America;

- People with HIV or AIDS are not prohibited persons;

- Being very severely ill, from whatever cause, is still a legal reason for prohibition.

Employees

An employee's rights are protected under the Constitution of the Republic of South Africa. The Labour Relations Act No 66 of 1995 and the Basic Conditions of Employment Act No 75 of 1997 apply. Legislation places a burden on employers to comply with the provisions therein. The following are some of the important aspects of an employee's rights:

- Individual and collective bargaining

    - Employment contracts;
    - Dismissals;
    - Discrimination.

- Basic conditions of employment

    - Working conditions;
    - Leave;
    - Working hours.

Tax residence

Taxation in SA has changed from a source-based system to a residence-based taxation. Therefore, an individual's liability to tax in SA is largely dependent on his/her residence. The tests that are applied to determine whether or not a taxpayer is resident in SA are the ordinary residence test and the physical presence test.

Resident

A resident is defined as:

- A natural person who is:
    - Ordinarily resident in SA; or
    - Physically present in SA for a period or periods exceeding:
        - 91 days in aggregate during the year of assessment under consideration;
        - 91 days in aggregate during each of the five years of assessment preceding the year of assessment under consideration; and
        - 915 days in aggregate during the five preceding years of assessment.
- A company or trust that is incorporated, established, formed or which has its place of effective management in SA.

Income tax

The term "non-resident" refers to any person who is not resident in SA as defined. In the case of a person who is not resident in SA, gross income includes all income which is from a South African source or which is deemed to be from a South African source. The provisions of double taxation must be taken into account and appropriate advice must be obtained when dealing with these matters.

Employee benefits

Any benefits provided by an employer in connection with employment are usually taxed in the same way as fringe benefits, although the taxable values vary, according to the benefit provided.

Capital gains tax

CGT applies to disposals of assets on or after 1 October 2001 and therefore is only applicable from that date forward.

Individuals, special trusts and deceased and insolvent estates pay normal income tax on 25% of the capital gains they make, whereas companies, close corporations and ordinary trusts pay normal income tax on 50% of the capital gains they make.

Residents and non-residents are treated differently for CGT purposes. A resident is subject to CGT on the disposal of assets that he/she owns, wherever they are.

On the other hand, only the disposal of the following assets by a non-resident is subject to CGT:

- Fixed property situated in SA;
- Shares in a fixed property company in SA; or
- Assets of a permanent establishment in SA.

Donations tax

Donations tax is a tax on the transfer of assets or wealth for no consideration or inadequate consideration. Donations tax is payable on the value of property disposed of under any donations by a South African resident at a flat rate of 20%, excluding donations exempt from the tax.

Supplementary information

Index

NB: The following information can change on an annual basis. Please refer to our website www.pkf.co.za for updated information.

Tax Rates – Companies

Normal tax

Year of assessment	Rate (%)
1 April 1993 – 31 March 1994	40
1 April 1994 – 31 March 1999	35
1 April 1999 – 31 March 2005	30
1 April 2005 – 31 March 2008	29
1 April 2008 – 31 March 2009	28

Note: Companies qualifying under the (tax) holiday legislation (section 37H) were not subject to tax. The tax holiday ended on 30 September 1999.

Branch profits

Financial year ending on or after	Rate (%)
1 April 1996	40
1 April 1999	35
1 April 2005	34
1 April 2008	33

Secondary tax on income

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

Small business corporations

Very small businesses

A simplified, turnover-based tax system will be implemented for businesses with a turnover up to R1 million per year, for small sole proprietors, partnerships and incorporated businesses.

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

Proposed presumptive tax table for very small businesses

Turnover (R)	Rates of tax
0 - 100 000	0%
100 001 - 300 000	2% of the amount above R100 000
300 001 - 500 000	R4 000 + 4% of the amount above R300 000
500 001 - 750 000	R12 000 + 5,5% of the amount above R500 000
750 001 - 1 000 000	R25 750 + 7,5% of the amount above R750 000

Small business corporations

Years of assessment ending between 1 April 2006 and 31 March 2007

Taxable income (R)	Rate of tax
0 – 40 000	Nil
40 001 - 300 000	10% of the amount over R40 000
300 0001 +	R26 000 + 29% of the amount over R300 000

