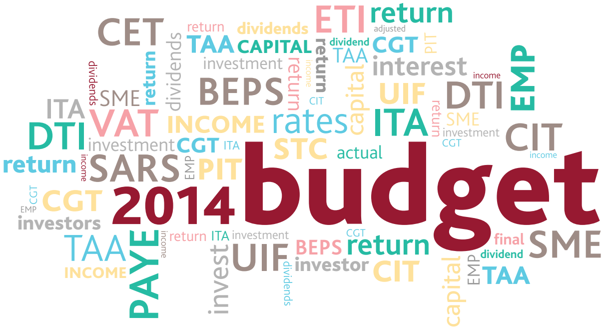
Audit • Advisory • Tax

Financial & Taxation
Directory 2014/15



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CONTENTS

The contents of this publication incorporate the budget proposals tabled in Parliament on 26 February 2014 together with appropriate amending legislation to that date. Applicable laws, rules, proposals, practices and regulations often change and have varying implementation dates. Furthermore, the information provided is only intended to serve as a general guideline and professional advice should be sought before making any decision.

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

Personal Income Tax Rates

The minimum tax threshold increases from R67 111 to R70 700 for persons under the age of 65. For persons aged from 65 to 74 the tax threshold increases from R104 611 to R110 200 and for persons aged 75 and older the tax threshold increases from R117 111 to R123 350.

The primary rebate increases from R12 080 to R12 726. The secondary rebate for individuals aged 65 and older increases from R6 750 to R7 110.

The third rebate for individuals aged 75 and older increases from R2 250 to R2 367.

The maximum marginal tax rate at 40% is applicable to taxable income above R673 101 (previously R638 601).

Interest and Dividend Income Exemption

The domestic interest exemption remains constant at R23 800 for taxpayers aged under 65 and at R34 500 for taxpayers aged 65 and over.

The most significant tax proposals

The 2014 Budget produced few surprises. There were no changes to the corporate or personal income tax rates, capital gains tax inclusion rates or the VAT rate. The robustness of revenue collections, almost in line with the 2013 forecast, probably played a part in enabling the Minister to keep rates steady.

Income tax highlights

- The introduction of tax-preferred savings accounts. The initial contribution limits are very low, at R30 000 per annum, with a lifetime contribution limit of R500 000. This was announced at last year's budget.
- Significant downward adjustments in the retirement fund lump sum tax tables.
- Public Benefit Organisations that are what the Minister referred to as 'philanthropic foundations', by which he appears to mean those that provide funds to other public benefit organisations, will see a relaxation in the requirement that the distribute at least 75% of the funds received by way of donations for which they have issued tax deduction receipts, within 12 months of the end of the year of assessment.

- Simplification is proposed in respect of the turnover tax regime. In addition, turnover up to R335 000 should not be taxed at all, and the maximum tax rate is to be reduced from 6% to 5%. Other suggestions are doing away with the compulsory three year lock in period and requiring annual, rather than biannual, returns. In the meantime, taxpayer-friendly changes were made to the bands within the small business graduated tax tables.
- Small business corporations in terms of section 12E of the Act may see a replacement of the reduced tax rate regime with an annual refundable tax compliance rebate, subject to public consultation.
- Foundations that promote small enterprise development through grants may be granted public benefit organisation status or otherwise benefit from a more dedicated tax provision.
- Government grants received by small and medium- sized enterprises may be made tax exempt. However, mention was made of the need to prevent abuse and avoid inconsistency within the tax system.
- It is sought to popularise the venture capital company regime, which has received limited uptake, by either:
  - Making deductions permanent if investments are held for a certain period;
  - Allowing transferability of tax benefits upon disposal of holdings;
  - Increasing the total asset limit for qualifying investee companies from R20 million to R50 million, and from R300 million to R500 million in the case of junior mining companies; or
  - Waiving capital gains tax on disposal of assets and expanding the permitted business forms.
- Tax relief measures for companies undergoing business rescue, in respect of debt reduction provisions, will be considered.
- Profits from the risk business of an insurer will be taxed in the corporate fund rather than in the policyholder funds – this was announced at last year's budget.
- The method of valuation of the fringe benefit that arises where an employer provides the employee with residential accommodation is to be reviewed.
- We are pleased to see that it has been proposed that the imposition of a secondary adjustment in the case of transfer pricing transgressions is to be transformed into a dividend or return of capital, depending on the facts or circumstances, rather than a deemed loan. There have been many concerns about the method in which deemed loans could be extinguished and it could be argued that such a loan would exist indefinitely. The proposed amendment will result in more certainty and, interestingly enough, takes us back to a similar position to that

which applied under STC in which a transfer pricing adjustment gave rise to a deemed dividend.

- A review of cross-border retirement saving with extensive consultation and spanning 2 years is to be conducted. From the wording it would appear to refer to South Africans working abroad and foreign residents working in South Africa.
- Taxpayer-friendly amendments are to be made to the 'third party-backed share' provisions of the Act (section 8EA). The circumstances in which the provision will not apply will be expanded to include:
    - The refinancing of third-party backed shares originally used to fund equity acquisitions in operating companies;
    - The inclusion of exploration companies in the definition of 'operating companies'; and
    - Limited pledges in respect of third party backed shares.
- Section 23N, which will replace the directive system (section 23K) relating to the deduction of debt utilised in reorganisation or acquisition transactions, will be amended so as to take the taxpayer's taxable income into account in the year preceding that in which the transaction occurred. It will also be amended to take assessed losses from previous years into account i.e. so as not to further lower the limitation on the quantum of the interest that may be deducted.
- If an individual resident's controlled foreign company receives a taxable foreign dividend, under current law the foreign dividend is taxed at an effective rate of 21% in the hands of the individual. This rate will be changed to reflect the fact that the taxpayer is an individual and not a company.

VAT highlights

- An amendment is proposed to prevent second hand goods consisting of precious metals from obtaining a notional input tax deduction.
- The elimination of the four-monthly category of VAT vendor is proposed. Vendors registered under this category will be brought into the bi-monthly VAT system.
- The current provisions in the VAT legislation impose interest on late payments of VAT for every month or part month that the VAT is outstanding. In other words the interest charged is the same irrespective of when, during the subsequent VAT period, the VAT is paid. The proposed amendment seeks to align the interest charging provisions in the VAT Act with those in the Tax Administration Act and as such interest will only be charged for the period between the period when the VAT became due and when payment is made. In so doing it will ensure that the basis on which interest is charged is fair.

- It is understood that over the next two fiscal years, National Treasury's research agenda will include reviews of the following VAT areas:
    - The zero rating provisions for housing subsidies with a view to eliminating anomalies encountered in practice. The standard rating of these grants is currently being considered together with an increase in the value of the grant.
    - The current treatment of educational services and public transport.
- The current zero rating of petrol and diesel sales will be reviewed.
- The legislation and the supplementary interpretation note dealing with the zero rating of a going concern are not aligned. Whereas the current VAT legislation prescribes that both the seller and the purchaser must be registered VAT vendors at the time of concluding the agreement in order for the zero rate to apply to the sale of the going concern, the interpretation note merely requires that the parties agree that the buyer will be a registered vendor at the effective date. The proposed amendment seeks to align the current legislation with the provisions of the interpretation note and to clarify the uncertainty surrounding whether the buyer needs to be a registered VAT vendor prior to concluding the agreement.
- The VAT legislation and accompanying interpretation notes prescribe the obtaining and retention of certain customs documentation. Due to the customs modernization programme, paper-based documentation is no longer freely available. The proposed amendment seeks to align the VAT documentary requirements with the electronic customs modernization programme.
- At present the VAT legislation only prescribes times limits in respect of tax invoices issued by VAT vendors. The 21 day time limit will be extend to agents acting on behalf of a VAT vendors. However legislation does not set any time limits for the issuing of debit and credit notes. The proposed amendments will make provision for this.
- The current VAT legislation together with Interpretation note 49 requires that the vendor is in possession of proof that the VAT levied on the importation of goods has been paid over to SARS prior to it being claimed by the vendor. The requirement is vague and the vendor is often unsure as to what documentation is required by SARS to substantiate the proof of payment. The proposed amendment will provide clarity on the documentation required to substantiate the proof of payment to SARS.

- The current VAT legislation allows for a supplier of goods and services who concludes an agreement prior to being registered as a VAT vendor and which subsequently is registered for VAT purposes to recover any VAT due arising from the agreement from the recipient. Suppliers who fail to register as VAT vendors will be excluded from relying on this provision and the legislation will be amended accordingly.
- Bargaining councils receive a separate fee for administrative services provided over and above the normal fee for goods and services provided to their members. Currently only the supply for goods and services arising from membership contributions are exempt from VAT. This exemption will be extended include the administration services provided.
- The concession granted to the agricultural sector to provide cash flow relief will be revisited. In order to curtail transactions entered into for the purpose of claiming fraudulent input tax deductions, the supply of goods which are used or consumed for agricultural, pastoral or farming purposes which supply is currently zero rated will be reviewed. It may possibly be replaced with the standard rate.

• The issuing of money or legal tender (paper currency) by the reserve bank is not subject to VAT. However the printing of money is standard rated. In order to ensure that VAT does not become a cost in the issuing of money, the definition of money in the VAT Act will be reviewed with a view to zero-rating of the supply of a legal tender or money.

