



TAX & BUDGET

2010 / 2011

17 February 2010



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CHARTERED ACCOUNTANTS (SA)

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ECONOMIC STABILITY

It must have been extremely difficult for Minister Pravin Gordhan in his maiden budget to determine priorities between social upliftment and economic considerations in his proposals to Parliament in particular the question of foreign borrowings to finance these priorities while under the constraint of increased taxes. On the one hand the policy of social reform and infrastructure development had already been formalised as an aim in the previous budget for 2010 and was largely committed and implemented and on the other hand the constraint of facing budgeted internal deficits by virtue of lower tax collections due to the severest recession since 1930 with a projected 34 million people worldwide having lost their jobs.

The Minister with the full support of his cabinet have determined that a new growth path is required to meet the challenges of the changed economic climate flowing from the changed international models and resolved to utilise foreign borrowing capacity to finance the current budget's objectives without raising taxes in the main .

The emphasis is on reducing joblessness and promoting labour intensive industries while leveraging off the global economy and being more competitive by removing obstacles to growth and employment in particular the youth. With this objective in mind a new program is to be introduced whereby tax-compliant businesses, non-government organisations and municipalities will receive a cash reimbursement for a two year period through the tax payroll system in order to raise employment of young inexperienced school leavers – it is estimated that some 800 000 will eventually qualify under this scheme with a further 500 000 by 2013 .

The primary objective of the SA Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic as provided in the Constitution [s 224[1] and in terms hereof the Bank should pursue its policy without fear, favour or prejudice and accordingly regular consultations with Governor Gill Marcus will be held to respond to changing economic circumstances in particular the following:

- Conducting a consistent and transparent manner within a flexible inflation target.
- Pursuing an inflation target range of between 3 and 6 %.
- Deviating from inflation targets when circumstances necessitate such action but then indicating the time frame of adjusting back to the said norms clearly to the public.
- Although extremely difficult to determine a fixed Rand price in exchange markets, it is vital to have a stable and competitive exchange rate as best as possible in the

volatile currency markets and the Bank will continue taking steps to counter this volatility.

- Reporting measures on prudential management of foreign exposure risk have now been finalised allowing the introduction of 25 % of foreign liabilities.

BUDGET HIGHLIGHTS – 2010/2011

The passing global financial crisis is accepted as decreasing by virtue of the substantial governmental interventions internationally which is anticipated to change economic thinking and business trading models. SA public and private sector attitudes will similarly be affected but it is important to implement a new growth path for reducing joblessness and improving competitive efficiency in more labour intensive industry.

One in four adults in S A is unemployed and fifty percent of young people have not found work and the Government supports the comment on this issue by the CEO of Business leadership who wrote: "The first step would be for society, led by government, but with business, labour and civil society in close support, to agree on a vision of doubling the size of the economy within a generation".

The increase in the overseas borrowing deficit from 23% of GDP in 2009 to 40% in 2013 will provide the scope to respond boldly and with confidence to expanding the infrastructure and social development as aforesaid in the current and following years.

Economic and Infrastructure Priorities:

This budget acknowledged the fine achievement in successfully completing the world cup soccer stadiums on time and emphasized investment in labour intensive industry alongside increased efficiency and effectiveness with a view to creating jobs especially for the youth and education within the following goals:

- Reduction in joblessness among young people supported by labour intensive industries, skills development, employment development strategies.
- It is proposed to introduce a cash reimbursive system through the SARS payroll tax platform to employers for a two year period with a view to facilitate the employment of young people with inadequate experience. It is estimated that 800 000 people will qualify for these job options.
- Sustaining high levels of public and private investment and savings levels coupled with improving performance and effectiveness of the State especially education.
- Reforms to increasing inclusion in the labour market with improved competition in the products market.
- Stabilising low inflation with competitive exchange rates and opening the economy to investment and trade opportunities for boosting exports at competitive prices.
- Addressing barriers to competitiveness that limit equitable sharing of opportunities.

- Climate changes are impacting on all people and countries and a bold commitment by SA to curb greenhouse gas emissions and manage scarce water resources which will necessitate investment in sustainable technologies and appropriate pricing of energy.
- The largest item of expenditure in this years budget is R168 billion on education and during the next three years R846 billion is to be spent on infrastructure programs including approximately one third thereof on Eskom's construction of power plants plus various amounts on transport, water supply capacity which in several cases will have to be financed from higher tariffs.

Fiscal Policy and Public Debt and Tax Proposals:

During the past year the global recession has had a dramatic influence on international economic policies causing a rethink in business and monetary management. This has resulted in the following shift in the economic policies of SA in the following respects:

- Whereas in the past few years a policy of reducing foreign debt had successfully pursued reducing such borrowings to 23% of GDP in 2008/9, this policy has been stalled and substantial foreign borrowings have now been approved.
- Foreign borrowings are projected to increase from 23% last year to a peak of 40% by 2013 and stabilize by 2015.
- Higher government borrowings is not a long term solution but merely a short term necessity in order to delay possible tax increases except as noted herein and as the world economy recovers those countries with lower debt levels will be better placed to take advantage of growth opportunities – it is suggested that certain countries are already targeting this gap in the global market recovery.
- Other than certain tax rebates discussed in detail later herein no tax increases have been applied to individuals at the present time however with effect 1 September an emissions tax will be introduced at a flat rate scaled according to fuel efficiency plus an environmental tax is to be explored.
- The tax treatment of financial instruments is to be reviewed including measures to ensure appropriate accommodation of ` Islamic-compliant finance which prohibits payment or receipt of various types of interest.
- Further steps are to be taken to minimize tax avoidance and restricting company car and fringe benefit rules.
- Several sophisticated tax avoidance arrangements such as the scheme of transfer pricing and cross-border mismatching are to be further investigated.
- Tougher action is to be take against cash-based businesses avoiding Vat and arrear payments on account of Vat and Paye monies collected and not paid timeously.
- A Voluntary Disclosure Programme is to be introduced effective November 2010 for a twelve month period in respect of taxpayers who wish to disclose unpaid tax

liabilities at a reduced interest charge without penalties. Consideration is also to be given to extending this to exchange control violations.

- The use of public private partnerships will be expanded to improve the Hospital and health care system in particular.

Income tax & Excise duties:

- Company tax remains unchanged at 28%
- Tax thresholds remain unchanged : - 65 and over increases to R88 528 per annum; under 65 increases to R57 000 per annum.
- Individual tax rates unchanged - top rate of 40% now achieved at R552 000 and the first R140 000 taxed at the lower rate of 18%.
- Small Business Corporations – unchanged.
- Micro businesses unchanged - up to R1 million turnover; levying tax at lower rates based on turnover instead of net profit.
- Secondary tax on companies (STC) - unchanged at 10% to be replaced by a new Dividends Tax for introduction on a date to be announced in the near future.
- Monthly monetary caps increased for deductible medical scheme contributions
- Annual tax-free interest threshold from SA sources - under 65 increased from R21 000 to R22 300 and over 65 increased from R30 000 to R32 000. These limits include an exemption for foreign dividends and interest up to a maximum amount of R3 500.
- VAT registration turnover threshold remains at R1 million per annum. The limit for voluntary VAT registration increased to a minimum of R50 000.
- The current gambling arrangements are to be reviewed to ensure more efficient tax collection including the current tax-free status of gambling winnings.
- Excise duties on tobacco and alcohol to be increased in terms of a stronger stance in the combating of alcohol abuse.
- A fuel tax increase of 25.5 cents per litre for petrol and diesel is proposed mainly to finance the multi-product pipeline from Durban to Gauteng, plus additional 8 cents per litre for the Road Accident Fund.
- Focusing on the environment, proposed that the carbon emissions tax on motor vehicles previously announced be changed to a flat rate emissions tax.
- New tax rates for lump sums from retirement benefit plans have already been introduced and now proposed that retrenchment lump sums be incorporated and treated the same as retirement lump benefits. At present a R30 000 exemption exists.
- Company car fringe benefit values to be increased.
- Group life insurance premiums to be treated as a fringe benefit.

TAX RATES – INDIVIDUALS.