Years of assessment ending between 1 April 2007 and 31 March 2008

Taxable income (R)	Rate of tax
0 - 43 000	Nil
43 001 - 300 000	10% of the amount over R43 000
300 001 +	R25 700 + 29% of the amount over R300 000

Years of assessment ending between 1 April 2008 and 31 March 2009

Taxable income (R)	Rate of tax
0 - 46 000	Nil
46 001 - 300 000	10% of the amount over R46 000
300 001 +	R25 400 + 28% of the amount over R300 000

Employment entities

Financial years ending in the following periods	Rate (%)
1 April 2002 to 31 March 2003	35
1 April 2003 to 31 March 2004	35
1 April 2004 to 31 March 2005	35
1 April 2005 to 31 March 2008	34
1 April 2008 to 31 March 2009	33

Tax Rates – Individuals

Year of assessment ending 28 February 2009

Taxable income	Rates of tax
R0 – R122 000	18% of each R 1
R122 001 – R195 000	R21 960 plus 25% of the amount over R122 000
R195 001 – R270 000	R40 210 plus 30% of the amount over R195 000
R270 001 – R380 000	R62 710 plus 35% of the amount over R270 000
R380 001 – R490 000	R101 210 plus 38% of the amount over R380 000
R490 001 +	R143 010 plus 40% of the amount over R490 000

Trusts

Years of assessment ending on 28 February 2008 and 2009

Taxable income	Rates of tax
All taxable income	40% of each R1

Capital gains tax

Inclusion- and effective rates	Inclusion rate (%)	Max. effective rate (%)
Individuals and special trusts	25	10
Companies	50	14
Trusts	50	20

Unit trusts: the unit holder is taxable
Retirement funds: not taxable

Donations tax

Donations tax is levied at 20% of the value of the property disposed of gratuitously on or after 1 October 2001 (previously 25%) by a South African resident and domestic company, excluding donations exempt from the tax. The tax is payable within three months of the donation taking effect.

Estate duty

Rates

Date of death	Rate (%)
Prior to 1 October 2001	25
After1 October 2001	20

Exemptions

- Persons deceased prior to 1 March 2006, the first R1 500 000
- Persons deceased after 1 March 2006, the first R2 500 000
- Persons deceased after 1 March 2007, the first R3 500 000
- Any bequest to a surviving spouse or a public benefit organisation

Value added tax (VAT)

Types of supplies

Standard-rated	Supplies of goods and services subject to the standard rate in force at that time of supply.
Exempt	Supplies of certain services not subject to VAT. Vendors making exempt supplies are not entitled to input credits.
Zero-rated	Supplies of certain goods or services subject to VAT at zero percent. Vendors making exempt supplies are entitled to input credits.

Transfer duty

On immovable property (after 1 March 2006)

Transfer duty, if property is purchased by natural persons:

Property value	Rates of tax
R0 – R500 000	0%
R500 001 – R1 000 000	5% on the value between R500 001 and R1 000 000
R1 000 001 +	R25 000 + 8% on the value above R1 000 000

If property is purchased by companies, close corporations or trusts, transfer duty is a flat rate of 8% on the full purchase consideration.

On leases of immovable property

For every R100 or part thereof of rent and other consideration payable, for every period of twelve months: R0,50. If the calculated stamp duty is less than R500, no stamp duty is payable. No stamp duty is payable on short-term leases of less than five years.

Stamp duty

Stamp duty on securities

Transactions	Rate (%)
Creation or increase in authorised share capital	0.50
Original issue or allotment of shares	Nil

As from 1 January 2006, only the transfer of marketable
securities of a consideration of above R40 000 will be subject to stamp duty.

Registration of transfer of shares:

• If transfer takes place within six months of date of execution of instrument of transfer	0.25
• If transfer takes place after six months	0.75

Stamp duty on credit agreements

Hire purchase agreements, instalment sale agreements and finance leases

Total amount payable (R)	Stamp duties(R)
1 – 5 000	2.00
5 001 – 10 000	4.00
10 001 – 20 000	8.00
20 001 – 40 000	16.00
40 001 – 60 000	24.00
60 001 – 80 000	32.00
80 001 – 100 000	40.00
100 001 – 130 000	50.00
130 001 – 150 000	60.00
150 001 – 180 000	70.00
180 001 – 200 000	80.00
Over 200 000	100.00