THE CALCULATION OF TAX PAYABLE - INDIVIDUALS 2015 YEAR OF ASSESSMENT

Gross income	....
Less: exempt income (see page 13)	....
Income	....
Less: deductions (see pages 14 - 17)	----------
Add: 33.3% of capital gain (see pages 39 - 45)	....
Less: s 18A donation deduction (see page 14)	
Taxable income	
Tax per tables (see page 8)	....
Less: rebates (see page 8)	....
Normal tax payable	
Less: medical scheme fees tax credit (see pages 14 - 15)	
Provisional tax paid (see pages 26 - 27)	
Foreign tax credits (see page 11)	
PAYE paid (see page 27)	
Tax due	

TAX RATES: INDIVIDUALS AND TRUSTS

YEAR ENDED 28/29 FEBRUARY

INDIVIDUALS

Rebates	2015	2014	2013
Primary Rebate	R12 726	R12 080	R11 440
Age Rebate * – 65 and over	R7 110	R6 750	R6 390
Third Rebate* – 75 and over	R2 367	R2 250	R2 130
* Additional to primary rebate			
Tax Threshold			
Under 65	R70 700	R67 111	R63 556
65 and over	R110 200	R104 611	R99 056
75 and over	R123 350	R117 111	R110 889

INDIVIDUALS AND SPECIAL TRUSTS

Taxable Income R	2015 R	Tax Liability
0 – 174 550		18% of each R1
174 551 - 272 700		31 419 + 25% of the amount above 174 550
272 701 - 377 450		55 957 + 30% of the amount above 272 700
377 451 - 528 000		87 382 + 35% of the amount above 377 450
528 001 - 673 100		140 074 + 38% of the amount above 528 000
673 101 and above		195 212 + 40% of the amount above 673 100

Taxable Income R	2014 R	Tax Liability
0 – 165 600		18% of each R1
165 601 - 258 750		29 808 + 25% of the amount over 165 600
258 751 - 358 110		53 096 + 30% of the amount over 258 750
358 111 - 500 940		82 904 + 35% of the amount over 358 110
500 941 - 638 600		132 894 + 38% of the amount over 500 940
638 601 and above		185 205 + 40% of the amount over 638 600

TRUSTS (Other than Special Trusts)

Taxable Income	Rate of Tax
2015	40%
2014	40%

TAX RATES: CORPORATES

YEAR OF ASSESSMENT ENDING BETWEEN 1 APRIL 2014 - 31 MARCH 2015

COMPANIES AND CLOSE CORPORATIONS

Taxable Income (R)	Rate of Tax (%)
Small business corporations	
0 - 70 700	0%
70 701 - 365 000	7% of taxable income above R70 700
365 001 - 550 000	20 601 + 21% of taxable income above R365 000
550 001 and above	59 451 + 28% of taxable income above R550 000
Micro businesses	
Qualifying businesses with a turnover of up to R1 million may elect to be taxed upon qualifying turnover. See page 30 for table of rates.	
Companies and Close Corporations other than certain gold mining companies and special entities referred to on this page	28%
Public Benefit Organisations and recreational clubs (on non-exempt income)	28%
Personal Service Providers, Companies and Close Corporations	28%
Dividends Tax	15%
Local branch of foreign company	
Normal tax rate	28%
Long-term Insurers	
Individual policyholder fund	30%
Company policyholder and Corporate fund	28%
Untaxed policyholder fund	0%

INDIVIDUAL TAXPAYERS AND TAX TAKE

Estimates of individual taxpayers and tax take: 2014/2015

Taxable bracket	Registered individuals	Taxable income	Income tax payable after relief
R	%	%	%
0 - 70 000	0	11.5	0
70 001 - 150 000	43.0	17.0	4.9
150 001 - 250 000	25.6	19.0	11.8
250 001 - 350 000	13.3	14.8	12.6
350 001 - 500 000	8.3	13.0	13.9
500 001 - 750 000	5.4	12.3	16.1
750 001 - 1 000 000	2.1	6.7	10.1
1 000 001 +	2.4	17.2	30.7
TOTAL	100.0	100.0	100.0

RESIDENCE AND SOURCE OF INCOME

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

Definition of resident

Individuals

A natural person is a resident if he or she:

- is ordinarily resident in South Africa; or
- is not ordinarily resident in South Africa but:
    - is physically present in South Africa for a period exceeding 91 days in aggregate during the current year of assessment and for a period exceeding 91 days in aggregate during each of the preceding 5 years of assessment; and
    - was physically present in South Africa for a period exceeding 915 days in aggregate during the preceding 5 years of assessment.

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

Where a person falls within the above physical presence tests, but has been outside of South Africa for a continuous period of at least 330 full days after ceasing to be physically present in

South Africa, then he or she will be deemed to be non-resident from the time of departure.

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

Companies or entities other than natural persons

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

Foreign branches of South African residents

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

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

Controlled foreign companies (CFCs)

A controlled foreign company (CFC) means any foreign company where more than 50% of the total participation rights in that foreign company are held or more than 50% of the voting rights in that foreign company are directly or indirectly exercisable by one or more residents that hold at least 10% of the participation rights.

A CFC's net income is imputed to South African residents in the same ratio as the participation rights of each resident in such CFC, subject to a number of exclusions. The most important of these are an exclusion for net income subject to a high rate of foreign tax and non-diversionary net income attributable to a foreign business establishment of the CFC.

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

Foreign tax credits / deduction

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

Where a resident is subject to foreign tax in respect of South African sourced income, a deduction of the foreign tax paid may be claimed, subject to certain limitations.

Foreign taxes on taxable income relating to South African sourced services may alternatively be claimed as a credit against South African tax payable on that amount of taxable income. The credit is limited to the South African tax payable on that amount of taxable income.

Non-residents

As stated above, non-residents are taxed on South African sourced income subject to a number of exceptions and the provisions of various double taxation treaties.
There are currently more than 70 comprehensive treaties in force and numerous other treaties are in various stages of finalisation.

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

- The profits of local branches of foreign companies are currently taxed at a rate of 28% and no dividend or similar tax is payable on the repatriation of branch profits.
- There are comprehensive transfer pricing (including thin capitalisation) rules applicable to transactions between local entities and non-resident related parties.
- Interest earned by non-residents is exempt from income tax unless a non-resident has a permanent establishment in South Africa or is present in South Africa for more than 183 days. However, a withholding tax at 15% on certain interest paid to non-residents applies from 1 January 2015. For more detail on this withholding tax, see 'Withholding tax on interest paid to non-residents' in this guide.
- Royalty payments to non-residents are currently subject to a withholding tax of 12%. This rate will increase to 15% with effect from 1 January 2015.
- Dividends paid to non-residents are subject to a 15% dividend withholding tax from 1 April 2012.
- A proposed withholding tax is to be levied on cross-border service fees at the rate of 15% with effect from 1 March 2014.
- The above withholding taxes are subject to various exclusions and are also subject to relief in terms of double tax treaties.
- The disposal of immovable property by a non-resident is subject to withholding tax, subject to certain exceptions.

TAXATION OF INDIVIDUALS

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

Married persons

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

- Any income which is received by or accrues to a spouse in consequence of a donation, settlement or disposition by the other spouse is deemed to be income of the spouse who made such donation/settlement/disposition if done solely or mainly to avoid tax.
- Any income derived by one spouse from the other spouse or from a partnership or private company of the other spouse, or derived from a trade which is connected to a trade carried on by the other spouse, is taxed in the hands of the other spouse to the extent that the amount of income is excessive in the circumstances.
- If a couple is married in community of property, the net property rentals and/or interest income received by them is deemed to accrue in equal shares to each spouse provided that the underlying property forms part of the joint estate. Any income which does not fall into the joint estate is taxed in the hands of the spouse entitled thereto. Similar principles apply in respect of capital gains and losses made by persons married in community of property.

Minor children

Minor children (under the age of 18 years) may be taxpayers in their own right and are taxed on income received by or accrued to them. Where the income arises as a result of the child's parent having made a donation or transferring income to the child, the resultant income will be taxed in the parent's hands.

EXEMPT INCOME

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

- Qualifying pensions received by or accrued to a resident from a non-South African source;
- The capital portion of a purchased annuity;
- Remuneration received for services rendered outside the Republic for longer than 183 days in any 12 month period, provided the 183 day period of absence includes at least 60 continuous days. This exemption is subject to certain exclusions;
- War and certain disability pensions;
- Dividends received from South African resident companies, subject to certain exceptions;
- Certain dividends received from non-resident companies;
- South African sourced interest earned by individuals, up to a maximum of R23 800 per tax year (R34 500 for persons aged 65 years and over).
- Interest earned by non-residents who are absent from South Africa for 183 days or more during the tax year and who do not carry on business through a permanent establishment in South Africa during the tax year. Note however that from 1 January 2015 withholding tax will apply to interest payments to non-residents; and
- UIF and Workmen's Compensation benefits.

Foreign employment

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

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

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

DEDUCTIONS

Medical and disability expenses

Medical expenditure includes:

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

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

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

In the case of taxpayers under the age of 65, a hybrid system consisting of tax credits and tax deductions applied for years of assessment commencing on 1 March 2012 up to and including the 2014 year.

Taxpayers aged 65 years or older were on a deductions-only system up to and including the 2014 year of assessment.

For the 2014 year of assessment, deductions allowable were as follows:

- In the case of taxpayers aged 65 years and over:
  - There was no limit on the amount of contributions to medical schemes and qualifying medical expenditure which could be claimed as a deduction.
- In the case of taxpayers under the age of 65 years a rebate (tax credit) for medical aid contributions was allowed as a credit against tax payable. The amount of the rebate was limited to:
  - › R242 where the contributions were in respect of the taxpayer only;
  - › R484 in respect of the taxpayer and one dependant and
  - › R484 plus R162 each, in the case of additional dependants.
  - A deduction from taxable income was allowed for:
    - › so much of the value of medical aid contributions which exceeded four times the contribution limits above and the sum of qualifying medical expenses to the extent that such amounts exceeded 7.5% of taxable income excluding retirement lump sum and severance benefits.
- In the case where the taxpayer, his or her spouse or child was disabled, the rebate and deduction for medical aid contributions was as described above for under 65s. However, the deduction for qualifying medical expenditure was unlimited.

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

Taxpayers aged 65 years and older and those with disabilities or disabled dependents convert all medical scheme contributions in excess of three times the allowable contributions credit (per table below) plus out of pocket expenses into an additional tax credit at a conversion rate of 33.3%. In respect of taxpayers under the age of 65 years, the conversion to credit will apply to medical scheme contributions in excess of four times the allowable contributions credit (per table below) plus out of pocket expenses at a conversion rate of 25%.

Also with effect from 1 March 2015, ex-employees no longer continue to enjoy a tax free benefit on employer contributions to medical aid funds.

The credit in respect of medical aid contributions is:

R257 where the contributions were in respect of the taxpayer only;

R514 in respect of the taxpayer and one dependent and

R514 plus R172 each, in the case of additional dependents.

Entertainment

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

Donations to Public Benefit Organisations

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

Home study expenses

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

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

Contributions to Pension, Retirement Annuity and Provident funds

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

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

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

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

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

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

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

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

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

Proposed changes
From 1 March 2015 contributions to retirement funds by employers will constitute a taxable fringe benefit in the hands of the employees. Individual taxpayers will be allowed to deduct up to 27.5% of the greater of their remuneration or taxable income in respect of contributions made by themselves or their employer to pension, provident or retirement annuity funds. The annual deductions will be limited to R350 000.

SHARE INCENTIVE SCHEMES

Employees and directors are subject to tax on gains derived from rights that they obtain in terms of a share incentive scheme. Rights obtained prior to 26 October 2004 are governed by section 8A. Rights obtained on or after 26 October 2004 are governed by section 8C. Broad-based share incentive schemes are governed by section 8B (see pages 47 - 48).