Individuals and special trusts: 2011

Taxable income	Rates of tax
R0 – R140 000	18% of each R1
R140 001 – R221 000	R25 200 + 25% of the amount above R140 000
R221 001 – R305 000	R45 450 + 30% of the amount above R221 000
R305 001 – R431 000	R70 650 + 35% of the amount above R305 000
R431 001 – R552 000	R114 750 + 38% of the amount above R431 000
R552 001 +	R160 730 + 40% of the amount above R552 000

Individuals and special trusts: 2010

Taxable income	Rates of tax
R0 – R132 000	18% of each R1
R132 001 – R210 000	R23 760 + 25% of the amount above R132 000
R210 001 – R290 000	R43 260 + 30% of the amount above R210 000
R290 001 – R410 000	R67 260 + 35% of the amount above R290 000
R410 001 – R525 000	R109 260 + 38% of the amount above R410 000
R525 001 +	R152 960 + 40% of the amount above R525 000

TAX REBATES

Amounts deductible from the tax payable	2008	2009	2010	2011
Persons under 65	R7 740	R8 280	R9 756	R10 260
Persons 65 and over	R12 420	R13 320	R15 156	R15 935

TAX THRESHOLD – INDIVIDUALS

Individuals	2008	2009	2010	2011
Under 65	R43 000	R46 000	R54 200	R57 000
Over 65	R69 000	R74 000	R84 200	R88 528

HISTORICAL TAX RATES – NATURAL PERSONS

Tax year	Maximum rate	Tax on income when maximum rate applies	Income at which maximum marginal rate applies	Primary rebate
2004	40%	R74 100	R255 000	R5 400
2005	40%	R78 070	R270 000	R5 800
2006	40%	R86 000	R300 000	R6 300
2007	40%	R117 000	R400 000	R7 200
2008	40%	R131 125	R450 000	R7 740
2009	40%	R143 010	R490 000	R8 280
2010	40%	R152 960	R525 000	R9 756
2011	40%	R160 730	R552 000	R10 260

TAX RATES – TRUSTS.

Special trusts	At the rate applicable to individuals, without the rebate
All other trusts	40% (2010: 40%)
Charitable trusts	Exempt provided a tax exemption has been granted

TAXATION OF LUMP SUM BENEFITS

Lump sums received from pension, provident fund or retirement annuity funds, including pension and provident preservation funds, are taxed according to one of two scales depending on which of the following categories they fall into.

- A. Amounts received on resignation from a fund prior to retirement age. These funds are referred to as "retirement fund withdrawal benefits".
- B. Amounts received on retirement or death, referred to as "retirement fund lump sum benefits".

The two types of lump sum amounts described are subject to tax as follows.

A. Retirement fund lump sum withdrawal benefits

- Tax determined by applying the following table to the aggregate of the lump sum now accruing plus all other retirement fund **withdrawal benefits** that have accrued since March 2009 and all retirement fund **lump sum benefits** that have accrued since October 2007,
- Deduct the tax determined by applying the tax table to the above mentioned aggregate amount but **excluding** the lump sum now accruing.

Taxable amount	Rate of tax
R0 – R22 500	0%
R22 501 – R600 000	18% of amount above R22 500
R600 001 – R900 000	R103 950 + 27% of amount above R600 000
R900 001 +	R184 950 + 36% of amount above R900 000

B. Retirement fund lump sum benefits

- Tax determined by applying the following table to the aggregate of the lump sum now accruing plus all other retirement fund **lump sum benefits** that have accrued since March 2009 and all retirement fund **lump sum benefits** that have accrued since October 2007,
- Deduct the tax determined by applying the tax table to the above mentioned aggregate amount but **excluding** the lump sum now accruing.

Taxable amount	Rate of tax
R0 – R22 500	0%
R22 501 – R600 000	18% of amount above R22 500
R600 001 – R900 000	R103 950 + 27% of amount above R600 000
R900 001 +	R184 950 + 36% of amount above R900 000

TAX RATES – COMPANIES.

References to companies throughout this publication includes close corporations.

Companies other than small business corporations and micro businesses

Companies	28% (2010: 28%)
Branches of foreign companies and foreign resident companies	33% (2010: 33%)
Employment companies, including personal service companies	33% (2010: 33%)
Public Benefit Organisations	28% over R100 000
Recreational Clubs	28% (2010: 28%)

Secondary tax on companies is levied at 10% of the net dividend declared. The effective corporate tax rates including STC are set out at the end of this section. Exemptions exist for liquidation dividends paid from capital profits relating to assets acquired prior to 1 October 2001 and for reserves arising prior to 1993.

Small Business Corporations

(R14 million turnover limit and other conditions apply – refer separate section within)

Financial years ending 1 April 2010 to 31 March 2011

Taxable income	Rates of tax
R0 – R57 000	0%
R57 001 – R300 000	10% of amount above R57 000
R300 001 +	R24 300 + 28% of amount above R300 000

Financial years ending 1 April 2009 to 31 March 2010

Taxable income	Rates of tax
R0 – R54 200	0%
R54 201 – R300 000	10% of amount above R54 200
R300 001 +	R24 580 + 28% of amount above R300 000

Micro Business

(R1 million turnover limit and other conditions apply – refer separate section within)

Tax rates based on turnover (as defined)

Financial years ending 1 April 2009 to 31 March 2010 and 1 April 2010 to 31 March 2011

Taxable income	Rates of tax
R0 – R100 000	0%
R100 001 – R300 000	1% of amount above R100 000
R300 001 – R500 000	R2 000 + 3% of the amount above R300 000
R500 001 – R750 000	R8 000 + 5% of the amount above R500 000
R750 001 and above	R20 500 + 7% of the amount above R750 000

Effective corporate tax rates

Companies (and close corporations) are subject to income tax at flat rates as described above as well as Secondary Tax on Companies (STC) on dividends distributed. STC is to be replaced at a future date by Dividends Tax, as discussed elsewhere in this publication.

STC is a tax paid by the company whereas the Dividend Tax will be borne by the recipient. Both however have the same effect on the net dividend received by shareholders. Assuming that companies will ultimately distribute all reserves to shareholders, the effective tax rate paid on a company's profits is more than just the applicable income tax rate.

The effective rate of tax paid by companies including STC or Dividend Tax is as follows:

Financial years ending 1 April 2010 to 31 March 2011

Company type	General	Small business corporation*		Employment	Foreign company /branch
		First R57 000	R57 001 to R300 000		
Income tax	28.00%	0.00%	10.00%	33.00%	33.00%
STC**	6.55%	9.09%	8.18%	6.09%	0.00%
Effective	34.55%	9.09%	18.18%	39.09%	33.00%

* For profits over R300,000, rates applicable to general companies apply.

** STC payable at 10% of after tax income distributed.

DEDUCTIONS - INDIVIDUALS

The following deductions are available to all individuals.

Donations to public benefit organisations	Limited to 10% of taxable income before deducting medical expenses (excluding retirement fund lump sums)
Foreign dividends	Individuals may elect that foreign tax ranks as a deduction against the income instead of credit against tax payable.
Travel expenditure	Only deductible by employees who are in receipt of a travel allowance - see section on Fringe Benefits.
Home office expenditure	The deduction of the cost of an office at home used exclusively for business is deductible where employer does not provide an office or by self employed persons.
Premiums to income protection plans	Deductible to the extent to which the policy covers loss of income. Portion of contributions towards life cover are not deductible.
Pension fund contributions Current Arrear contributions	Limited to the greater of 7.5% of remuneration from retirement-funding employment income or R1 750. Excess contributions carried forward to following year or to retirement. Limited to a maximum of R1 800 per annum. Any excess may be carried forward to the following year.
Retirement annuity funds Current Reinstated retirement annuity fund contributions	The deduction of the cost of an office at home used exclusively for business is deductible where employer does not provide an office or by self employed persons.

Medical expenses	
<p>Taxpayers aged 65 and above</p> <p>Taxpayers under 65:</p> <ul style="list-style-type: none"> • Medical aid contributions • Medical expenses including contributions in excess of above limits and value of fringe benefit in respect of employer contributions <p>Where taxpayer, spouse or any child have a physical impairment or disability</p>	<p>All medical expenditure.</p> <p>Own contributions to a maximum of R670 (2010: R625) per month for each of the member and first dependant and R410 (2010: R380) per month for each further dependant.</p> <p>Amount that exceeds 7.5% of taxable income before this deduction (excluding retirement fund lump sums)</p> <p>All medical expenditure. Includes sensory, communication, intellectual or mental impairment.</p>

Limitation of deductions by employees

Deduction of expenditure against an employee's income is limited to the following except where more than 50% of the employee's income is derived from commission:

- Travel allowance.
- Medical expenditure within prescribed limits.
- Pension fund and RAF contributions.
- Donations to Public Benefit Organisations within the prescribed limits.
- Wear and tear on equipment.
- Deduction of contributions to income protection plans. If the policy provides for anything other than illness, injury, disability or unemployment, only portion of the contribution relating to income protection will be allowable.

