SOUTH AFRICAN REVENUE SERVICE

TAX BROCHURE FOR NON-RESIDENTS

Another helpful guide brought to you by the
South African Revenue Service

SARS
At Your Service

www.sars.gov.za

FOREWORD

This brochure provides general guidelines regarding –

- the different forms/types of entities through which a business can be conducted by non-residents in South Africa; and
- the obligations of a non-resident in respect of taxes, duties and levies which are charged in terms of the various Acts administered by the Commissioner for the South African Revenue Service (SARS), with particular emphasis on income tax.

This brochure is not meant to delve into the precise technical and legal detail that is often associated with taxation. It should, therefore, not be used as a legal reference nor regarded as a binding general ruling issued under section 76P of the Income Tax Act, 1962. Should an advance tax ruling be required, details of the application procedure to be followed for such a ruling can be found on the SARS website.

Should you require additional information concerning any aspect of the taxes, duties or levies administered by SARS, you may –

- contact any SARS office;
- contact the SARS National Contact Centre –
  - if calling locally, on 0800 00 7277; or
  - if calling from abroad, on +27 11 602 2093 (only between 8:00am and 4:00pm SA time);
- visit the SARS website at www:sars.gov.za; or
- contact your own tax advisor/practitioner

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SOUTH AFRICAN REVENUE SERVICE

January 2012

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OVERVIEW

Due to the sustained growth in investments made by non-residents in South Africa there is a need for an information brochure that deals with the different forms/types of entities through which a business can be conducted by non-residents in South Africa and the tax implications associated therewith. The main aim of this brochure then is to explain the income tax consequences for non-residents in respect of the various forms of income that may be received by or that may accrue to them.

This brochure further contains information about the responsibilities of a non-resident with regard to some of the other taxes, duties and levies administered by SARS and some non-tax information such as Exchange Control information of a very general nature.

Finally it contains information about certain administrative provisions of the various tax laws. The words “taxpayer” and “non-resident” will be used interchangeably as they have the same meaning for purposes of this brochure.

PART A: INTRODUCTION

Glossary

Unless the context indicates otherwise, the meaning of words, concepts and acronyms used in this brochure, are the following:

Commissioner
Commissioner for the South African Revenue Service

CGT
Capital gains tax

PAYE
Pay-As-You-Earn

SARB
South Africa Reserve Bank

SARS
South African Revenue Service

SBC
small business corporation

SITE
standard income tax on employees

South Africa
Republic of South Africa

STC
secondary tax on companies

the Act
Income Tax Act, No. 58 of 1962

the Companies Act
Companies Act, No. 71 of 2008, as amended, read together with the regulations thereto

VAT
Value-added tax

1. Tax basis of South Africa

Historically the income tax system in South Africa was source-based and apart from a few exceptions, residency was not a criterion. However, from the 1998 year of assessment South African residents became taxable on certain of their worldwide income starting with income received or accrued from foreign investments on or after 1 July 1997. With effect from years of assessment commencing on or after 1 January 2001, South Africa completed the move from a source-based system of taxation to a residence basis of taxation in respect of all income, subject to certain exemptions. The effect is that all residents are now taxed on their worldwide income and no longer just on income from a source within or deemed to be within South Africa.

All persons who are not residents (non-residents) are still subject to tax in South Africa on their income from a source within or deemed to be within South Africa.

2. Non-resident

2.1 Introduction

There is no definition for the word "non-resident" in any Act administered by SARS. The terms "taxpayer" and "resident" are, however, referred to and defined in the Act.

A "taxpayer" means any person chargeable with any tax leviable under the Act and includes every person required by the Act to furnish a return.

The term "resident" refers to any –

- natural person –
  - who is ordinarily resident in South Africa; or
  - who is not at any time during the relevant year of assessment ordinarily resident in South Africa but was physically present in the Republic in that year and complied with all three of the requirements[1] of the physical presence;

  or
- person (other than a natural person) which is incorporated, established or formed in South Africa or which has its place of effective management in South Africa,

but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any

[1] See the second bullet under **2.2** of this brochure

agreement entered into between the government of South Africa and that of the other country for the avoidance of double taxation.

The word "non-resident" used in the context of this brochure refers to a person who is not a resident of South Africa for the purposes of the Act.