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

- Employees are subject to tax on any share, share option, convertible instrument or member's interest in a close corporation which is acquired from an employer or by arrangement with the employer. The gain or loss will be determined on the vesting date (see below).
- The gain or loss is the difference between the amount paid by the employee to acquire the equity instrument and its market value on the vesting date.
- The definition of 'vesting date' differs depending on whether the instrument is restricted or unrestricted.
- Unrestricted instruments trigger a taxable event when acquired whereas restricted instruments usually trigger such an event once the restrictions cease to have effect.
- The amount of any gain determined on the vesting of an equity instrument is taxed as income and will be subject to employees' tax.
- If an employee purchases shares in terms of a share incentive scheme and the transaction is cancelled or the shares are repurchased from the employee, the employee will not be taxed on the amount received to the extent that it does not exceed the amount paid for the shares.

THE TAXATION OF FRINGE BENEFITS

Fringe benefits arising from employment are taxed as follows:

A general principle regarding the taxation of such benefits is that the taxability of the fringe benefit is unaffected whether the benefit is granted by the employer or by an 'associated institution' in relation to the employer. Where the benefit is granted to any person other than the taxpayer by virtue of the taxpayer's employment, it is deemed to be granted to the taxpayer. The principles below apply to benefits granted to an employee or to the holder of an office (e.g. a director), hereinafter collectively referred to as 'employee'.

Residential accommodation for foreigners working in the Republic

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

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

This concession is limited to R25 000 per month. Where the value of the benefit exceeds R25 000 per month, the fringe benefit is determined by taking the greater of the residential accommodation formula or actual costs less the R25 000 exemption. If an employee is in the Republic for less than 90 days the cap will not apply.

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

Bursaries

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

- if the bursary or scholarship is granted to any employee and the employee does not agree to reimburse the employer if the employee fails to complete the studies; or
- if the bursary or scholarship is granted to an employee's relative and the employee's remuneration exceeds R200 000 per annum; or
- if the bursary or scholarship is granted to an employee's relative, to so much of the bursary or scholarship as exceeds R30 000 per annum (in the case of higher education) or R10 000 per annum (in the case of basic education).

Acquisition of asset at less than actual value

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

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

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

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

VAT on certain fringe benefits is payable by the employer on the fringe benefit amount at a rate of 14/114.

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

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

Travel allowances

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

Either actual or deemed costs relating to actual business travel may be claimed. Deemed costs are determined based on the value of the vehicle as per the table below. The value of the vehicle is essentially the purchase price including VAT, but excluding finance charges. Private travelling includes travelling between the employee's place of residence and his place of employment.

Where business travel is 8 000 kilometres or less for a year of assessment, an employee may receive a reimbursement of up to 330 cents per kilometre on a tax-free basis, provided that no other allowance or reimbursement is received by the employee in respect of the vehicle.

For PAYE purposes, 80% of the monthly travel allowance is regarded as remuneration and is subject to PAYE. However, if the employer is satisfied that at least 80% of the use of the motor vehicle will be for business purposes, only 20% of the monthly travel allowance may be subject to PAYE.

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

- a taxpayer may furnish accurate data and deduct actual costs relating to business travel. A logbook is thus required for this method. Finance charges and wear and tear are, however, limited where a vehicle costs more than R480 000, and in this case, lease deductions are limited to the deemed fixed cost applicable to a vehicle with a cost of R480 000 per the table below; or
- a taxpayer may use actual business kilometres which are applied to deemed costs. A log book is also required for this method.

Deemed costs are determined according to the following table:

Value of the Vehicle (including VAT) R	**Fixed Cost** R	**Fuel Cost** c	**Maintenance Cost** c
R0 - R80 000	25 946	92.3	27.6
R80 001 - R160 000	46 203	103.1	34.6
R160 001 - R240 000	66 530	112.0	38.1
R240 001 - R320 000	84 351	120.5	41.6
R320 001 - R400 000	102 233	128.9	48.8
R400 001 - R480 000	120 997	147.9	57.3
R480 001 - R560 000	139 760	152.9	71.3
Exceeding R560 000	139 760	152.9	71.3

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

Right of use of an employer provided motor vehicle

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

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

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

The ‘determined value’ of the vehicle is the original cash cost to the employer (including VAT) or the retail market value thereof in the case of a lease or donation. The 'determined value' does not decrease in subsequent years. However, should the taxpayer not be the first employee to have use of the motor vehicle and the taxpayer first obtains the right of the use of the vehicle 12 months or more after the employer acquired the vehicle, the determined value comprises the original value as determined above depreciated by 15% per annum for each completed period of 12 months on the reducing balance method.

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

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

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

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

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

Interest on loans

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

The official rate is determined with reference to the repurchase ('repo') rate. Where the loan is denominated in rands, the official rate is 100 basis points above the repo rate. Where the loan is denominated in foreign currency, the official rate is 100 basis points above the equivalent rate to the repo rate for that currency. Where the repo rate changes during a month, the official rate changes from the beginning of the following month. No benefit is placed on a casual loan to an employee up to R3 000 or a study loan to enable the employee to further his or her own studies.

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

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

Subsistence allowance

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

- where the accommodation to which that allowance or advance relates is in South Africa, an amount equal to:
- R105 per day if the allowance/advance is paid to defray the cost of incidental subsistence expenses; or
- R335 per day if the allowance/advance is paid to defray the cost of meals and incidental subsistence expenses, i.e. beverages, room service, etc.; and
- where the accommodation to which the allowance relates is outside of South Africa, a foreign subsistence allowance which varies from country to country.

These allowances only apply to continuous periods not exceeding 6 weeks away from home.

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

Right of use of an asset (other than residential accommodation or motor vehicles)

A taxable benefit arises whenever an employee is granted the right to use an asset for his private or domestic purposes, either free of charge or for a consideration which is lower than the value of use.

Exclusions:

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

Residential accommodation

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

Where the employer or associated institution does not own the accommodation but it is customary and necessary for the employer in the industry concerned to provide free or subsidised accommodation to its employees, the benefit is provided solely for bona fide business purposes other than the obtaining of a tax benefit and the employee does not have an interest in the accommodation, then the employee will be taxed on the difference between the rental value for the year, as determined by the following formula, and the amount paid by him or her:

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

A = the remuneration of the employee in the preceding year of assessment, including directors fees, but excluding taxable benefits from the use of a motor vehicle or residential accommodation.
If the employee was employed by the current employer for only part of the preceding year, his salary is grossed up to that of a full year, but if he was not employed by the current employer in the previous year, 'A' will be his first month's salary divided by the number of days in that month and multiplied by 365.

B = R67 111 except for the following situations where it is nil:
(i) where the employer is a private company controlled directly or indirectly by the employee or his spouse even if the employee is only one of the persons controlling the company; or
(ii) where the employee or his spouse or minor child has an option or right of pre-emption granted by the employer or another person by arrangement with the employer whereby they may become the owner of the accommodation.

C = 17, or 18 if the accommodation consists of at least four rooms and is unfurnished and power or fuel is supplied by the employer, or furnished but without the supply of power or fuel, and 19 if furnished and power or fuel is supplied.

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

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

Holiday accommodation

If the accommodation is hired by the employer, the employee will be taxed on all costs borne by the employer (including meals, refreshments and services). In any other case, the employee will be taxed on an amount equal to the prevailing rate per day at which the accommodation could normally be let to a person who is not an employee.

Payment of employee's debts

A taxable benefit arises where an employer has paid an amount owing by the employee to a third party without requiring reimbursement from the employee, or has released an employee from an obligation to pay an amount owing by the employee to the employer. The amount of the benefit is the amount of the debt settled.

Professional subscriptions paid by the employer are, however, exempt if membership is a condition of employment, as are professional indemnity insurance premiums paid by the employer.

Meals and refreshments

An employee is taxed on the cost to the employer of any meal or refreshment provided by the employer, subject to the following exclusions, which apply to meals or refreshments:

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

Free or cheap services

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

The following exclusions apply:

- certain circumstances where the employer is engaged in the business of conveying passengers;
- transport services conveying employees between their homes and work;

- telephone, cellphone or other communication services if used mainly for business purposes;
- services rendered by the employer to assist with the better performance of employees' duties; and
- travel facilities granted to the spouse or minor children of an employee who is stationed more than 250km away from his usual place of residence for more than 6 months in a tax year.

Medical Aid contributions

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

No taxable fringe benefit arises if:

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

With effect from 1 March 2014, employer contributions to medical schemes on behalf of ex-employees will be deemed a taxable fringe benefit in the hands of the ex-employees, and the ex-employee will be able to claim appropriate tax credits.

Insurance policy premiums

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

Other exemptions

The following benefits are exempt from tax:

- the value of a uniform, or an allowance paid for purposes of funding a uniform, which an employee is required to wear while he or she is on duty, provided that the uniform is clearly distinguishable from ordinary clothing; and
- the cost of the transfer of an employee to another place of employment arising out of the appointment or resignation of an employee at the insistence of the employer. Included in this exemption are transportation costs, costs in respect of the sale of employee's previous residence, settling in costs and costs of hiring temporary accommodation.

Employer's obligations

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

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

PROVISIONAL TAX

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

The following individuals who derive income which is not remuneration are nevertheless exempt from provisional tax provided that the income or any part of the income is not derived from the carrying on of a business:

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

Provisional returns - Individuals

First provisional tax return

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

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

Second provisional tax return

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

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

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

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

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

Third provisional tax return

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

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

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

General

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

EMPLOYEES TAX (PAYE)

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

Directors of private companies, as well as members of close corporations, are subject to PAYE on the greater of their actual monthly remuneration or their deemed remuneration (calculated in terms of a formula), unless they received at least 75% of their remuneration in the previous tax year in the form of fixed monthly payments of remuneration. In that case, such directors are taxed only on their actual remuneration.

TAXATION OF LUMP SUM PAYMENTS

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

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

- the employee or holder of office is at least 55 years old;
- the termination or variation is due to permanent incapacity of holding the office or employment on the part of the employee or holder of office; or

- the termination or variation is a result of retrenchment (except where the employee or holder of office at any time held more than 5% of the shares or member's interests of the employer).

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

On retirement, death or retrenchment

Pension Funds, Retirement Annuity Funds and Provident Funds

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

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

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

The table applies cumulatively and is currently as follows:

Retirement, death or retrenchment

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

On withdrawal from the Fund

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

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

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

Withdrawal

Lump Sum	Tax Liability
R0 - R25 000	0%
R25 001 - R660 000	18% of the amount exceeding R25 000
R660 001 – R990 000	R114 300 + 27% of the amount exceeding R660 000
R990 001 and above	R203 400 + 36% of the amount exceeding R90 000

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

TRUSTS

Trusts are separate fiscal entities and pay tax at a flat rate of 40% on income retained and not awarded to beneficiaries. Trusts do not qualify for the annual interest exemption nor the primary rebate.

Trusts pay Capital Gains Tax (CGT) on 66.6% of capital gains giving rise to an effective CGT rate of 26.6% (40% x 66.6%).