EXEMPTIONS – INDIVIDUALS

- **Local dividends** are exempt from normal tax.
- **Foreign dividends** are exempt from normal tax provided that SA residents hold more than 20% of the equity, subject to certain exceptions.
- **Interest received** by or accrued to non-residents is exempt from tax but the minister has proposed amendments to restrict the exemption to certain public investments.
- **Interest income**, excluding distributions from property collective investments, For natural persons aged under 65: R22 300 (2010: R21 000)
For natural persons aged 65 and above: R32 000 (2010: R30 000)
These exemptions include taxable foreign dividends and interest limited to R3 700 (2010: R3 500).
- **R30 000 exemption on lump sum payments** to certain employees is also granted to employees who became unemployed as a result of retrenchments (irrespective of such employee's age), because the employer has ceased to operate or because of personnel reduction. This exemption does not apply to directors of companies if they at any time held at least 5% of the equity share capital of that company. It is proposed that this exemption be merged into the retirement fund lump sum benefit system (dealt with elsewhere in this publication).
- **Salaries**, both **South African and foreign**, in respect of service rendered outside the Republic provided the individual is outside the Republic for at least 183 days during any 12 month period commencing or ending during the year of assessment, of which at least 60 full days are continuous.
- **Foreign pensions**. Does not apply when the income was earned in respect of foreign service rendered to an SA employer and such income was exempt from tax in terms of the 183/60 day rule.
- **Government grants** paid in terms of a programme or scheme approved in terms of the national annual budget process and identified by the Minister of Finance by notice in the Gazette for the purposes of this exemption.
- **Funeral benefits** payable in terms of the Special Pensions Act applicable to members of liberation movements' armed wings.
- Payments made to **visiting sportsmen and artists** to the extent to which the prescribed withholding tax has been paid.
- Employer granted **scholarships and bursaries**.
- R300 000 in respect of **death while at work** payment.

FRINGE BENEFITS

Motor vehicle - employer provided vehicle

Use of first vehicle: Employer pays all costs Employee pays cost of all: - fuel for private purposes: - maintenance - fuel and maintenance	2.5% per month 2.28% per month 2.32% per month 2.10% per month
Use of second and subsequent vehicles Employer pays all costs Employee pays costs of all: - fuel for private purposes - maintenance - fuel and maintenance	4.00% per month 3.78% per month 3.82% per month 3.60% per month
Use of vehicle and travel allowance	Where in receipt of a travel allowance and use of motor vehicle, the rate applicable to the second vehicle applies

Subsistence allowances

Local travel Incidentals only Meals and incidentals	R85 per day (2010: R80 per day) R276 when at least one night is spent away from home (2010: R260 per day).
Overseas travel (outside CMA) Daily allowance for meals and incidentals in addition to the actual accommodation costs	A specific amount per country is deemed to be expended. A list of rates for selected countries is set out overleaf.

Subsistence allowance for travel outside the Republic (effective 1 March 2009)

COUNTRY	CURRENCY	AMOUNT
Australia	AUS \$	175
Botswana	Pula	799
Brazil	US \$	133
Canada	Canadian \$	156
Cyprus	Euro	116
Denmark	Euro	185
France	Euro	149
Germany	Euro	107
Hong Kong	Hong Kong \$	1 000
Ireland	Euro	233
Italy	Euro	120
Lesotho	Rand	750
Mauritius	US \$	215
Mozambique	US \$	69
Namibia	Rand	660
Netherlands	Euro	127
New Zealand	New Zealand \$	160
Norway	NOK	1 647
People's Republic of China	US \$	157
Portugal	Euro	113
Seychelles	Euro	275
Spain	Euro	109
Swaziland	Rand	411
Sweden	Swedish Krona	843
Switzerland	S Franc	230
Thailand	Thai Baht	3 050
United Arab Emirates	Dirhams	410
United Kingdom	B Pounds	107
USA	US \$	157
Zambia	US \$	119
Zimbabwe	US \$	264

Rates for countries not listed above are available from Leask & Partners or SARS.

Cellular phones and computers

Where an employer provides cellular phones and computers for business use, the incidental private use thereof will not be regarded as fringe benefit.

Telephone and internet

No fringe benefit will apply if the service is used mainly (more than 50%) for business purposes.

Employee scholarships and bursaries

Bona fide scholarships and bursaries for employees are tax-exempt regardless of whether or not elements of a salary sacrifice are present. Similarly, the employer will now also be able to deduct scholarship and bursary payments, irrespective of whether these payments constitute a salary sacrifice. A pre-condition for the exemption is that the employee agrees to repay the employer should he or she fail to fulfil the scholarship or bursary obligation.

If an employer grants a bursary to the relative of an employee, that grant results in a taxable fringe benefit. However, in the case of employees earning less than R100 000 per annum (previously R60,000), the grant will be tax free up to an amount of R100,000 per annum (previously R30,000).

Free or cheap services

The provision of free travel facilities to relatives of an employee to visit the employee at a place of business of the employer in the Republic, is exempt from fringe benefits tax if the employee is stationed more than 250 km from his ordinary residence and if he is required to spend at least 183 days there in any year of assessment.

Medical aid benefits

Medical aid contributions by an employer in excess of the "family limit" are subject to tax in the hands of the employee. The family limit is set at R670 per month (2010: R625) in respect of each of the main member and first dependant, and R410 per month (2010: R380) for each subsequent dependent thereafter.

No fringe benefit will arise however in the following cases:

- An employee who has retired by reason of superannuation, ill health or other infirmity.
- The dependants of a person after his death if he was in the employ of the employer at the time of his death.
- The dependants of a retired employee after his death.
- A person over the age of 65.

The amount subjected to tax, i.e. the amount in excess of the family limit, is deemed to be medical expenditure incurred by the employee for purposes of calculating any medical aid deduction in the employee's income tax return.

Medical service costs

Where an employer has directly or indirectly made payments or contributions towards the medical costs of employees or their families, other than by way of medical aid contributions, the amount incurred by the employer will constitute a fringe benefit in the hands of the employee.

Where the amount incurred for each employee cannot be determined, the value will be determined by dividing the costs incurred by the total number of employees who are entitled to the facility.

However, no value is to be placed on the provision of medical services in respect of:

- An employee who has retired by reason of superannuation, ill health or other infirmity.
- The dependants of a person after his death if he was in the employ of the employer at the time of his death.
- The dependants of a deceased retired employee who retired by reason of superannuation, ill health or other infirmity.
- A person over the age of 65.
- Medical care provided to employees and their spouses and children that are prescribed minimum benefits as determined by the Minister of Health under a programme which:
 - is approved by the Registrar of Medical Schemes as being exempt from complying with the requirements of medical schemes under the Medical Schemes Act and if the programme constitutes the carrying on of a business of a medical scheme, or
 - does not constitute the carrying on of a business of a medical scheme and the employee or his/her spouse and children are either not beneficiaries of a medical aid scheme or are beneficiaries of a medical aid scheme and the total cost of the treatment is recovered from the medical scheme.

Reimbursive allowances

All amounts reimbursed to employees are to be included in the income of the employee. Exceptions to this rule are travel costs and subsistence allowances as dealt with in separate sections of this publication, and reimbursement of expenses incurred on behalf of the employer. Proof of such expenditure must be submitted to the employer and, where any asset was acquired, ownership of that asset must vest in the employer.

Professional Fees

Professional subscriptions paid by employers are not regarded as a fringe benefit where membership is a condition of employment. Proposed that this exemption will be extended to other fees that largely benefit the employer.

Travel allowances

80% (2010: 60%) of travel allowances are subject to employees' tax irrespective of distances travelled. A final determination of tax will be made by SARS on receipt of the employee's annual income tax return reflecting kilometres travelled and costs incurred, and any difference in tax paid will be payable or refundable as the case may be.

With effect from 1 March 2010 a log book must be maintained to record distances travelled for business purposes. Vehicle costs can be based on actual records or determined using the table below.

The tables below sets out deemed fuel, maintenance and fixed costs that employees may adopt for the **2009, 2010 and 2011** years of assessment.

Value of vehicle Inc VAT		Fixed	Fuel	Maintenance
From:	To:	Cost	Cost	Cost
R 0	R 40 000	R 14 672	R 0.586	R 0.217
R 40 001	R 80 000	R 29 106	R 0.586	R 0.217
R 80 001	R 120 000	R 39 928	R 0.625	R 0.242
R 120 001	R 160 000	R 50 749	R 0.686	R 0.280
R 160 001	R 200 000	R 63 424	R 0.688	R 0.411
R 200 001	R 240 000	R 76 041	R 0.815	R 0.464
R 240 001	R 280 000	R 86 211	R 0.815	R 0.464
R 280 001	R 320 000	R 96 260	R 0.857	R 0.494
R 320 001	R 360 000	R 106 367	R 0.946	R 0.562
R 360 001	R 400 000	R 116 012	R 1.103	R 0.752
Exceeding R 400 000		R 116 012	R 1.103	R 0.752

Where an employee chooses to utilise actual expenditure to determine the deduction, lease payments are limited to the fixed cost element reflected on the table of the corresponding vehicle cost. Where the employee incurred interest to finance the vehicle, the interest is limited to the interest costs on a vehicle costing R400 000. In addition, wear and tear must be determined over seven years and is limited to a cost of R400 000.