Tax rebates

Individuals

Amounts deductible from the tax payable	2008	2009
Person under 65	R7 740	R8 280
Persons over 65	R12 420	R13 320

Capital allowances

Capital incentive allowances

Asset type	Conditions for annual allowance	Annual allowance
Residential building	Building projects erected on or after 1 April 1982 consisting of at least five units of more than one room intended for letting, or occupation by bona fide full time employees	2% of cost and an initial allowance of 10% of cost
Industrial building or improvements	Construction of buildings or improvements on or after 1 January 1989, provided building is used wholly or mainly for carrying on process of manufacture or similar process	5% of cost (previously 2%)
	Construction of buildings or improvements on or after 1 July 1996 to 30 September 1999 and the buildings or improvements are brought into use before 31 March 2000 and contracted for and construction commenced on or after 23 February 2000	10% of cost
New commercial commercial buildings (other than residential accomodation) (Note 1)	Any cost incurred in erecting any new and unused building, or improving an existing building on or after 1 April 2007 wholly or mainly used for the purposes of producing income in any course of trade.	5% of cost

Asset type	Conditions for annual allowance	Annual allowance
Building in development zones (Note 1)	Costs incurred in erecting or extending a building in respect of demolishing, excavating the land, or to provide water, power or parking, drainage or security, waste disposal or access to the building Improvements to existing buildings	20% in first year 5% in each of 16 subsequent years 20% of cost
Hotel buildings	Construction of buildings or improvements, provided used in trade as hotelkeeper or used by lessee in trade as hotelkeeper. Refurbishments (note 2) which commenced on or after 17 March 1993	5% of cost 20% of cost
Hotel equipment	Machinery, implements, utensils or articles brought into use on or after 16 December 1989	20% of cost
Electricity and telephone transmission lines and railway tracks	New and unused structures contracted for and construction commenced on or after 23 February 2000	5% of cost
Aircraft	Acquire on or after 1 April 1995	20% of cost (note 2)
Airport hangars and runways	Construction commenced on or after 1 April 2001	5% of cost
Farming equipment	Machinery, implements, utensils or articles (other than livestock) brought into use after 1 April 2003	50% in the first year 30% in the second year 20% in the third year
Ships	South African registered ships used for prospecting, mining or as a foreign going ship, acquired on or after 1 April 1995	20% of cost (note 3)
Plant and machinery	New and unused manufacturing assets acquired on or after 1 March 2002 will be subject to wear and tear allowances over four years	40% in the first year 20% in each of the three subsequent years (note 4)
Plant and machinery (small business corporations only)	New and unused plant or machinery brought into use on or after 1 April 2001 and used by the taxpayer directly in a process of manufacture	100% of cost
Non-manufacturing assets (small business corporations only)	Acquired on or after 1 April 2005	50% in the first year 30% in the second year 20% in the third year

Notes:

1. Allowances are available to owners as users of the building or as lessors/financiers.
2. Refurbishment is defined as any work undertaken within the existing building framework.
3. Recoupment of allowance can be deducted from the cost of the replacement asset.
4. Where plant and machinery is used in a process of manufacture or a similar process, the taxpayer is obliged to make use of the allowances and not the wear and tear rates.

Wear and tear allowances

Write-off periods acceptable to SARS in terms of Practice Note No. 19

Item	Percentage write-off
Adding machines	16.6
Air conditioners (window type, moving parts only)	16.6
Aircraft (light passenger/commercial/helicopters)	25
Arc welding equipment	16.6
Balers	16.6
Battery chargers	20
Bicycles	25
Bulldozers	33.3
Burglar alarms (removable)	10
Calculators	33.3
Cash registers	20
Cellular telephones	33.3
Cheque-writing machines	16.6
Cinema equipment	20
Cold drink dispensers	16.6
Compressors	25
Computers (main frame)	20
Computers (personal computers)	33.3
Computer software (mainframes):	
- purchased	33.3
- self-developed	100
Computer software (personal computers)	50
Concrete transit mixers	33.3
Containers	20
Containers (stainless steel - transport of liquids)	20
Crop sprayers	16.6
Curtains	20
Debarking equipment	25
Delivery vehicles	25
Demountable partitions	16.6
Dental and doctors' equipment	20