Various anti-avoidance provisions exist to combat the use of trusts for income splitting and tax avoidance structures. One such provision provides that any income earned by the trust as a result of a donation, settlement or disposition made by a person ('the donor'), which is not distributed, is deemed to be the income of that donor and taxed in his or her hands.

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

Trusts play an important part in estate planning and if properly structured, managed and controlled can act as a significant shelter against future estate duties. With the introduction of CGT, the effectiveness of the use of trusts in estate planning has been somewhat reduced.

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

- solely for the benefit of a person who suffers from a mental illness or a serious physical disability, where that person is incapacitated from earning sufficient income for his or her maintenance or from managing his or her own financial affairs; or
- in terms of the will of a deceased person, where all the beneficiaries are surviving relatives of the deceased, the youngest of whom must be under the age of 18 as at the end of the relevant tax year.

In terms of rather cryptically worded 2013 Budget proposals, it appears that the 'conduit pipe' treatment will cease to apply to discretionary trusts and that taxable income will in future be fully calculated at trust level. Distributions from offshore foundations will be treated as ordinary revenue. It is not clear whether or not this amendment will take effect.

COMPANIES AND CLOSE CORPORATIONS

Normal taxation

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

Branches of foreign companies conducting business in South Africa through a permanent establishment are taxed at 28%.

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

Taxable Income	Tax Liability
0 - R70 700	0%
R70 701 - R365 000	7% of the amount above R70 700
R365 001 - R550 000	R20 601 + 21% of the amount above R365 000
R550 001 and above	R59 451 + 28% above the amount above R550 000

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

Taxable Turnover	Tax Liability
0 - R150 000	0%
R150 001 - R300 000	1% of each R1 above R150 000
R300 001 - R500 000	R1 500 + 2% of the amount above R300 000
R500 001 - R750 000	R5 500 + 4% of the amount above R500 000
R750 001 - R1 000 000	R15 500 + 6% of the amount above R750 000

This turnover based tax system is elective and qualifying businesses will be required to remain in the system for a minimum of 3 years unless they no longer qualify (for example if the turnover threshold is exceeded).

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

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

A **Micro business** is a company, close corporation or individual (including deceased and insolvent estates where the person was a registered micro business at the time of the death or insolvency) where qualifying turnover is less than R1 million. This amount is reduced proportionately for periods of less than a full year.

A person will not qualify as a Micro Business in certain circumstances, such as the following:

- it holds certain shares such as shares in unlisted companies;
- more than 20% of total receipts consist of, in the case of natural persons, income from professional services, and in the case of companies or close corporations, investment income and income from professional services;
- its business is that of a personal service provider for any portion of the year;
- the total receipts from capital disposals do not exceed R1.5 million over a three year period;
- in the case of a company, its tax year ends other than on the last day of February or its shareholders are not individuals or deceased or insolvent estates of individuals; or
- in the case of partnerships any partner is not a natural person, or a partner is a partner in more than one partnership or the turnover of the partnership exceeds R1 million.

Personal service providers (PSPs) which are incorporated are taxed at a rate of 28%. PSPs which are trusts are taxed at 40%.

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

- such person would be regarded as an employee of the client if such service was rendered directly by such person to the client; or

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

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

Any amount that is paid to a personal service provider is subject to employees' tax at the rate of 28% (in the case of a company) or 40% (in the case of a trust). If the personal service provider is in possession of a directive from SARS for a lower percentage, then employees' tax must be deducted at the percentage per the directive.

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

Secondary tax on companies

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

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

Dividends tax withholding regime

The essential features of the DT are as follows:

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

A payer must not withhold tax if:

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

A regulated intermediary must not withhold tax if:

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

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

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

Provisional tax

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

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

The third provisional payment is voluntary and should be submitted 7 months after the end of the tax year if the year end is February and 6 months after the end of the tax year if the year end is on any other date, in order to avoid interest.

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

The same rules apply as for individuals relating to the estimation of provisional tax payments (see 'Provisional returns - individuals' on page 26).

Special corporate rules

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

These rules specifically cover:

- Asset-for-share transactions
- Substitutive share-for-share transactions
- Amalgamation transactions
- Intra-group transactions
- Unbundling transactions
- Liquidations/winding-up and deregistrations

CAPITAL ALLOWANCES

Plant and machinery

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

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

Manufacturing assets acquired by small business corporations, as defined, may be deducted in full (100%) in the year the asset was acquired. Other depreciable assets acquired by small business corporations are eligible for a depreciation allowance at a 50:30:20 rate over a 3-year period. The normal S11(e) write-off periods (see below) may however be used at the option of the small business corporation.

Farmers are entitled to an allowance, over 3 years, of 50%, 30% and 20% respectively calculated on the cost of machinery, implements and articles used for farming, excluding passenger motor vehicles and office furniture and equipment. Farmers are also entitled to a deduction of various capital expenses against farming income.

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

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

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

Wear and tear allowance

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

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

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

A full transcript of the interpretation note which includes a detailed list of rates acceptable to SARS, may be viewed at *www.bdo.co.za/mailers/Wearandtearallowances2014.pdf*.

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

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

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

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

Buildings

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

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

The annual allowance is also claimable in respect of purchased industrial buildings, provided that the seller was entitled to the allowance. The rate of the allowance will be the same as the rate to which the seller was entitled, with the exception of the accelerated 10% rate.

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

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

Commercial building allowance

An allowance is available in respect of new commercial buildings or improvements to existing buildings. The allowance is equal to 5% of the cost to the taxpayer of any new and unused building owned by the taxpayer, if that building or

improvement is wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer's trade.

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

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

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

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

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

In certain circumstances, if a taxpayer holds a right of use or occupation of land or a building and effects an improvement to the land or to the building, the taxpayer is deemed to be the owner of the improvement for purposes of claiming capital allowances if the improvement is in terms of a Public Private Partnership or a lease with the Government or certain quasi-Government organisations.

Residential building allowance

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

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

Urban development zone allowance ('UDZ')

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

Sale of low-cost housing on loan account

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

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

FOREIGN EXCHANGE PROFITS AND LOSSES

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

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

TRADING STOCK

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

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

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

The LIFO method of valuation is not permitted.

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

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

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

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

CAPITAL GAINS TAX (CGT)

Capital Gains Tax was introduced on 1 October 2001.

Determination of a capital gain or loss

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

The calculation of CGT

Proceeds on disposal	....
Less: Base Cost	....
Capital Gain	....
Less: Annual exclusion (if applicable)	R30 000[1]
Less: Previous assessed capital loss	....
Net Capital Gain (Assessed Capital loss carried forward and may not be offset against revenue gains)	....
Net Capital Gain Multiplied by: Inclusion rate (33.3% / 66.6%)	....
Amount of the capital gain to be included in income	....

Note 1: An annual exclusion of R30 000 against capital gains or capital losses applies to individuals and special trusts only. In the year of the death of an individual, the annual exclusion becomes R300 000.

Four cornerstones for determining a capital gain or loss

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

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

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

Asset

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

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

Disposal

A 'disposal' is any event, act, forbearance or operation of law and includes:

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

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

- the transfer of an asset as security for debt;
- the issuing or cancellation of shares by a company (in the hands of the company) except cross-issues of shares in a resident company in exchange for shares in a non-resident company;
- the granting of an option by a company to take up shares or debentures (in the hands of the company);
- the issuing of units by an equity unit trust or the granting of an option to take up units;
- the issuing of a bond, debenture, note or borrowing of money from a person;
- the correction at the deeds office of incorrect property registration;
- the lending of marketable securities in terms of a lending arrangement; and
- what might otherwise qualify as the 'disposal' of an equity instrument obtained after 26 October 2004 if the equity investment has not yet vested at the time of its 'disposal'.

Determination of base cost

Assets acquired before 1 October 2001:

- the base cost will be the sum of the 'valuation date value' and qualifying costs incurred after the valuation date. The valuation date value, depending on the information and records available, can be determined by using any one of the following methods:
  - › market value of the asset on 1 October 2001. It should be noted that proof of the market valuation of high value assets had to be furnished to the Commissioner within a prescribed period;
  - › the time-apportionment base cost method; or
  - › 20% of the proceeds from the disposal.

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

Assets acquired on or after 1 October 2001:

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

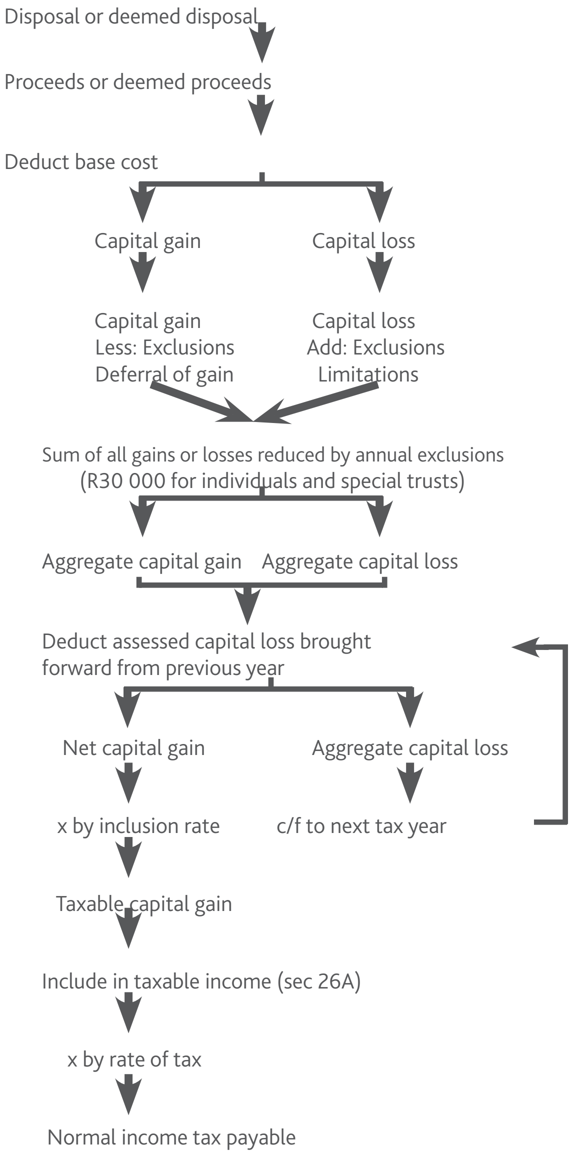
The following are examples of costs that are excluded from the base cost:

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

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

In the case of an asset that was subject to a deemed disposal (e.g. asset acquired through donation or inheritance), the base cost in the hands of the recipient will be equal to the deemed proceeds that were used to calculate the gain in the hands of the person who disposed of the asset plus subsequent qualifying costs.