Where a taxpayer is in receipt of both a travel allowance and an employer owned car, the employer owned car is taxed at 4% of the determined value.

Reimbursement of travel costs

Employers may reimburse employees for actual business mileage without deducting employees' tax where the business travel does not exceed 8 000 kilometres during the year of assessment and if the rate reimbursed per kilometre does not exceed R2.92. It should be noted that this option will not apply if any other compensation in the form of an allowance or reimbursement is payable by the employer to the employee in respect of travel.

Other benefits

The Income Tax Act provides for the taxation of the following other benefits:

• Share incentive schemes	• Holiday accommodation
• Acquisition of any assets at less than market value	• Discharge of a debt
• Right of use of any asset	• Entertainment allowances
• Meals and refreshments	• Residential accommodation
• Bond subsidies	• Low interest loans
• Benefits granted to relatives of employees	• Computer allowances
• Free or cheap services	• Long service and bravery awards

DIRECTORS' EMOLUMENTS

With effect from 1 March 2002, the remuneration of private company directors (and members of close corporations) is subject to PAYE. In cases where emoluments are not paid on a regular basis, or not determined until the following tax year, legislation provides for deemed remuneration that must be used to calculate and pay PAYE on a monthly basis.

The deemed monthly remuneration is calculated as follows:

Total remuneration paid to the director in the previous year,

Excluding: lump sums from company pension and provident funds,

lump sums following termination or variation of service,
lump sums on commutation of service contracts,
gains on the exercise of share option,
gains on vesting of equity instruments.

Less: contributions to pension and retirement annuity funds,
medical aid contributions where the director is aged 65 and above,
Divided by: the total number of months that the director was employed by the
company in the previous year of assessment.

Where the remuneration for the previous year has not been finally determined, the remuneration figure will be the next preceding year of assessment's remuneration increased by an amount of 20%. If remuneration for the next preceding year has also not been finally determined, then the Commissioner will determine the amount.

Directors who receive fixed monthly amounts of more than 75% of the deemed remuneration, are subject to employees' tax on the actual remuneration instead of the deemed remuneration.

Furthermore, directors will no longer be automatically regarded as provisional taxpayers by virtue of their directorship alone.

TRUSTS

Subject to certain anti-avoidance provisions, all income (including distributions of a capital nature made by foreign trusts from income received in prior tax years) that accrues to a trust is taxable in the hands of the trust, unless it is distributed to the beneficiaries.

Similarly, all expenses incurred by a trust in the production of the income is deductible in the hands of the trust to the extent to which it is not distributed to the beneficiaries with the proviso that the expenses/allowances distributed may not exceed the income distributed.

Distributions of interest income by a trust to its non-resident beneficiaries are taxable in the hands of the trust where the interest is as a result of or by reason of or in consequence of any donation, settlement or other disposition.

Amendments have been introduced to clarify the position as to whether trust income accrues to a beneficiary by the introduction of variable definitions depending on the context.

The income tax rate applicable to trusts is currently 40% except in the case of Special Trusts, where the tax tables for natural person apply but without the deduction of the rebate. Special Trusts are those trusts set up solely for a beneficiary who suffers from a mental illness or serious physical disability.

SECONDARY TAX ON COMPANIES

The 2007/08 Budget Review announced the eventual change in the STC regime from a company-level tax to a Dividends Tax at shareholder-level tax. The rate of STC reduced from 12,5% to 10% from 1 October 2007.

STC remains in place for the time being until the introduction of the new Dividends Tax on a date to be announced. This new tax is dealt with under a separate heading below.

Certain liquidation / deregistration dividends remain exempt from STC as well as capital profits arising before 1 October 2001 and revenue profits arising before 1993.

DIVIDENDS TAX

A new dividends tax is to be introduced effective from a date to be announced and will replace Secondary Tax on Companies (STC).

The tax will be levied at 10% on dividends paid by resident companies. For purposes of Dividends Tax, a dividend is defined as any amount transferred by a company to a shareholder to the extent that the amount transferred does not result in a reduction of "contributed tax capital" and does not constitute shares in the company. The minister announced that this definition is to be further reviewed and refined.

Contributed tax capital of a company is the sum of the company's share capital and share premium excluding tainted share capital will be and determined on the date of introduction of the dividends tax. Subsequent receipts from share issues will increase the contributed tax capital.

Any distribution by a company which does not fall into the dividend definition will be regarded as a capital distribution and thus subject to capital gains tax.

The tax is levied on shareholders rather than the company but in most cases the company will be required to withhold the tax from dividend payments on behalf of SARS.

Certain shareholders will be exempt from the tax, including the following:

- Resident companies / close corporations.
- Public benefit organisations.
- Shareholders of micro businesses (dealt with separately in this publication) in respect of the first R200 000 of dividends distributed by a company per annum.
- Non-residents may enjoy relief from the tax as prescribed by any applicable tax treaties.

SMALL BUSINESS CORPORATIONS

Lower income tax rates and accelerated capital allowances apply to private companies and close corporations that fall within the definition of a Small Business Corporation (SBC). The definition is as follows.

- Private companies, close corporations and co-operatives,
- having a turnover of less than R14 for the year of assessment,
- which is not an employment company (personal service company or labour broker without an exemption certificate),
- those shareholders did not directly or indirectly hold any shares or have any interest in the equity of any other company or close or corporation during the year of assessment, other than a listed company, body corporate, share block company, not for profit organisation, collective investment scheme, co-operative or society. A company that has always been dormant, or a company that has filed for liquidation or deregistration, is also excluded.
- not more than 20% of the turnover and all the capital gains received during the year of assessment consists of investment income as defined (and includes trading and investing in immovable property),
- not more than 20% of the turnover derived during the year of assessment is from the rendering of a personal service (i.e. rendered personally by a shareholder/member in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science unless three or more full time unconnected employees are core to rendering these services).

Relief granted to small business corporations

- Beneficial tax rates as set out the section TAX RATES - COMPANIES
- 100% allowance in respect of plant and machinery used for manufacturing as defined.
- Three year write off of other assets (excluding buildings), 50% in year one, followed by 30%, and then 20% in the third year.

MICRO BUSINESS

A special tax regime for very small businesses, referred to as a **Micro Business** was introduced from 1 March 2009. This simplified tax system is available to companies, close corporations or persons and trusts who conduct business and is essentially a tax levied on turnover as a substitute for Income Tax, Capital Gains Tax, VAT and to an

extent, STC or Dividends Tax. The system is optional, meaning that a "micro business" still has the option to be taxed under the normal tax rules and rates.

Unlike the income tax system that makes use of comprehensive inclusion rules and requires that records and proof of expenditure be maintained, tax is calculated by simply applying a tax rate to "taxable turnover".

Taxable turnover is defined as turnover received (not invoiced) plus 50% of capital receipts from immovable property used for business and other assets used mainly for business and, in the case of companies and close corporations, all investment income.

The tax rates applicable to Micro Businesses are set out in the table under the section TAX RATES – COMPANIES.

A VAT registration threshold of R1 million applies with effect from 1 March 2009 but businesses that elect to adopt the turnover tax system will not be permitted to register for VAT, the aim of the system being to reduce the burden of record-keeping.

Any vendor that deregisters from the VAT system in light of the increase in the VAT registration threshold to R1 million will be allowed to pay the exit VAT (VAT charged on the market value of the company's assets) over a period of six months. Where a vendor deregisters from the VAT system in order to register for the turnover tax system, relief will be granted to that vendor by way of a deduction of up to R100 000 from the value of the assets held by that vendor prior to deregistration.

Shareholders of micro businesses are exempt from STC or Dividend Tax on the first R200 000 of dividends distributed by the company per annum.

The qualifying criteria for a Micro Business are as follows:

- Applicable to companies, close corporations, co-operatives, sole traders and partnerships but not applicable to trusts, recreational clubs and public benefit organisations (PBO's).
- In the case of companies and close corporations, all shareholders must be natural persons during the tax year and the shareholders may not hold shares in another company/close corporation other than a listed company, body corporate, share block company, not for profit organisation, collective investment scheme, co-operative or society a company or close corporation that has always been dormant. The minister has proposed to also exclude companies/close corporations that have filed for liquidation or deregistration.
- In the case of partnerships, all partners in the tax year must be natural persons and the partners may not hold any shares in other company/close corporation except shares as described in the preceding point.
- The micro business may not hold shares in other company/close corporation except shares as described in the preceding point.

- Annual turnover not exceeding R1 Million excluding capital receipts and excluding certain government grants.
- Capital receipts from immovable property used for business and other assets used mainly for business may not exceed R1,5 million in the current and preceding two tax years.
- A maximum of 10% of total receipts may be from investment income.
- No receipts are from rendering professional services or from providing a personal service as defined or a labour broker not having an exemption certificate.
- Year of assessment must end on last day of February.