Item	Percentage write-off
Dictaphones	33.3
Drilling equipment (water)	20
Drills	16.6
Electric saws	16.6
Electrostatic copiers	16.6
Engraving equipment	20
Excavators	25
Fax machines	33.3
Fertiliser spreaders	16.6
Fire extinguishers (loose units)	20
Fishing vessels	8,3
Fitted carpets	16.6
Fork-lift trucks	25
Front-end loaders	25
Furniture and fittings	16.6
Gantry cranes	16.6
Garden irrigation equipment (movable)	20
Gas cutting equipment	16.6
Gas heaters and cookers	16.6
Gear shapers	16.6
Graders	25
Grinding machines	16.6
Guillotines	16.6
Gymnasium equipment	10
Hairdressers' equipment	20
Harvesters	16.6
Heat dryers	16.6
Heating equipment	16.6
Hot water systems	20
Incubators	16.6
Ironing and pressing equipment	16.6
Kitchen equipment	16.6
Knitting machines	16.6
Laboratory research equipment	20
Lathes	16.6
Laundromat equipment	20
Law reports	20

Item	Percentage write-off
Lift installations (goods)	8,3
Lift installations (passengers)	8,3
Medical theatre equipment	16.6
Milling machines	16.6
Mobile caravans	20
Mobile cranes	25
Mobile refrigeration units	25
Motorcycles	25
Motorised chain saws	25
Motorised concrete mixers	33.3
Musical instruments	20
Neon signs and advertising boards	10
Ovens and heating devices	16.6
Ovens for heating food	16.6
Oxygen concentrators	33.3
Paintings (valuable)	4
Pallets	25
Passenger cars	20
Patterns, tooling and dies	33.3
Perforating equipment	16.6
Photocopying equipment	20
Photographic equipment	16.6
Planers	16.6
Pleasure craft etc	8,3
Ploughs	16.6
Portable concrete mixers	25
Portable generators	20
Portable safes	4
Power tools (hand operated)	20
Public address systems	20
Racehorses	25
Radio communication equipment	20
Refrigerated milk tankers	25
Refrigeration equipment	16.6
Refrigerators	16.6
Runway lights	20
Sanders	16.6

Item	Percentage write-off
Scales	20
Security systems	20
Seed separators	16.6
Sewing machines	16.6
Shop fittings	16.6
Solar energy units	20
Special patterns and tooling	50
Spin dryers	16.6
Spot welding equipment	16.6
Staff training equipment	20
Surveyors:	
- Field equipment	20
- Instruments	10
Tape recorders	20
Telephone equipment	20
Television and advertising films	25
Television sets, video machines and decoders	16.6
Textbooks	33.3
Tractors	25
Trailers	20
Traxcavotors	25
Truck mounted cranes	25
Trucks (heavy duty)	33.3
Trucks (other)	25
Typewriters	16.6
Vending machines (including video game machines)	16.6
Video cassettes	50
Washing machines	20
Water distillation and purification plant	8,3
Water tankers	25
Water tanks	16.6
Weighbridges (movable parts)	10
Workshop equipment	20
X-ray equipment	20

Examples of individual and company tax calculations

Individual

Example

Mr A, who is a South African resident aged 67, received and paid the following amounts during the year of assessment ended 28 February 2009:

	R
Salary	150 000
Interest received (from a source within South Africa)	24 000
Dividends received (from South African companies)	12 000
Deductible expenditure	3 000
Taxable capital gain (25% of net capital gain of R20 000)	5 000

Calculate the normal tax liability of Mr. A for the year of assessment ended 28 February 2009.

Solution

		R
Salary		150 000
Interest received		24 000
Dividends received from South African companies after deduction of STC		12 000
Gross income		186 000
Less: exempt income	– Basic interest exemption	24 000
	– Local dividend exemption	12 000
Income		150 000
Less: deductions		3 000
		147 000
Add: Taxable capital gain		5 000
Taxable income		152 000
Tax payable		
On R122 000		21 960
On R30 000		7 500
Normal tax payable		26 460
Less: rebates		13 320
Normal tax liability		16 140

Company

Example

A Ltd, a South African registered company, showed the following results for the financial year ended 31 March 2008:

	R
Trading profits	300 000
Rental income	50 000
Dividends received (from South African companies)	72 000
Deductible expenditure	230 000
Dividends paid on 31 March 2008	100 000
Taxable capital gain (50% of net capital gain of R50 000)	25 000

Calculate the tax payable by A Ltd for the financial year ended 31 March 2008.