CGT BASIC FRAMEWORK



Inclusion Rates

Type of Taxpayer	Inclusion Rate (%)	Statutory Tax Rate (%)	Effective Tax Rate (%)
Individuals	33.3	0 - 40	0 - 13.3
Standard companies	66.6	28	18.6
Trusts			
• Unit	N/A	N/A	N/A
• Special	33.3	0 - 40	0 - 13.3
• Other	66.6	40	26.7
Retirement Funds	N/A	N/A	N/A
Life assurers			
• Ind policyholder fund	33.3	30	10
• Co policyholder fund	66.6	28	18.6
• Corporate fund	66.6	28	18.6
• Untaxed policyholder fund	0	0	0

Death

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

Liability for CGT

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

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

- immovable property and any interest in or right to immovable property; and
- assets of a permanent establishment situated in South Africa.

Withholding tax regime for non-residents

A capital gain made by a non-resident on the disposal of immovable property or any right or interest therein is subject to a withholding tax regime. The obligation to withhold the tax is placed upon the purchaser and the withholding rates are as follows:

Individuals	5.0%
Corporates	7.5%
Trusts	10.0%

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

Triggering of CGT

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

Exclusions

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

- the first R2 million of a gain or loss upon disposal of a primary residence;
- the disposal of personal use assets of individuals or special trusts;
- lump sum benefits from pension, provident or retirement annuity funds;
- proceeds from long term insurance policies (excluding second-hand policies);
- payments as compensation for personal injury, illness or defamation claims;
- gains from gambling, games or competitions authorised and conducted in terms of South Africa's laws;
- certain gains made by approved PBOs;
- qualifying gains and losses made by unit trust funds;
- gains of up to R1.8 million during an individual's lifetime from the disposal of a small business asset by reason of reaching the age of 55 or for reasons of ill-health or death, provided certain other requirements are met; and
- donations and bequests to approved PBOs.

Rollover or deferrals

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

- involuntary disposals (e.g. theft, fire) provided the asset is replaced within a period of 12 months;
- re-investment in replacement assets that are brought into use within a period of 12 months;
- transfers between spouses, including as inheritances; and
- disposal of assets using the special corporate rules.

Capital losses not taken into account

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

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

Assets held in foreign currency

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

Profits and losses resulting from foreign exchange differences must generally be accounted for in the case of taxpayers that are companies or trading trusts.

Foreign currency assets and liabilities

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

DISPOSAL OF SHARES - 3 YEAR RULE

The proceeds on the sale of equity shares will automatically be subject to Capital Gains Tax if the period of ownership equals or exceeds three years.

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

The salient features of section 9C are as follows:

- It is applicable to the disposal of qualifying shares on or after 1 October 2007.
- It is mandatory – no election by the taxpayer is provided for.
- The application of section 9C extends beyond listed shares – it also applies to shares in private companies, interests in close corporations and collective investment schemes (in securities and hedge fund collective investment schemes). There are however various exclusions from section 9C such as shares in non-resident companies (other than shares in non-resident SA listed companies), shares in share block companies and hybrid equity instruments.

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

THE TAXATION OF FOREIGN DIVIDENDS

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

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

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

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

BROAD-BASED BLACK ECONOMIC EMPOWERMENT

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

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

Broad-based employee share plans

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

In essence, employees may acquire over a period of 5 years, in aggregate up to R50 000 worth of shares from the employer or associated companies either for free or for a nominal consideration. The employee will be subject to capital gains tax on any amounts received or accrued, if the shares are held by the employee for more than 5 years before disposal. If the shares are disposed of within 5 years, any gains made will be taxable as normal income and subject to normal income tax (this is despite the 3 year rule contained in section 9C which characterises the proceeds upon the disposal of a share after 3 years as capital).

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

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

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

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

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

HEADQUARTER COMPANY REGIME

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

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

- The company must be a South African resident;
- Throughout the current year of assessment, each shareholder must have held 10% or more of the equity shares and voting rights in the company;
- As at the end of the current year of assessment and all previous years, 80% or more of the cost of total assets must have been attributable to investments in foreign companies in which the company held at least 10% of the equity share capital and voting rights (a 'qualifying investee');
- Where the gross income of the headquarter company exceeds R5 million for a given year of assessment, 50% or more of the 'gross income' (ignoring taxable foreign exchange differences) of the company for that year of assessment must consist of rental, dividends, interest, royalties or fees from qualifying investees or proceeds from the disposal of the headquarter company's interests (including intellectual property interests) in qualifying investees.

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

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

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

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

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

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

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

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

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

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

WITHHOLDING TAX ON INTEREST PAID TO NON-RESIDENTS

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

Non-residents are also except from the withholding tax on royalties.

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

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

The following are the most important exemptions:

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

TAX EXEMPT ENTITIES

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

Public Benefit Organisations (PBOs)

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

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

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

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

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

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

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

PBOs also enjoy preferential VAT treatment in certain respects.

Recreational clubs

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

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

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

Body corporates

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

VALUE ADDED TAX (VAT)

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

Exempt supplies, for example:

- non-fee based financial services unless zero rated e.g. by export. This includes interest charged and the transfer of debt and equity securities;
- rental of residential accommodation in terms of an agreement for the letting and hiring of the accommodation. This exemption does not apply to 'commercial accommodation' e.g. accommodation provided in a hotel or guest house;
- educational services;
- local passenger transport by road or rail;
- trade union contributions;
- share block and body corporate levies;
- child care in a crèche or after-school care;
- the sale or letting of land outside South Africa; and
- certain supplies by certain Public Benefit Organisations;

Zero rated supplies, for example:

- the sale of a going concern between two registered vendors;
- petrol sales;
- certain basic foodstuffs;
- certain goods to be used for farming purposes;
- exported goods and services, subject to prescribed requirements;
- goods supplied to a customs controlled area, subject to prescribed requirements;
- supply of gold to the South African Reserve Bank, Mint or any registered bank;
- certain services rendered outside South Africa;
- international transportation and related services;
- certain services rendered to non-residents, but subject to prescribed requirements;
- certain services rendered by welfare organisations; and
- certain services related to warranties.

Essential features

- enterprises making taxable supplies of less than R1 million in any period of 12 months are not obliged to register for VAT;
- enterprises making taxable supplies of less than R50 000 in any period of 12 months are not permitted to register for VAT;
- VAT returns are generally submitted on a 2 monthly basis unless taxable supplies in any period of 12 months has exceeded or is likely to exceed R30 million, in which case returns are submitted monthly. There are, however, also 4-monthly, 6-monthly and annual VAT periods;
- a vendor may claim the VAT element of all incoming taxable supplies from registered VAT vendors, subject to the vendor being in possession of a valid tax invoice when making the claim, but for the following exceptions:
  › entertainment expenditure (which excludes *inter alia* certain qualifying subsistence expenditure and expenditure of an entertainment business);
  › the supply of passenger vehicles (including hiring);
  › club subscriptions; and
  › goods or services acquired by a superannuation scheme.
- input tax credits may not be claimed on expenditure relating to exempt supplies;
- the name, address and VAT registration number of the recipient must appear on tax invoices (together with other required information) where the VAT inclusive total exceeds R5 000;
- a notional input tax credit may be claimed on the purchase of second hand goods including immovable property, subject to prescribed requirements;
- all fee based financial services (with the exception of certain premiums on life policies, contributions to retirement funds and the buying or selling of derivatives or the granting of options) are subject to VAT;
- certain vendors, the value of whose taxable supplies made in a 12 month period has not exceeded and is not likely to exceed R2.5 million, may apply to account for VAT on a payments basis; and
- non-residents may, subject to certain conditions, qualify for a VAT refund on goods purchased in South Africa. Such refunds do not apply to services.

GOVERNMENT INCENTIVES

At present there are a number of incentives available to South African businesses. Incentive categories include research and development, enterprise development, export development, industry specific incentives and investment incentives.

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

Research and development

Support programmes provided by the Department of Trade and Industry (DTI) in association with the Industrial Development Corporation (IDC) are aimed at encouraging research and development activities by large companies and Small and Medium Enterprises (SMEs). The Support Programme for Industrial Innovation (SPII) serves to promote technology development in industries within South Africa for the innovation of competitive products and/or processes.

Three options are available:

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

Enterprise development

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

Export development

Various incentives to encourage exports are available. These include:

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

Industry specific incentives

Targeted support is available to selected industry sectors which include:

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

Investment incentives

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

- Critical Infrastructure Programme (CIP): a cost sharing grant established to assist industrialists engaged in the development or upgrading of critical infrastructure such as roads, rail links, water pipelines, telecommunication networks, etc. The grant of up to 30% (capped at R30 million) of development costs is available to approved enterprises on completion of the infrastructure project concerned.
- The Enterprise Investment Programme (EIP) is made up of the Manufacturing Investment Programme (MIP) and the Tourism Support Programme (TSP).

  The MIP closed for applications in September 2013. A replacement programme is expected to launch in mid-2014. It aimed to enhance the sustainability of manufacturing investment projects by small enterprises and to support large-to-medium sized investment projects in manufacturing that would otherwise not be established without the grant.

  The MIP incentive programme provided investment support to both local- and foreign-owned entities, by offering an investment grant of up to 30% of the value of qualifying investment costs in machinery, equipment, commercial vehicles, land and buildings, required for establishing a new production facility; expanding an existing production facility; or upgrading production capability in an existing clothing and textile production facility. Investment projects of above R5 million could qualify for an investment grant equal to 30% of their total qualifying investment cost, payable over a three year period. Investment projects of above R5 million could qualify for an incentive grant equal to 30% of their total qualifying investment cost, payable over a three year period. Investment projects of above R5 million could qualify for an incentive grant of between 15% and 30% of their qualifying investment costs, calculated on a regressive scale and payable over a period of two years. This investment grant could not exceed R30 million. Foreign investment projects could qualify for an additional grant for the cost of transporting their qualifying machinery and equipment to South Africa. The additional grant was the lower of 15% of the value of qualifying imported machinery and equipment or the actual transport costs of relocating qualifying new machinery and equipment from abroad to a maximum of R10 million. In all cases, the grant payment was subject to the approved project achieving the stipulated performance requirements of investment and employment creation.

  The TSP incentive programme closed for applications in September 2013. A new programme is being formulated by the National Department of Tourism and is expected to launch in mid-2014. It offered a grant of up to 30% towards qualifying investment costs for establishing and expanding existing tourism operations in South Africa.
- The Manufacturing Competitiveness Enhancement Programme (MCEP) was launched on 15 May 2012 and offers a cash grant to existing manufacturing and engineering businesses that wish to increase competitiveness through one or more of the following components:
  - Capital investment (machinery, equipment and building improvements)
  - Green technology and resource efficiency (solar panels, pumps, motors, etc)

- Enterprise-level competitiveness improvement (i.e. undertake 3rd party service projects such as ISO9000; HACCP; ERP system implementation; training; etc)
- Feasibility studies
- Cluster competitiveness Improvement (5 or more businesses may claim shared infrastructure and marketing costs etc)
- Pre/post dispatch working capital facility
- Industrial policy niche project fund

This grant is calculated using the applicant's Manufacturing Value Addition (MVA), defined as:

Average sales for the last 2 years
Less average material input costs
Less sales value of bought-in finished goods
Less sales value of imported goods
= MVA

The MVA is then multiplied by a % ranging from 25% down to 10% based on the entity's asset value.