Taxpayers that elect to be classified as micro businesses are bound to remain in the system for at least three tax years.

PERSONAL SERVICE PROVIDERS (COMPANIES AND TRUSTS)

Anti-avoidance measures are targeted at persons who provide services to clients through the medium of a company, close corporation or trust in order to benefit from lower income tax rates and deduct expenditure that is not available to employees generally.

The legislation defines a personal service provider as being a company/close corporation or trust where any service rendered to a client is rendered personally by any person who is a connected person in relation to such company or trust **and** if any one of the following conditions apply:

- such person would be regarded as an employee of the client if the service was rendered directly by the connected person to the client, or
- the services need to be performed mainly at the client's premises and the connected person is subject to the control or supervision of the client as to the manner in which the duties are performed or to be performed, or
- more than 80% of the income company or trust's income from services rendered consists of, or is likely to consist of amounts received directly or indirectly from any one client or associated institution in relation to that client.

A company or trust will not be classified as a personal service provider where the company/trust employs more than two full time employees who are engaged solely in rendering any such service and are not shareholders or members or a connected person in relation to any shareholder or member.

Implications for personal service provider

- Income tax rate of 33% applied to personal service companies instead of 28% applicable to companies generally.
- Personal service companies cannot qualify as small business corporations.

- Tax rate applicable to personal service trusts is unaffected i.e. 40% as for all trusts which are not special trusts.
- Deduction of expenses incurred in the production of income limited to the following:
 - salaries and wages of employees
 - cost of providing fringe benefits to employees
 - legal fees not of a capital nature
 - bad debts
 - contributions to employees pension, provident or benefit funds
 - expenses in respect of premises
 - finance charges
 - insurance
 - repairs, fuel and maintenance
- Clients are compelled to deduct employees' tax from payments made to personal service companies at 33% and personal service trusts at 40%. Failure to do so can result in amounts being collected from the client.

In order to protect clients of personal service providers, who may be unable to determine whether the aforementioned 80% rule will apply, the client may, if in good faith, rely on a sworn affidavit or solemn declaration from the company/trust which states that not more than 80% of income will be derived from one client.

- The deduction of employees' tax may well result in PAYE deductions which far exceed the final tax liability of the company/trust and in these cases application can be made to the Commissioner for a directive.

RECREATIONAL CLUBS AND SPORTING BODIES

Partial taxation of recreational clubs

Recreational clubs are subject to a system of partial taxation. Income from non-members is generally subject to tax and is consistent with PBO rules. All club income is subject to income tax unless that income falls within the following forms of recreational club receipts and accruals:

- Membership fees or subscriptions paid by its members.
- Business undertakings/trading activities directly and integrally related to the provision of social or recreational facilities, amenities or services provided directly to the members, e.g. golf course fees and bar facility fees paid by members.
- Fundraising activities of that club if those activities are of an occasional nature and substantially undertaken with unpaid voluntary assistance.

- Other sources of income for example investment income and non-member income for club services and rentals as long as these "other source" receipts and accruals do not in total exceed the greater of:
 - (i) 5% of the total membership and subscriptions in respect of that year or
 - (ii) R100 000 for years of assessment ending on or after 31 March 2009 (previously R50 000).

Similarly, expenditure incurred in producing exempt income for example levies, membership fees or subscriptions cannot be offset against club income falling outside the abovementioned categories. Capital gains on the disposal of recreational club property will be subject to rollover treatment.

Conditions for exemption (Section 30A)

A recreational club eligible for partial exemption must be established with the sole/principal object of providing social and recreational amenities or facilities for its members. Club exemption is not automatic for clubs formed before 1 April 2007 and application must be made by these clubs to the Commissioner for approval prior to 31 March 2009. The minister has proposed that this deadline be extended to 30 September 2010.

BODY CORPORATES

Receipts and accruals from transactions with members or shareholders such as levies or subscriptions are exempt from income tax.

Income from any other source, such as investment income or even trading income, is exempt up to a maximum of R50 000.

This applies to entities such as body corporates, share block companies or other associations such as societies or clubs which are formed solely for purposes of managing the collective interest of its members.

CAPITAL GAINS TAX

Capital Gains Tax (CGT) is imposed on all capital gains realised by SA residents with effect from 1 October 2001, which date is referred to as the valuation date.

Determination of capital gains and losses

A capital gain is the difference between the proceeds arising on disposal of an asset and the base cost. Capital losses are not offset against revenue income but are carried forward to subsequent years. The base cost of an asset represents the cost of acquiring the asset plus all improvements or additions to asset. Determining the base cost of assets acquired prior to 1 October 2001 is dealt with below.

Exemptions

- An annual exemption of R17 500 (2009: R16 000).
- The first R1.5 million of a gain on sale of a personal residence.
- The sale of a personal residence for an amount not exceeding R2 million.
- Gains from disposal of the following assets are exempt:
Private motor vehicles, personal belongings and effects, coins not used as legal tender, stamps, lump sum benefits in respect of superannuation and certain life policies, compensation for personal injury and defamation receipts, betting, local lottery and other chance prizes, foreign legal tender on return from abroad and gains and losses made by foreign governments and agencies.
- The first R120 000 capital gain on death.
- The first R750 000 arising on the sale of small business assets provided the taxpayer has attained the age of 55 or the disposal is in consequence of ill health, other infirmity, superannuation or death. This includes the property from where the business traded. A small business is one where the market value does not exceed R5 million.

Rollover (Deferrals)

In certain cases, transactions are subject to rollover. A rollover will not give rise to an immediate CGT liability but is deferred to a subsequent CGT event. When a subsequent CGT event occurs, the base cost of an asset will be at the base cost prior to the rollover; i.e. the original cost of the asset. The result is that CGT will be paid when the asset is ultimately realised. Rollover relief is only available where the asset is transferred to South African residents.

Where the heirs or legatees enter into a redistribution agreement of the assets and one of the parties to the agreement is the surviving spouse, the deceased must be treated as having disposed of the asset to his surviving spouse, if ownership of the asset is acquired by that surviving spouse by intestate or by testamentary succession or as a result of a redistribution agreement between the heirs and legatees in the course of liquidation or distribution of the deceased estate.

Valuation of assets acquired prior to CGT

Where assets were acquired prior to the introduction of CGT, only the gain made after the introduction of CGT will be subject to tax. Three methods are available for determining this, namely a time apportionment basis, actual valuation (certain assets have specific valuation formulae or rules) and the 20% rule which provides that 80% of the gain is subject to CGT.

Where a person elects to utilise a valuation basis, the asset must have been valued by 30 September 2004. This valuation must state the value as at 1 October 2001. There is no restriction as to who may effect the valuation although to the extent to which it is

carried out by someone unqualified, SARS may be more inclined to challenge the valuation.

Rate relief

A proportion of capital gains are added to the normal taxable income and taxed at the appropriate rate applicable to the type of taxpayer. The following rates are applied to calculate the proportion to be included in taxable income (not applicable to gains made by Micro Businesses):

	Inclusion rate	Effective tax rate
Natural persons and special trust	25%	4,5% - 10%*
Trusts (other than special trusts)	50%	20%
Companies, close corporations (other than Small Business Corporations and Micro Businesses)	50%	14%
Small Business Corporations	50%	5% - 14%*

*The effective rate applicable to natural persons, special trusts or Small Business Corporations will depend on their total taxable income.

In the case of Micro Businesses, capital receipts up to a maximum of R1,5 million, from sale of immovable property used for business and other assets used mainly for business, will be taxed at the prescribed rates for Micro Businesses. No deduction is therefore allowed for the base cost of these assets. Any capital receipts not falling within this limit will cause the entity from being disqualified from the system.

Donations and bequests

A person must disregard a capital gain or capital loss determined from a donation or bequest of an asset by him to a government or a provincial administration.

Capital versus revenue – equity investments

With effect from 1 October 2007, the previous 5-year rule was replaced with a new mandatory “3-year” rule whereby a sale of shares which have been held for a period of at least 3 years will be deemed to be of a capital nature. Certain exceptions apply. This rule applies equally to gains and losses.

Transfer of residence from a company or trust.

Provision is made for a base cost roll over where a residence is transferred from a company or a trust to a natural person who resides at the property.

The effect hereof is to exempt the transfer from:

- Capital gains tax,
- Transfer duty and
- STC/Dividends Tax

Requirements that must be complied with:

1. Natural person must acquire and register transfer of the interest from the company / trust no later than 31 December 2011 (in this year's budget speech the minister announced that the window period may be insufficient and will be reviewed).
2. Natural person alone or together with a spouse, directly held all the share capital or member's interest in the company/close corporation from 11 February 2009 until the date of transfer. Conversely, in the case of a trust, the natural person disposed of the residence to the trust by way of donation/ settlement or financed all expenditure to acquire and improve the residence.
3. Natural person alone or together with spouse resided in the residence and used it mainly for domestic purposes from 11 February 2009 to date of registration of transfer.