Solution

	R
Trading profits	300 000
Rental income	50 000
Dividends from South African companies	72 000
Gross income	422 000
Less: Exempt income – Local dividend exemption	72 000
Income	350 000
Less: Deductions	230 000
	120 000
Add: Taxable gain tax	25 000
Taxable income	145 000
Normal tax payable:	
Taxable income x 28%	40 608
STC payable:	
Dividends paid	100 000
Less: Dividends received	72 000
Net amount	28 000
STC payable (net amount x 10%)	2 800

Total taxes payable by A Ltd for the year ended 31 March 2008:

Normal tax + STC	43 408

Treaty and non-treaty withholding tax rates

There are a number of double taxation agreements (DTAs), which provide relief in respect of royalties and know-how withholding taxes. South Africa has no withholding tax on dividends or interest.

	Royalties (%)	Notes
Non-treaty countries	12	
Treaty countries		
Algeria	10	
Australia	10	
Austria	0	
Belarus	5/10	(7)
Belgium	0	
Botswana	12	(4)
Brazil	10/15	(9)
Bulgaria	5	(8)
Canada	10	(2)
Croatia	5	
Cyprus	0	
Czech Republic	10	
Denmark	0	
Egypt	12	(4)
Ethiopia	20	
Finland	0	
France	12	(1)
Germany	12	(1)
Ghana	10	
Greece	5/7	(6)
Grenada	12	
Hungary	0	
India	10	
Indonesia	10	
Iran	10	
Ireland	0	
Israel	12	(1) (3)
Italy	6	
Japan	10	
Korea	10	

	Royalties (%)	Notes
Kuwait	10	
Lesotho	10	
Luxembourg	0	
Malawi	12	(1)
Malaysia	5	
Malta	10	
Mauritius	0	
Namibia	10	
Netherlands	0	
New Zealand	10	
Norway	0	
Oman	8	
Pakistan	10	
Peoples Republic of China	10	(5)
Poland	10	
Romania	12	(4)
Russian Federation	0	
Seychelles	0	
Sierra Leone	12	
Singapore	5	
Slovak Republic	10	
Swaziland	10	
Sweden	12	(1)
Switzerland	0	
Taiwan	10	
Tanzania	10	
Thailand	12	(4)
Tunisia	10	
Turkey	10	
Uganda	10	
Ukraine	10	
United Kingdom	0	
USA	0	
Zambia	12	(1)
Zimbabwe	12	(1)

Part of the DTA with the United Kingdom

Notes:

1. No withholding tax if the royalty is subject to tax in the recipient's country of residence.

2. Rate reduced to 6% in respect of copyright royalties and other like payments in respect of any literary, dramatic, musical or other artistic work or royalties for use of computer software, or for use of any patent or any industrial, commercial or scientific information. Reduced rates do not apply to royalties in respect of films or videos or other means of reproduction for use in television broadcasting, nor does it apply to information in connection with rental/franchise agreements.

3. As per note (1) with the exception of the use of cinematograph or television film where withholding tax of 15% of the company tax (ie: 5.25%) applies.

4. The treaty provides that the rate may not exceed 15%.

5. Withholding tax on the payments for the use of, or right of use, any industrial, commercial or scientific equipment, should be raised on 70% of the gross value of the payments.

6. 5% of the gross amount of the payments of any kind received to the use of, or right to use, any copyright or literary, artistic or scientific work including cinematograph films and films, tapes or disc or any other media for television or radio broadcasting, and 7% of the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific experience.

7. If paid for the use of, or the right to use, industrial, commercial or scientific equipment, or transport vehicles. 10% in all other cases.

8. In respect of the copyright royalties and other similar payments in respect of the production or reproduction or any cultural, dramatic, musical or other artistic work (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television) and royalties paid for the use of industrial, commercial or scientific equipment. 10% in all other cases.

9. 15% of the gross amount is paid for the use of, or the right to use trademarks. 10% on all other leases.

10. With the exception of Austria, Canada, Croatia, Czech Republic, Denmark, Finland, Greece, India, Ireland, Japan, Korea, Malta, Norway, Seychelles, Singapore, Sweden, UK and USA, there is no relief granted for STC.

11. Limited sea and air transport agreements are in force with Portugal and Spain.

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Regulatory and supervisory bodies

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