Maximum grant payable per entity over a 2 year period: R50 million (per component).

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

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

Maximum grant payable per entity: R40 million

The Clothing and Textile Production Incentive (PI) offers a cash grant to existing manufacturing businesses (and design houses) in the clothing, textile and leather goods sector for qualifying investments in machinery and equipment (historical and future). The PI also offers an interest subsidy for working capital facility. This grant is calculated using the applicant's Manufacturing Value Addition (MVA), defined as:

Sales for the last financial year
Less material input costs
Less sales value of bought-in finished goods

Less sales value of imported goods
Less outsourced CMT costs
=MVA
The MVA is then multiplied by 7.5%

- Tax allowance incentive for industrial projects (S12I): The S12I incentive is designed to support greenfield projects (i.e. new industrial projects that utilise only new and unused manufacturing assets) as well as brownfield projects (i.e. expansions or upgrades of existing industrial projects). The projects have to be approved by the Minister of Trade and Industry. The manufacture of certain products, for example wine, spirits, beer, tobacco, arms and ammunition does not qualify for the allowance. The provision gives allowances for both capital investment and training. Certain minimum investment in manufacturing assets is required: for example for Greenfield projects, the minimum is R200 million. The project must significantly contribute to the Industrial Policy Programme of South Africa having regard to:

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

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

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

As part of the 2013 Budget proposals, certain companies operating in Special Economic Zones (which Zones are still to be gazetted), are granted special tax incentives.

These are:

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

EMPLOYMENT TAX INCENTIVE ACT

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

Main Features

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

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

For the second 12 months of the qualifying employee's employment the credit would halve to R500 per month assuming that the employee continued to earn remuneration of R4 000 per month during this period. The incentive has been made exempt from Income Tax in the hands of the employer by virtue of a specific new exemption provision.

Qualification requirements

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

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

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

In addition, the employee must:

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

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

Excess credits

Where the incentive credit exceeds the Employees' Tax payable during a particular month, the excess is rolled over as a credit to the following month. If an employer does not claim the credits in any particular month (for example in ignorance of the legislation), then the amount of the unclaimed credits is rolled over as a credit to the next month. If the employer becomes disqualified from claiming credits by virtue of having an outstanding tax return or tax debt as discussed above, then credits continue to accumulate during the period of disqualification. However, on the first day of the month following the end of an IRP 501 reporting period, accumulated credits are limited to R6 000 per qualifying employee. It appears that SARS will pay out credits due at the IRP 501 reporting date in cash, provided that the employer is in good standing.

Anti-displacement rules

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

ESTATE DUTY

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

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

The dutiable amount is arrived at as follows:

Value of all property at date of death (including limited interests such as usufructs and off-shore assets)	R………………
Deemed property *	R………………
Gross value of property	R………………
Deductions **	R………………
Net value of estate	R………………
Abatement***	R (3 500 000)
Dutiable amount	R………………
Estate Duty thereon at 20%	R………………

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

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

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

There is relief from estate duty in the case of the same property being included in the estates of taxpayers dying within 10 years of each other. The deduction is calculated on a sliding scale decreasing from 100% where the taxpayers die within two years of each other to 20% where the deaths are within 8 to 10 years of each other.

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

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

Rates

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

DONATIONS TAX

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

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

Rate of donations tax

Donations tax is payable within 3 months of the date of donation at a flat rate of 20% on all donations made.

Principal exemptions

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

SECURITIES TRANSFER TAX

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

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

‘Securities’ include a member’s interest in a close corporation.

No STT is payable on the issue of shares.

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

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

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

STAMP DUTY

Leases of immovable property

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

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

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

TRANSFER DUTY ON IMMOVABLE PROPERTY

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

The following are the rates applicable to acquisitions of immovable property acquired under purchase agreements concluded on or after 23 February 2011, irrespective of the juristic nature of the acquiror:

Value of property:	
on first R600 000	0%
R600 001 to R1 000 000	3% on value above R600 000
R1 000 001 to R1 500 000	R12 000 + 5% on value above R1 000 000
R1 500 001 and above	R37 000 + 8% on value above R1 500 000

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

CARBON TAX

As part of the 2013 Budget proposals, it was announced that a carbon tax will be introduced as part of South Africa’s efforts to mitigate the effects of climate change. By pricing the external costs associated with carbon dioxide (CO_2) emissions, incentives will be created to change behaviour and encourage energy-efficiency measures. Government proposes to phase the tax in over time. Draft legislation is however not yet available. As part of the 2014 Budget proposals, it was announced that the implementation of the carbon tax will be postponed to 2016.

SKILLS DEVELOPMENT LEVY

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

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

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

TAX ADMINISTRATION ACT

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

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

The Act also contains transitional provisions.

EXCHANGE CONTROL

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

Facilities available to South African residents

Discretionary allowance

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

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

The allowance is available to cover the following:

- Monetary gifts and loans to non-resident individuals.
- Donations to missionaries, religious, charitable and educational bodies.
- Maintenance transfers.
- Travel allowances.
- Study allowances.
- Alimony and child support payments.
- Foreign capital allowance.

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

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

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

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

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

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

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

South African residents temporarily living abroad

Such persons qualify for:

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

Study facilities

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

The facilities comprise:

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

Business travel facilities

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

Foreign investment by South African residents

Individuals

Private individuals over the age of 18 years are permitted to invest an amount of R4 million per calendar year outside the CMA. A tax clearance certificate must be obtained from SARS prior to the transfer of funds. These funds may not be utilised to invest directly or indirectly back into South Africa.

The Reserve Bank will also consider applications by private individuals to invest in fixed property in the SADC member countries against submission of a tax clearance certificate.

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

South African resident companies

Requests to invest overseas are considered on merit. The investor will be required to motivate that the investment will result in a long-term benefit to the South African economy. Similarly, major corporates may apply to establish primary listings offshore. The outward investment limit was increased from R50 million to R500 million in October 2009.

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

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

The HoldCos will be subject to the following conditions:

- They must operate as South African tax residents, and be incorporated and effectively managed and controlled in South Africa.

- Transfers from the parent company to HoldCo will be allowed up to R750 million per year. Additional amounts may be considered on application to the Reserve Bank.
- HoldCos will be allowed to freely raise and deploy capital offshore, provided these funds are without South African guarantees. Additional domestic capital and guarantees will be allowed on funding genuine foreign direct investment (FDI) in the same manner as the current FDI allowance.
- HoldCos will be allowed to operate as cash management centres for South African multinationals. Cash pooling will be allowed without any restrictions.
- Local income generated from cash management will be freely transferable.
- HoldCos may choose their functional currency or currencies, and operate foreign currency accounts and a rand-denominated account for operational expenses.
- Only one wholly owned HoldCo per JSE-listed entity will be allowed. In future, conditions for jointly owned HoldCos, multiple HoldCos and subsidiaries of non-listed entities may be prescribed
- Appropriate governance and transparency arrangements will be required.

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

Institutional Investors

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

Royalties and licence fees

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

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

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

Non-residents

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

Capital transactions

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

Dividends

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

Dividends declared by unlisted companies are remittable in proportion to percentage shareholdings. Dividends in favour of emigrant shareholders may be remitted subject to additional requirements.

Directors fees

Authorised dealers may transfer directors fees to non-resident directors permanently domiciled outside South Africa, provided the application is accompanied by a copy of the resolution of the board of the remitting company, confirming the amount to be paid to the beneficiary.

Management and administration fees

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

Emigrants from South Africa

Emigrants qualify for:

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

Cash allowance

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

Foreign capital allowance

- up to R4 million per calendar year per single person; or
- up to R8 million per calendar year per family unit, less any amount invested in terms of the foreign investment allowance.

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

Quoted securities may be exported as part of the emigration facilities based on their market value at the time of utilising the foreign capital allowance. The relevant securities must be restrictively endorsed.

Exportation of goods

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

Further regulations

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

Blocked funds

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

Emigrants can, on application, request to transfer blocked assets in excess of the foreign capital allowance limits, subject to an exit schedule approved at the discretion of the South African Reserve Bank.

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

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

Distributions from estates

Bequests and the cash proceeds of and inheritances due to heirs permanently resident outside South Africa may be remitted abroad, subject to the adherence to prescribed procedures where the legatee is an emigrant.

NAMIBIA

Tax year

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

Individual tax rates

Taxable income (N$)	Tax rate (N$)
Up to 50 000	Not Taxable
50 001 - 100 000	18% for each N$ above 50 000
100 001 - 300 000	9 000 + 25% for each N$ above 100 000
300 001 - 500 000	59 000 + 28% for each N$ above 300 000
500 001 - 800 000	115 000 + 30% for each N$ above 500 000
800 001 – 1 500 000	205 000 + 32% for each N$ above 800 000
Over 1 500 000	429 000 + 37% for each N$ above 1 500 000

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

Company tax rates

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

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

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

Diamond mining taxable income is taxed at 55%.

Retirement funds are exempt from income tax.

Capital Gains Tax (CGT)

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

Withholding tax

- Dividends: 10% if the beneficiary is a company holding more than 25% capital in the Namibian company and 20% in all other cases;
- Royalties paid to non-residents are subject to 9,6% withholding tax;

- Interest: 10% withholding tax on interest paid by Namibian Banks and Unit trusts. Not applicable to companies. There is no withholding tax if interest is paid from a Namibian company to a non-Namibian company. It might be subject to tax in Namibia, based on the source of the income, but it is not a withholding tax;
- Fees and services: 25% withholding tax on management, technical, entertainment, director's fees and all similar fees paid by Namibian Resident to Non-resident. DTA's could provide relief;
- Double Taxation Agreements (DTA) may override these withholding taxes. There are DTA's with Botswana, France, Germany, India, Malaysia, Mauritius, South Africa, Romania, Russian Federation, Sweden and the United Kingdom.

Estate duty/donations tax

There is currently no estate duty nor donations tax.