CORPORATE RESTRUCTURING RULES

Group relief measures exist to facilitate transactions between group companies on a tax neutral basis. These provisions provide for the amalgamation, conversion, merger or similar schemes between two resident companies without having to apply to the Commissioner for approval. These rules relate to company formations, share-for-share transactions, amalgamation transactions, inter-group, intra-group transactions, unbundling transactions and liquidation and distribution. The legislation sets out a number of definitions of terminology that is used throughout the corporate restructuring rules.

Removal of the financial instrument limitations

The corporate restructuring rules provide rollover relief in a variety of circumstances. However, this relief is generally unavailable if the company reorganisation mainly entails the transfer of financial instruments or companies mainly consisting of financial instruments. All of the financial instrument limitations are completely removed from the company reorganisation rollover provisions. All reorganisations can now be conducted without regard to any of these limitations. It should be noted, however, that the financial instrument limitations will remain for cross-border transactions.

WEAR AND TEAR

The more common wear and tear allowances available are set out below: Note that SARS will allow an asset having a cost of less than R7 000 (with effect from 1 March 2009, previously R5 000) to be written off on acquisition. Does not apply to assets used for letting.

Aircraft	25%
Cellular telephones	33.3%
Computers – main frame	20%
Computers – personal	33.3%
Computer software – purchased	33.3%
Computer software – developed	100%
Delivery vehicles	25%
Fax machines	33.3%
Furniture and fittings	16.6%
Law reports	20%
Motor cycles	25%
Neon signs and advertising boards	10%
Passenger cars	20%
Photocopiers	20%
Race horses	25%
Security systems	20%
Shop fittings	16.6%
Small assets – less than R5 000	100%
Staff training equipment	20%
Television sets, video players, decoders	16.6%
Telephone equipment	20%
Textbooks	33.3%
Trailers	20%

INTELLECTUAL PROPERTY

An allowance is available in respect of costs incurred in devising or inventing patents, designs, copyrights or similar property (excluding trademarks) on or after 1 January 2004 at the following rates:

- 5% in respect of inventions, patents or copyright expenditure.
- 10% in respect of designs or property of a similar nature.

When property is acquired from a connected person, the cost is limited to the lesser of the cost or market value on the date it was acquired by the seller. No deduction is permitted in respect of expenditure incurred on or after 1 January 2004 to extend the term or renew the registration of the trademark.

CAPITAL ALLOWANCES

Capital allowances are only permissible when the taxpayer is the owner of the asset or holds the asset under an instalment sale agreement and not a lease/finance lease.

The more common capital allowances available are set out below:

Aircraft	Purchased on or after 1 April 1995 for transporting persons for reward.	20%
Aircraft hangers and runways, aprons and taxiways	Purchased and contracted for on or after 1 April 2001. Construction commenced and brought into use on or after 1 April 2001 and used by the taxpayer in his sole trade as airport operator.	20%
Hotel buildings and improvements	Erection commenced on or after 4 June 1988. Refurbishment, not extending outer shell of building.	5% 2%
Industrial buildings and improvements	Used in process of or a process similar to a process of manufacture. Erected on or after 1 January 1989. Erected prior to 1 January 1989 Erection commenced between 1 July 1996 and 30 September 1999 and brought into use on or before 31 March 2000.	5% 2% 10%
Commercial buildings and improvements	New and unused commercial buildings and improvements which fall outside other available capital allowance regimes.	5%
Small business corporations	Plant and machinery brought into use for the first time on or after 1 April 2001 for the purposes of trade and used directly in a process of or process similar to a process of manufacture. Other assets but not buildings, brought into use on or after 1 April 2005 (not pro rata for part years).	100% 50/30/20
Plant and machinery used in a manufacturing or similar process	Brought into use before 1 March 2002 New and unused equipment brought into use on or after 1 March 2002	20% 40% 3 x 20%

Research and development expenditure (Including buildings)	Effective in respect of expenditure incurred on or after 2 November 2006. Must be undertaken within South Africa and must be performed for purposes of advancing scientific or technological knowledge.	50/30/20
Oil and gas pipelines	New and unused, used directly in the taxpayer's sole business and in the production of its income.	10%
Electricity and telephone lines	New and unused, used directly in the taxpayer's sole business and in the production of its income.	5%
Railway lines	Contracted for on or after 23 February 2000.	5%
Farming equipment including game farming	Used by a farmer in his farming operations, including game farming.	50/30/20
Rolling stock (trains, carriages and other things pulled by train)	Brought into use by the taxpayer in his trade for the first time on or after 1 January 2008 and must be used wholly or partly for the transportation of persons, goods or things.	20%
Airport and port assets	New and unused aircraft hangers, aprons, runways, taxiways and new and unused port terminals, breakwaters, berths and shipways.	5%
Environmental assets and activities	New and unused production environmental assets (waste treatment and recycling facilities or improvements thereto) and post production assets (waste dumps and dams or improvements thereto). Post production environmental assets for example; dams, reservoirs, evaporation ponds, etc.	40/20/20/ 20 5%
Small assets	Cost less than R7 000 (R5 000 prior to 1 March 2009). Does not apply to assets used for letting.	100%
Energy efficient equipment	Proposed additional allowance	Up to 15%

LEARNERSHIPS

In order to encourage employment, deductions are afforded to employers who enter into learnership agreements with employees.

Where an employer enters into a registered learnership agreement with a learner during years of assessment ending on or after 1 January 2010 and the agreement was entered into pursuant to a trade carried on by the employer, a deduction of R30 000 (R50 000 if employee is disabled) is allowed against the employer's income. If the agreement was not in place for the entire year of assessment, the allowance is apportioned.

Upon successful completion of the learnership, the employer receives a completion allowance of R30 000 for each consecutive 12 month period within the duration of the agreement. In cases where the duration of the agreement was less than 24 full months, the completion allowance is limited to R30 000.

A deduction will not be allowed if the learner previously failed to complete any other registered learnership having the same educational and a training component.

RESIDENCE BASED TAXATION

South Africa operates a residence based system of taxation and all residents are subject to tax in SA regardless of the source of the income and including a portion of profits of controlled foreign entities (as dealt with in separately in this booklet). Exceptions are:

- where service is rendered outside the Republic provided the individual is outside the Republic for at least 183 days during any 12 month period commencing or ending during the year of assessment, of which at least 60 full days are continuous.
- Foreign dividends where the shareholding is less than 10%.
- Foreign pensions (refer to the section dealing with Income Tax Exemptions in this booklet).
- Profits attributable to a permanent establishment of a controlled foreign entity, subject to restrictions.
- Special rules apply for capital gains earned by non residents.

Non-residents are only taxed on the income they derive from a South African source including sale of immovable property in South Africa.

The legislation defines a resident as:

- A person ordinarily resident in South Africa, or
- If not ordinarily resident, physically present in South Africa for 91 days in the relevant year of assessment and each of the preceding five years for assessment and physically present for at least 915 days in the preceding five years of assessment.

Where the above requirements are met, the individual will be regarded as being resident from the first day of assessment in which the 915 day and 91 day physical presence test is met. Partial days are regarded as full days.

When a person is out of the country for a continuous period of 330 days after ceasing to be physically present in the Republic, that person is deemed to have been not resident from the day he left South Africa.

In all cases, a person will cease to be resident in South Africa from the date that he becomes a resident for tax purposes in a country with which South Africa has entered into a double taxation treaty.

Taxpayers may deduct foreign taxes paid against South African tax payable to prevent the effects of double taxation. However, tax credits are available only to the extent that foreign taxes arise on foreign source income and excess credits may not be deducted against tax on domestic source income. Alternatively, foreign taxes may be deducted from the income to reduce the taxable amount. However, the foreign tax cannot exceed the underlying income giving rise to the foreign tax.

CONTROLLED FOREIGN COMPANIES (CFC)

Anti-avoidance measures apply to prevent South African residents from avoiding South African tax on foreign income by housing business and investment activities in foreign companies.

A controlled foreign company is defined as a non-resident company in which one or more South African residents hold more than 50% of the participation rights or voting rights. Provided that any resident that holds less than 5% of the participation rights is considered to be non-resident for purposes hereof.

A participation right is defined as the right to participate directly or indirectly in the share capital, share premium or reserves or, where no person has any such right in the company, the right to exercise any voting right.

The legislation provides that a portion of the net income of a CFC will be included in the taxable income of any South African resident who has a participation right in the CFC. The portion of the net income to be so included is based on the proportion of participation rights the resident has to the total participation rights in the CFC.