Transfer pricing and thin capitalisation

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

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

Value Added Tax (VAT)

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

BOTSWANA

Tax year

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

Company tax rates

Resident companies	22%
Resident manufacturing companies (Approved*)	15%
Non–resident companies	30%
International Financial Services Centre (IFSC) Companies (Income from approved transactions)	15%
International Financial Services Centre (IFSC) Companies (Income from unapproved transactions)	22%
Foreign dividends	15%
Pension and Provident Fund not approved by the Commissioner General	7.5%
All other persons not mentioned above excluding individuals	22%

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

According to the budget announcements in Botswana on 3 February 2014, the following was proposed:

- Increase the VAT compulsory registration threshold from BWP 500,000 to BWP1,000,000
- Exempt all farming equipment from VAT
- Exempt all basic food items currently zero-rated from VAT
- Possible amendments to the Income Tax Act to be announced during the 201/2015 financial year

Capital Gains Tax

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

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

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

- principal private residence if owned for at least 5 years;
- shares and debentures of a public company if held for at least one year; and
- plant and machinery, but not buildings, in respect of which annual allowances have been granted, subject to income tax and gains arising from disposal of mineral rights and mining or prospecting information.

100% of net gains on immovable property will be taxable, whereas only 75% of net gains on movable property will be taxable.

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

Withholding tax

- Dividends 7.5%
- Payment of interest to a non-resident is subject to WHT of 15% on payment.
- Commercial royalties and management or consultancy fees paid to non-residents are subject to 15% WHT.
- 10% WHT is deductible on entertainment fees paid to a non-resident.
- 3% WHT is deductible on construction contracts that are in excess of Pula5 000, but the withholding tax does not apply to construction related services.

Self Assessment Tax (SAT)

Under this scheme, tax is payable on a quarterly basis in advance with a final payment due during the first 4 months of the subsequent financial year. The scheme is at present only applicable to companies. The quarterly payments must not be less than 20% of the actual liability for the relevant tax year. SAT is mandatory for companies with tax payable of over Pula50 000.

Individuals

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

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

Value Added Tax

Introduced on 1 July 2002.

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

Compulsory registration is required for those persons whose taxable turnover is in excess of Pula500 000 and all auctioneers, irrespective of their annual turnover.

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

MOZAMBIQUE

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

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

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

Corporate tax rates

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

Specific Categories	Rate
Agricultural or livestock activities, until 31 December 2015	10%
Income subject to withholding tax at source (e.g. interest, certain dividends and royalties)	20%
Entities that do not have headquarters, effective management nor a permanent establishment in Mozambique	20%
Entities which do not have headquarters, effective management nor a permanent establishment in Mozambique where income is derived from rendering services relating to international telecommunication and transport as well as assembling and installation of equipment related to the latter entities. Also applies to construction and rehabilitation of electric energy infrastructures in rural zones and rental of fishing vessels for fishing and cabotage.	10%
Withholding tax on dividends from shares listed on the Maputo Stock Exchange	10%
Expenses not duly documented and those of a confidential or illegal nature (unsubstantiated payments)	35%

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

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

Income is taxed under separate schedules for:

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

The top marginal rate is 32%.

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

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

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

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

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

Double taxation agreements

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

Estate duty / donations tax

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

ZAMBIA

BUDGET OVERVIEW

The October 2013 Zambia Budget Address for the year 1st January, 2014 to 31st December, 2014 was delivered to the National Assembly by the Minister of Finance and National Planning, Honorable Alexander B. Chikwanda, MP on Friday 11 October 2013.

The theme for this year's budget is, "MOVING FORWARD TO CONSOLIDATE GROWTH AND SOCIAL JUSTICE IN PEACE AND UNITY"

At the centre of the Government's plan is an ambitious job creation agenda in the agriculture, tourism, manufacturing, energy and construction sectors, so as to consolidate economic growth and promote social justice.

The Government intends to continue constructing multi-purpose dams and irrigation schemes as well as constructing silos in order to see the agricultural sector grow to its full potential. The Government also intends to support the fisheries and forestry industries.

During the course of 2014, the Government will continue to implement the road building programme which commenced last year. More progress is also expected on the upgrading of Zambia Railways. The Government is also proposing significant developments in the energy infrastructure, the health sector, education and water supply and sanitation sectors.

The Government has put policies and programmes in place to accelerate growth and diversify the economy with the aim of all Zambians benefiting from the nation's development.

BUDGET HIGHLIGHTS FOR 2014

DIRECT TAXES

- PAYE exempt threshold increased from K2,200 to K3,000 per month.
- Withholding tax to be extended to the distribution of branch profits to foreign companies.
- Withholding tax on public entertainment fees, commissions and contractors paid to non-residents will increase to 20%.
- Rental income to be excluded from turnover tax.
- Withholding tax on rental income to be reduced to 10% and will be a final tax.
- No withholding tax on debenture interest received from property loan stock held in a Lusaka Stock Exchange Company.
- Gaming, lottery and betting winnings to be subject to 20% withholding tax.

VALUE ADDED TAX

- Pre-booked tourist services to be standard rated.
- Tourist activities to be standard-rated.

CUSTOMS AND EXCISE

- Excise duty on airtime increased from 10% to 15%.
- Excise duty on clear beer increased to 60%.
- Import duty exemptions under a ZDA licence will no longer be granted to new license holders from midnight on 11th October, 2013 (except MFEZ).

PROPERTY TRANSFER TAX

Property Transfer Tax to be increased from 5% to 10%.

THE BUDGET IN DETAIL

DIRECT TAXES

All of the following measures will take effect from 1st January, 2014.

PERSONAL TAX RATES

The exempt threshold for PAYE has been increased from K2, 200 per month to K3,000 per month.

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

WITHHOLDING TAX ON PAYMENTS TO NON RESIDENTS

In the 2013 budget, withholding tax on payments to non-residents on royalties, management and consultancy fees was increased to 20%. In order to align withholding tax rates on similar payments to non-residents, withholding tax on commissions, public entertainment fees and payments made to non-resident contractors has been increased from the current 15% to 20%.

DISTRIBUTION OF BRANCH PROFITS

To equalize tax treatment between branches and subsidiaries and prevent tax avoidance, withholding tax has been extended to profits distributed by branches of foreign companies.

Following this change, a definition of "branch profits" has been provided.

WITHHOLDING TAX ON RENTAL INCOME

In order to simplify the tax system and enhance compliance, withholding tax on rental income has been reduced from 15% to 10% and will be the final tax.

This has resulted in the amendment of the Income Tax Act to remove the requirement by the Commissioner General to include an assessment on rental income on which withholding has been deducted.

TURNOVER TAX

Turnover tax on rental income has been excluded from the Turnover Tax Regime. Previously, businesses whose rental income was K800,000 and below were liable to pay turnover tax at 3%. They will now pay withholding tax at 10% and it is the final tax.

INTEREST ARISING FROM THE DEBENTURE PART OF A PROPERTY LINKED UNIT

Interest arising from the debenture part of Property Linked Unit paid to Zambian resident shareholders in any Property Loan Stock Company listed on the Lusaka Stock Exchange has been exempted from withholding tax.

Following this change, the definition of "Property Linked Unit" has been provided.

WITHHOLDING TAX ON GAMING, LOTTERIES AND BETTING

Winnings from gaming, lotteries and betting will now be subject to withholding tax of 20% and it will be the final tax. Previously such income was untaxed in the hands of the winners.

SUBMISSION OF PAYE RETURNS

The Pay as You Earn regulations have been amended to:

- Remove the requirement for submitting an annual employer's return
- Individuals on direct payment schemes to now remit monthly payments as opposed to quarterly as is currently
- The case with persons working for institutions that fall under the Diplomatic Immunities and Privileges Act.
- Monthly returns to be signed by taxpaying agents.

The PAYE Regulations have been revoked and replaced to consolidate amendments made in the past to ease the administration and interpretation of the Regulations.

TRANSFER PRICING LEGISLATION

The transfer pricing regulations will be amended to align them to international best practices such as the new OECD guidelines framework in order to strengthen the current anti-avoidance provisions.

SHARE OPTION INCOME

The first schedule to the Income Tax Act has been amended to redefine and provide clarity on the definition of the benefit arising from share options and the applicable tax points.

PAYMENT OF INCOME TAX ASSESSED

The Commissioner General will have the power to determine when tax should be due for payment where a company is being wound up or a person is leaving the country or any other need arises. Previously the Act provided for the tax assessed to be paid within 30 days.

PROPERTY TRANSFER TAX

The property transfer tax rate has been increased from 5% to 10%.

VALUE ADDED TAX ACT

RATE OF VAT

The VAT rate remains unchanged at 16%.

All of the following measures will take effect from 1st January, 2014.

STANDARD RATING OF ANCILLARY SERVICES AT THE PORT OF EXPORT

Previously these services were zero-rated.

STANDARD RATING OF ALL DISTINCT TOURISM SERVICES

Previously, tourism services such as game viewing, canoeing, helicopter tours, boat cruising, walking with lions etc were zero-rated when sold as part of a pre-booked package to a tourist. All of these services will now be standard rated.

STANDARD RATING OF PRE-BOOKED TOURISM PACKAGES

Pre-booked tourism packages sold to tourists will no longer be zero-rated. These tours will now be standard-rated with the exception of tours booked prior to the effective date of this measure.

CAVEAT ON LAND FOR PAYMENT OF TAXES

The Commissioner General will have the power to place a caveat on land to ensure that any unpaid taxes can be recovered.

AMENDMENT TO INCLUDE GRZ FUNDING AS ZERO-RATED

Previously only supplies paid from donor funds under joint projects with GRZ were zero-rated. This amendment extends the zero-rating to the GRZ funds as well.

UNCIRCULATED ZAMBIAN COINS

Uncirculated Zambian coins will be exempt for VAT.

TAX AND INTEREST ON VAT UNDER APPEAL

This measure will allow the ZRA to collect tax and interest on an assessment which is under dispute with the tax payer before the outcome of the dispute has been finalised.

IMPORTATIONS UNDER INTERNATIONAL CONVENTIONS

The VAT Exemption Order has been amended under Group 10 (a) to include supplies imported under International Conventions. This will only apply to goods in respect of which a rebate, refund or remission of duty is available under the Customs and Excise Regulations.

AT EXEMPTION CLARIFICATION

The words 'domestic building' will be removed and replaced with the words 'dwelling house'. This clarifies that the sale or lease of dwelling houses is exempt whereas the development of dwelling houses is standard-rated.

CUSTOMS AND EXCISE

EXCISE DUTY ON AIRTIME

Excise duty on airtime has been increased from 10% to 15%.

CUSTOMS DUTY ON COPPER BLISTER, COPPER POWDERS AND FLAKES, AND LAMELLAR STRUCTURES AND FLAKES

To harmonise the tariff treatment of products similar to those listed above, a customs duty of 15% has been introduced.

EXPORT DUTY ON SEMI PROCESSED METALS AND BASE METALS

An export duty of 10% has been introduced to encourage local value addition and to create employment.

EXCISE DUTY ON CLEAR BEER

Statutory Instrument No. 23 of 2010 which suspended the excise duty rate on clear beer from 60% to 40% has been revoked. This results in the excise duty rate being restored from 40% to 60%.

CUSTOMS DUTY ON CRUDE OIL

Customs duty on crude oil has been removed.

AMENDMENTS OF SECOND SCHEDULE TO THE CUSTOMS AND EXCISE ACT

- Deleting 'HS 3304.99.00' that denotes 'other cosmetics' and replacing it with 'HS 3304.99.90' to denote other cosmetics to correct a drafting error.
- Deleting the word "vaseline" on the description of goods under the tariff heading 3304.99.10 to describe the product in generic terms as "petroleum jelly".
- Amending the description under the Customs Tariff schedule of heading 3923.21.91 "bags" and 3923.29.91 "bags" in order to clarify that the bags that should be described under the above mentioned HS codes should be secondary plastic packaging used as shopping bags.
- Converting excise duties charged on selected petroleum products from ad-valorem rates to specific rates.

AMENDMENT OF SECTIONS 20, 21, 22 AND 23 OF THE CUSTOMS AND EXCISE ACT

These amendments allow for inward reporting and advance lodgement of electronic manifests for pre-clearance of imported goods.

AMENDMENT OF SECTION 32B (1) (A) AND (B) OF THE CUSTOMS AND EXCISE ACT ON PRE-CLEARANCE

The words "description in writing" are substituted with the words "declaration in a prescribed manner" with the view to providing a standardised declaration form as opposed to the requirements for a taxpayer to submit the relevant information in writing.

AMENDMENT OF SECTION 32(4) OF THE CUSTOMS AND EXCISE ACT

The number of days within which goods Removed In Bond (RIB) may be entered for consumption, warehousing or re-export has been reduced from 30 days to 15 days.

AMENDMENT OF SECTION 33(1) OF THE CUSTOMS AND EXCISE ACT

The period within which goods may be entered has been reduced from 30 days to 15 days.

AMENDMENT OF SECTION 62(2) OF THE CUSTOMS AND EXCISE ACT

The period after which warehoused goods become liable to seizure on expiry of the warehousing period has been reduced from 30 days to 15 days.

AMENDMENT OF SECTION 86 OF THE CUSTOMS AND EXCISE ACT

This amendment empowers the Commissioner General to amend the valuation assessment relating to excise duty on goods imported into Zambia.

AMENDMENT SECTION 162 (9) AND (10) OF THE CUSTOMS AND EXCISE ACT

The period for the "Notice of Seizure" has been reduced from 30 days to 15 days and the period for forfeiture from date of publication in the Gazette has been reduced from 45 days to 30 days.

AMENDMENT OF SECTION 173 (3) OF THE CUSTOMS AND EXCISE ACT ON “BURDEN OF PROOF”

This is to include acceptance of electronic documents as part of admissible evidence.

INTERNATIONAL ORGANISATIONS ENGAGED IN DEVELOPMENT ASSISTANCE TO GRZ

The Third Schedule of the Customs and Excise (General) Regulations has been updated to provide for the inclusion of organisations that provide development assistance to GRZ and have been approved by the Minister of Finance to import their goods without the payment of duty.

PUBLIC BENEFIT ORGANISATIONS (PBOs)

Statutory Instrument No. 7 of 2009 (PBOs) Regulations has been amended to enhance controls in the management of the Scheme and streamline beneficiary organisations in line with the Government policy to rationalise the incentive regime.

AMENDMENT OF THE PROVISION UNDER REGULATION 85A OF THE CUSTOMS AND EXCISE (GENERAL) REGULATIONS, (1) (D)

The period within which the importation of household goods and personal effects imported by an administrator on behalf of a deceased person may qualify for duty free importation has been increased from 6 months to 12 months.

ENDMENT OF REGULATION 88B OF THE CUSTOMS AND EXCISE (GENERAL) REGULATIONS

This amendment makes it mandatory for all ministries and implementing agencies to communicate any amendments made to the Bill of Quantities (BOQ) directly to the Commissioner General in order for the Zambia Revenue Authority to facilitate the importation of goods.

OTHER NON TAX MEASURES

INTRODUCTION OF SANCTIONS FOR ZDA LICENCE HOLDERS

Foreign and local investors with a Zambia Development Agency licence who violate the provisions under which their incentives were granted will face sanctions including the revocation of their investment licences.

INCENTIVES UNDER IMPORT DUTY FOR ZDA LICENCE HOLDERS

New ZDA licence holders will no longer be granted incentives under the import duty exemptions from midnight on 11th October, 2013 apart from licence holders in Multi – Facility Economic Zones, Industrial Parks and business enterprises in rural areas.

ENHANCE THE PROVISIONS RELATING TO ACCESS TO INFORMATION FOR TAX PURPOSES

The Income Tax Act will be amended to empower the Commissioner General to have access to any type of information required for tax purposes under the Legal Practitioners Act.

It will also be mandatory for financial institutions to provide banking transaction information for tax purposes to the Commissioner General if required.

CHARGE ON MONEY TRANSFERS

A 0.2% charge will be levied on money transfers to recipients both inside and outside Zambia.

ROAD TOLLS

Road tolls will be introduced on major roads. The tolls for commercial traffic will commence before the end of 2013 using the existing weighbridges.

COMPARATIVE TABLE OF TAXES PAYABLE IN CERTAIN SOUTHERN AFRICAN STATES

	South Africa	Zambia	Botswana	Lesotho	Namibia	Swaziland	Mozambique	Zimbabwe
COMPANY TAX								
Manufacturing/IFSC/ Innovation Hub	28%	35%	15% [(N9)]	10% [N11]	18% [N6]	27.5%	10% [N18] 32%	20% [N20]
Normal non-mining, local	28%	35%	22%	25%	32%	27.5%	32%	25% + AIDS levy 3%
Non-resident branch	28%	35%	30%	25%	32%	27.5% + 15%	32% [32% N19]	
Mining and other	28% [N1]	10% - 40% [N17]	≥22% [N10]	25%	37.5%	27.5%		15%
INDIVIDUAL TAX								
Maximum rate	40%	35%	25%	35%	37% [N15]	33%	32%	50% + AIDS levy 3%
Non-residents			25%	35%			20%	
Level of taxable income at which maximum rate applies	ZAR673,100	ZMW70,801 [(N5]	BWP144,000	LSL51,670	NAD1,500,000	SZL200,000	MZM1,512,000,001	USD240,000
OTHER TAXES								
Remitance tax iro branches of foreign companies	-	-	-	25% [N12]	-	15% [N16]	-	15%
CGT	13.3% - 26.6% [N2]	-	22%	0%/25% [N13]	-	37.5% [N17]	0[1]	20%/5% [N21]
VAT	14%	16%	12%	14%	15%	14%/25%	17%	15%
NRST / WHT / Dividends Tax	15% [N3]	15%	7.5%	25% [N14]	10-20%	15% [N16]	20%	15%/10% [N22]
NRTI / WHT Interest	- [N4]	15% [N8]	15%	25%	10%	10%	20%	0%
NRTF / WHT fees	- [N5]	20%	15%	10/25%	25%	15%	10/20%	15%
NRTR / WHT Royalties / Royalty Tax	12% [N6]	20%	15%	25%	9.6%	15%	20%	15%

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

N1 Gold mining according to formulae
N2 Individuals - 13.3%; companies - 18.6%; trusts - 26.6%
N3 STC was replaced by the Dividends Tax with effect from 1 April 2012. The Dividends Tax is not applicable to the distribution of branch profits
N4 non-residents will be taxed from 1 January 2015 at a flat rate of 15%
N5 A withholding tax on cross border service fees has been proposed. It would come into effect from 1 January 2016 at the rate of 15%
N6 The rate will increase from the current 12% to 15% with effect from 1 March 2014
N7 E.g. farming-10%, non-traditional exports, manufacture of organic & chemical fertilizer - 15%, Banks - 35% (40% rate on banks has been abolished. They now pay 35% on their entire profits). Telecommunication Companies-First
ZMW250,000 at 35%, balance taxed at 40%, Mining companies pay tax at 30% and then at a variable rate above 8% of gross sales
N8 Interest to individuals on Treasury Bills - 15%
N9 The 15% is for income from approved activities. Unapproved activities 22%
N10 A special formula is used to calculate the tax rate, it cannot be below the normal company rate
N11 0% for certain manufacturing companies which export exclusively outside SACU countries
N12 taxed at a 25% rate in addition to corporate income tax payable on the chargeable income of the branch.
N13 Part of business income
N14 Applies to branch profits as well.
N15 Diamond mining = 55% and Oil & Gas = 35%
N16 12,5% for companies in Botswana, Lesotho, Mozambique, Namibia & South Africa
N17 Only on disposal of mineral rights
N18 Agriculture and stockbreeding - 10% until 31 December 2015
N19 Tax free zone operators and enterprises
N20 20% rate for manufacturing applies where at least 50% of goods are exported from Zimbabwe.
N21 The rate of CGT on specified assets acquired prior to 1 February 2009 is 5%
N22 Reduced rate applies to listed shares in Zimbabwe

RETENTION OF RECORDS

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

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

RETENTION OF RECORDS (continued)

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

PRIME BANK OVERDRAFT RATES

Effective Date	Rate %
29.01.2014	9.00
19.07.2012	8.50
19.11.2010	9.00
10.09.2010	9.50
26.03.2010	10.00
14.08.2009	10.50
29.05.2009	11.00
04.05.2009	12.00
25.03.2009	13.00
06.02.2009	14.00
12.12.2008	15.00
13.06.2008	15.50
11.04.2008	15.00
07.12.2007	14.50
12.10.2007	14.00
17.08.2007	13.50
08.06.2007	13.00
08.12.2006	12.50
13.10.2006	12.00
03.08.2006	11.50
08.06.2006	11.00
15.04.2005	10.50
16.08.2004	11.00
18.12.2003	11.50
20.10.2003	12.00
16.09.2003	13.50
14.08.2003	14.50
12.06.2003	15.50
13.09.2002	17.00
14.06.2002	16.00
14.03.2002	15.00
15.01.2002	14.00
25.09.2001	13.00
16.07.2001	13.50
18.06.2001	13.75
14.01.2000	14.50
04.10.1999	15.50
02.08.1999	16.50
19.07.1999	17.00
14.07.1999	17.50
25.06.1999	18.50
19.04.1999	19.00
09.03.1999	20.00
13.02.1999	21.00
08.01.1999	22.00
07.12.1998	23.00
09.11.1998	23.50
19.10.1998	24.50
31.08.1998	25.50
31.12.1948	4.50

COMPARATIVE RATES

Companies Income Tax

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

Branches of foreign companies

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

STC

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

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

SARS interest rates (prescribed rates)

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

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

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

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

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

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February 2014