Provisions are also in place to specifically include and exclude income from certain sources and to further regulate the calculation of income to be included in a resident's taxable income.

NON RESIDENTS – WITHHOLDING TAX

Capital gains

Capital gains tax applies to gains made by non residents on the sale of immovable property located in South Africa. With effect from 1 September 2007, a withholding tax must be deducted by the seller or the estate agent or conveyancer assisting the seller.

This withholding tax only applies where the total amount payable to the seller(s) exceeds R2 million. The withholding tax must then be based on the entire proceeds and not only that portion as exceeds R2 million.

This represents an advance payment against the final tax liability to be determined and must be paid to SARS within 14 days, reckoned from the date the sale proceeds are paid to the seller. This is extended to 28 days if the purchaser is a non-resident.

Late payments will attract a 10% penalty and interest at prescribed rates. Where the amounts withheld are denominated in foreign currency, the amount payable to SARS must be translated into at the spot rate on the date of payment.

The withholding tax is calculated at the following rates:

- 5%, where the seller is a natural person
- 7.5%, where the seller is a company
- 10%, where the seller is a trust

The seller may apply to the Commissioner for a lower or nil amount to be withheld if any of the following conditions exist:

- security is furnished for payment of taxes as finally assessed
- seller has other assets in South Africa
- where the actual liability will be less than the prescribed withholding tax
- where seller is not subject to tax on the disposal

Any purchaser who knowingly fails to adhere will be held liable for amounts not withheld. Where the purchaser is assisted by an estate agent or conveyancer, they will be held liable, but limited to the remuneration receivable.

Visiting entertainers and sportspersons

There is a 15% withholding tax imposed on foreign visiting entertainers and sportspersons and applies to all gross payments for performances in South Africa irrespective of whom the payments are made to, including management companies. This includes the players participating in the 2010 FIFA Soccer World Cup.

The withholding tax must be paid by the person making the payment if the person making the payment is a resident or by the sportsperson or entertainer if the payment is made by a non-resident. This tax is a final tax and the sportsperson or entertainer need not submit a return of income.

Where the sportsperson or entertainer is in the Republic for more than 183 days, there is no withholding tax but all payments are then subject to employees tax and the sportsperson or entertainer is obliged to submit a tax return.

Any resident who agrees to find, organise or facilitate a performance is obliged to notify SARS of the performance within 14 days of concluding the agreement. Any resident who fails to withhold the tax or fails to pay it over to SARS is personally liable for the tax.

Double tax treaties

Agreements are in place between South Africa and various other countries to avoid income being fully taxed in both countries. A list of countries that South Africa has agreements with and further details are available from Leask & Partners or SARS.

SOCIAL SECURITY TAX

In the 2007/08 budget it was proposed that a mandatory, earnings related social security system be developed to provide improved unemployment, disability and death benefits, with a view to implementation by 2010.

The scheme would be financed by a social security tax administered by SARS and collected in individual accounts in the name of every contributor. A wage subsidy for those earning below the income tax threshold was proposed to offset the cost of the social security tax for low income workers and to lower the cost of creating employment. It is not clear whether the scheme will include obligatory contributions from employers.

No legislation has been passed to implement the proposals and no further proposals were announced by the minister in his 2010/2011 budget.

EXCHANGE CONTROL

The following foreign exchange allowances are currently available, provided satisfactory documentation is provided.

Annual allowances for private individuals	
<ul style="list-style-type: none">• Holiday and business travel• Tuition, accommodation and living costs while studying abroad• Monetary gifts and loans• Donations to missionaries• Maintenance	Aged 18 and over - R750 000 per annum (previously R500 000) Under 18 years - R160 000 per annum for travelling.
Payments by debit or credit cards: Imports, services or subscriptions Cardholders may make permissible foreign exchange payments for small currency transactions not exceeding R20 000 per transaction.	
Export of capital Individuals over 18 years of age and in good standing with SARS may export capital within the R4 million (previously R2 million) overall limit. Foreign currency accounts may be held with authorised dealers.	
Emigrants Single person limit R4 million (previously R2 million) Family limit R8 million (previously R4 million) Personal and household effects and vehicles within insured value of R1 million	
Income tax refunds Refunds in excess of R10 000 may be remitted by SARS.	
Emigrants' blocked funds May be remitted in accordance within approved tranches. 10% levy applies.	
Retirement annuities Transfer of annuities from RA's is permissible on application, provided the policy was initiated more than five years prior to emigration or where the annuity has been funded from a pension payment from a previous employer.	
SA residents proceeding abroad on a temporary basis May utilise the annual allowance dealt with above plus export of personal household effects, vehicles, stamps and coin collections within an insured value of R1 million per family or single person.	

Temporary export of personal effects and jewellery

Must declare on NEP form where the total value of goods exceeds R50 000. Specific approval of Exchange Control is required where the value exceeds R200 000. Where jewellery is exported, such products must be manufactured items and be in accordance with the traveller's financial means and standing.

Foreign earned income

Individuals may retain foreign earnings earned offshore. Proceeds of merchandise exports must be repatriated.

Omnibus facilities

Authorised dealers may approve applications from firms/companies for omnibus travel facilities up to R2 million per calendar year at the discretion of the firm/company.

Foreign investments into SA

Share capital – shares to be endorsed non-resident by authorised dealer. Foreign loans require prior SARB approval stating interest rate, objective and terms.

Local companies

On application and must demonstrate long term benefit to South Africa. Must obtain at least 10% of the voting rights in the foreign investment.

Inheritances

Inheritances may be retained abroad.

Foreign controlled companies

Local borrowings in Rand limited to three times shareholders' interest. Exceptions apply.

Legacies and distributions from estates

Beneficiary non-resident: no restriction.
Beneficiary an emigrant: must ensure formally re-designated as a non-resident.

Directors' fees

No limit. Require copy of resolution.

Miscellaneous items

Foreign currency transfers are also permitted in respect of a host of items not listed above, including various personal and business expenses. Contact Leask & Partners or a foreign exchange dealer for further details.

TRANSFER DUTY, STAMP DUTY AND SECURITIES TAX

Immovable property - transfer duty Natural persons R0 - R500 000 R500 001 - R1 000 000 R1 000 001 +	0% 5% over R500 000 R25 000 plus 8% over R1 000 000
Companies, close corporations, trusts	8%
<p>Any immovable property registered in the name of a spouse is exempt from transfer duty where that property or portion thereof is transferred as a result of the dissolution of the marriage.</p> <p>Where applicable, a notional VAT input tax credit is allowed, limited to the transfer duty actually paid.</p> <p>200% penalty applies in respect of transfer duty evasion</p>	
Securities Transfer Tax Creation/increase in authorised share capital Issue of shares Transfer Penalty on late registration of transfer	0% 0% 0.25% 10% plus interest
<p>If the shares being transferred are shares in a residential property company, transfer duty is payable by the purchaser instead of securities transfer tax. The duty is based on the market value of the property and not the value of the shares. Where the purchaser does not pay the duty, the seller and public officer are jointly and severally liable. See section on RESIDENTIAL PROPERTY COMPANIES</p>	
Stamp Duty The stamp duty act has been repealed. This means that no stamp duty will be payable on documents previously dealt with by that Act, including leases of immovable property. Any lease executed prior to 1 April 2009 would still bear duty in terms of the act, with an exemption applicable where the lease term, including any option period, is less than five years.	

RESIDENTIAL PROPERTY COMPANIES

With effect from 13 December 2002, the transfer of shares or member's interests in a company or close corporation attracts transfer duty where the company or close corporation is a residential property company. Transfer duty is calculated on the value of the property at the time of transfer.

A residential property company is defined as any company or close corporation which holds any dwelling-house, holiday home, apartment or similar abode, improved or unimproved land zoned for residential use in the Republic, other than –

- an apartment complex, hotel, guesthouse or similar structure consisting of five or more units held by a person which has been used for renting to five or more persons, who are not connected persons in relation to that person; or
- any fixed property of a vendor forming part of an enterprise as defined in section 1 of the Value-Added Tax Act;
- and more than 50% of the company's or CC's assets comprise of residential property.

Transfer duty is payable at rates based on the acquirer's status i.e. where the purchaser is a natural person, at the graduated rate whilst a flat rate of 8% applies where the purchaser is not a natural person.

As there is no transfer of property in the deeds office, the Act imposes the liability on the purchaser to pay the duty and in the event of the purchaser not paying the transfer duty, the public officer and seller are jointly and severally liable for the transfer duty.

Exemption on transfer to resident

In 2009 government announced a three year window period within which personal residences housed in companies or trusts can be transferred to the resident without attracting transfer duty, capital gains tax or STC - refer to the applicable section under CAPITAL GAINS TAX. The minister has now announced that the three year period may be insufficient and is to be reviewed.

ESTATE DUTY

Estate duty as well as capital gains tax is potentially payable on the death of a taxpayer which is seen to be double taxation. For this reason as well as the fact that estate duty does not generate much tax revenue relative to the administration required, that the minister has announced that taxes payable on death are to be reviewed. Until then the following principles remain in place.

- Estate duty at 20% of the Net Dutiable Estate.
- Levied in addition to Capital Gains Tax which arises because assets are deemed to be disposed of at market value at time of death.

- The portion of the estate that is bequeathed to the surviving spouse is exempt from estate duty.
- The first R3.5 million of an estate is not subject to estate duty.
- Any unused portion of the aforementioned R3.5 million exemption is transferred and added to the surviving spouse's exemption, with certain limitations.
- Limited interests (usufructs and *fideicommissums*) are capitalised and valued at the lesser of the life expectancy or period of enjoyment of the beneficiary.
- Donations that are exempt from donations tax, i.e. when the donee only receives a benefit on the death of the donor or under a donation *mortis causa*, are subject to estate duty in the hands of the donor.

DONATIONS TAX

Donations tax is levied at 20% of all donations made by natural persons.

The following exemptions are provided for:

- The first R100 000 per annum donated by a natural person in cash.
- Donations between spouses.
- Donations to qualifying PBO's.
- Casual gifts made by a donor other than a natural person, that do not exceed R10 000 per annum.
- Donations made in terms of an ante nuptial or postnuptial contract.
- Donations made to or for the benefit of any traditional council, traditional community or tribe.
- Donations made by or to a recreational club that is exempt from income tax.

Donations of assets other than cash are considered to be a disposal and could also give rise to capital gains tax. CGT also arises where a loan account or other dbt is waived or written off. An exception is in group company situations.

Donations made by a resident out of funds derived by him from a foreign trade attract donations tax.

PENALTIES FOR NON COMPLIANCE

New and harsher penalties have been introduced in order to achieve the widest possible compliance by tax payers. SARS have not yet applied the penalties except in the case of taxpayers who have more than one tax return outstanding.

The penalty applies to the following instances of non compliance:

- Failure to register as a taxpayer or otherwise register as and when required;
- Failure to inform the Commissioner of a change of address or other details as and when required;

- Failure by a company / close corporation to appoint a public officer or to have a registered office or to notify the commissioner of any change in the public officer or the registered office;
- Failure to submit a return or other related documents or information timeously;
- Failure to furnish, produce, or make available information, documents or things as and when required;
- Failure to reply to or answer a question as and when required;
- Failure to attend or give evidence as and when required;
- Failure by an employer to notify SARS of a change of address or the fact of having ceased to be an employer;
- Failure by an employer to submit a monthly declaration of employee's tax;
- Failure by an employer to provide details of an employee;
- Failure to deliver an employees' tax certificate to one or more employee or former employee as and when required;
- Delivery by an employer of an employees' tax certificate in contravention of the requirement that the employer must first render an employees' tax return;
- Failure by a provisional taxpayer who is liable for the payment of normal tax during a year of assessment to submit an estimate of taxable income as and when required;

Any other non-compliance with an obligation imposed under the Act, other than instances of non compliance which are dealt with in other sections.

Fixed penalties chargeable

Penalties will be calculated at the following rate based on taxable income of the taxpayer for the preceding tax year.

TAXABLE INCOME	PENALTY
R0 – R250 000	R250
R250 001 – R500 000	R500
R500 001 – R1 000 000	R1 000
R1 000 001 – R5 000 000	R2 000
R5 000 001 – R10 000 000	R4 000
R10 000 001 – R50 000 000	R8 000
Above R50 million	R16 000

Furthermore, the penalty will be charged **for each month, or part thereof** that the person fails to remedy the non-compliance.

The following persons, except those having taxable income above R50 million, or those that did not trade during the year of assessment, will be treated as having a taxable income of between R10 000 001 and R50 000 000 for purposes hereof.

- A company listed on a recognized stock exchange as described in paragraph 1 of the Eighth Schedule to the Act;
- A company whose gross receipts or accruals for the preceding year exceeded R500 million; or
- A company that forms part of a group of companies and which group includes a company described in either point above.

Except in the case of the types of company listed above, where the taxable income of the taxpayer for the preceding year is unknown or that person was not a taxpayer that year, the commissioner may either impose a penalty assuming a taxable income of less than R250 000 or estimate the amount of taxable income based on available information. Provided that, where upon determining the actual taxable income of the person it appears that such person falls within another bracket of the table, the penalty must be adjusted accordingly.

Percentage based penalties

The commissioner may, in addition to any other penalty, interest or charge for which the person may be liable under these regulations or the Act, impose a penalty equal to ten percent of the:

- Amount of employees' tax that an employer fails to pay as and when required;
- Total amount of employees' tax deducted or withheld, by an employer from the remuneration of its employees, where the employer fails to submit an employees' tax return; or
- Amount of provisional tax that a provisional taxpayer fails to pay as and when required.

Remittance of penalties

Application may be made to the Commissioner to remit the penalty in certain circumstances. In particular, where a penalty is imposed on a person for a failure to register or to notify the commissioner of a change of address, the commissioner may remit the penalty in whole or part if:

- The failure to register was discovered because the person approached SARS voluntarily; or
- The failure to notify SARS of a change of address was remedied by the person before SARS became aware of the changed address; and
- The person has filed all tax returns required under the act.
- In the case of a first incidence of non-compliance, or
- non-compliance where the duration of non-compliance is less than 7 days.

PRIME INTEREST RATES (Source SA Reserve Bank)

Date	%
1998-11-09	23.50
1998-12-07	23.00
1999-01-11	22.00
1999-02-12	21.00
1999-03-08	20.00
1999-04-19	19.00
1999-06-25	18.00
1999-07-14	17.50
1999-08-08	16.50
1999-10-04	15.50
2000-01-24	14.50
2001-06-18	13.75
2001-07-16	13.50
2001-09-25	13.00
2002-01-16	14.00
2002-03-18	15.00
2002-06-14	16.00
2002-09-16	17.00
2003-06-13	15.50
2003-08-15	14.50

Date	%
2003-09-11	13.50
2003-10-20	12.00
2003-12-15	11.50
2004-08-16	11.00
2005-04-15	10.50
2006-06-09	11.00
2006-08-04	11.50
2006-10-06	12.00
2006-12-08	12.50
2007-06-08	13.00
2007-08-17	13.50
2007-10-12	14.00
2007-12-07	14.50
2008-04-11	15.00
2008-06-13	15.50
2008-12-12	15.00
2009-02-06	14.00
2009-03-25	13.00
2009-05-04	12.00
2009-05-24	11.00
2009-08-14	10.50

OFFICIAL INTEREST RATES

The taxable fringe benefit arising from low or interest free loans is determined using the following official rates:

Fringe Benefits tax

Date of change	Rate
1 September 2004	8.5%
1 September 2005	8%
1 September 2006	9%
1 March 2007	10%
1 September 2007	11%
1 March 2008	12%
1 September 2008	13%
1 March 2009	11.5%
1 June 2009	9.5%
1 July 2009	8.5%
1 September 2009	8%

SARS charges interest on outstanding monies due to it or credits interest where it owes a provisional taxpayer a refund of tax.

The following rates are applicable in the given circumstances.

Assessed and provisional tax

Date of change	Rate
1 September 2003	14%
1 October 2003	13%
1 December 2003	11.5%
1 November 2004	10.5%
1 November 2006	11%
1 March 2007	12%
1 November 2007	13%
1 March 2008	14%
1 September 2008	15%
1 May 2009	13.5%
1 July 2009	12.5%
1 August 2009	11.5%
1 September 2009	10.5%

Overpayment of tax

Date of change	Rate
1 July 2003	11%
1 September 2003	10%
1 October 2003	9%
1 December 2003	7.5%
1 November 2004	6.5%
1 November 2006	7%
1 March 2007	8%
1 November 2007	9%
1 March 2008	10%
1 September 2008	11%
1 May 2009	9.5%
1 July 2009	8.5%
1 August 2009	7.5%
1 September 2009	6.5%

VAT- Interest on late payment

	Rate
1 December 2003	11.5%
1 November 2004	10.5%
1 November 2006	11%
1 March 2007	12%
1 November 2007	13%
1 March 2008	14%
1 September 2008	15%
1 May 2009	13.5%
1 July 2009	12.5%
1 August 2009	11.5%
1 September 2009	10.5%

VAT - Interest on VAT refunds

1 November 2004	10.5%
1 November 2006	11%
1 March 2007	12%
1 November 2007	13%
1 March 2008	14%
1 September 2008	15%
1 May 2009	13.5%
1 July 2009	12.5%
1 August 2009	11.5%
1 September 2009	10.5%

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