2.2 Natural person

Based on the definition of the term "resident" a person is a non-resident in the case of –

- a natural person who is neither –
  - ordinarily resident in South Africa; nor
  - at any time during a relevant year of assessment physically present in South Africa in compliance with all three of the requirements[2] of the physical presence test.

- **Ordinarily resident in South Africa**

  In summary the courts have assigned the following meaning to the concept "ordinarily resident":

  - Living in a place with some degree of continuity, apart from accidental or temporary absence. If it is part of a person's ordinary regular course of life to live in a particular place with a degree of permanence that is where he/she must be regarded as being ordinarily resident.
  - The place where his/her permanent place of abode is, where his/her belongings are stored, which he/she leaves for temporary absence and to which he/she regularly returns after such absences.
  - A residence that is settled and certain and not temporary and casual.
  - Where a person normally resides, apart from temporary/occasional absences.

  Based on the above discussion of the concept "ordinarily resident" a natural person is not ordinarily resident in South Africa if his/her permanent home, to which he/she will normally return, is not situated in South Africa.

[2] See (i), (ii) and (iii) in the second bullet under **2.2** of this brochure

Example 1

Mr B was never a resident of South Africa and became ordinarily resident in South Africa on 1 October 2010. All the income received by or accrued to him on or after 1 October 2010 (excluding certain income that might be exempt from income tax) will be included in his taxable income for the years of assessment ending on or after 28 February 2011. Prior to 1 October 2010, only income from a source within or deemed to be within South Africa (excluding certain income that might be exempt) will be taxable in South Africa.

For more information regarding the concept of "ordinarily resident" refer to the interpretation note[3] available on the SARS website.

- **The Physical presence test**

A natural person, who is not ordinarily resident in South Africa at any time during a relevant year of assessment but meets with all three requirements of the physical presence test, will be deemed to be a resident. To meet the requirements that person must be physically present in South Africa for a period or periods exceeding –

(i) 91 days in aggregate during the year of assessment under consideration;

(ii) 91 days in aggregate during each of the five years of assessment preceding the year of assessment under consideration; and

(iii) 915 days in aggregate during those five preceding years of assessment.

If that person fails to meet any one of these three requirements, he/she will not satisfy the physical presence test and will, for the purpose of the Act, be a non-resident.

This test is time-based and is only applicable to a natural person who was not at any time during the relevant year of assessment ordinarily resident in South Africa.

It is important to note that a day includes a part of a day. Thus both the day of arrival and departure are included in the count. This test is also known as the day test or time rule. A day starts at midnight. A person who arrives in South Africa, for example, on

[3] Interpretation Note No. 3: Resident: Definition in relation to a natural person – Ordinarily resident (4 February 2002)

12 December at 23:55 is present in South Africa for that day. However, any day that that person is in transit through South Africa between two places outside South Africa and does not formally enter South Africa through a port of entry, or at any other place authorised by the Director General of the Department of Home Affairs or the Minister of Home Affairs, is excluded in the count.

The physical presence test must be performed annually in order to determine whether a natural person, who is not at any time during the relevant year of assessment ordinarily resident in South Africa, is a non-resident for the year of assessment under consideration.

A year of assessment starts on 1 March and ends on the last day of February in the following year.

In terms of the physical presence test a natural person, who is not at any time during the relevant year of assessment ordinarily resident in South Africa, will be a resident with effect from the first day of the relevant year of assessment if he/she was physically present in South Africa for the periods as set out above. The purpose of the presence is irrelevant. A day is therefore counted even if the presence was, for example, for the purpose of a holiday, visiting friends or attending a funeral.

A natural person, who is a resident by virtue of the physical presence test, ceases to be a resident if that person is physically outside South Africa for a continuous period of at least 330 full days. The continuous period commences the day after the day that person physically left South Africa.

For more information on this rule, refer to the interpretation note[4] available on the SARS website.

2.3 Person (other than a natural person)

Based on the definition of the term "resident" a person, (other than a natural person), for example, a company or a trust, will be a non-resident if it is not incorporated, established or formed in South Africa and does not have its place of effective management in South Africa. The place of effective management in the case of a company is the place where it is managed on a regular or day-to-day basis by the directors or senior managers of the company, irrespective of where the overriding control is exercised, or where the board of directors meets.

[4] Interpretation Note No. 4: (Issue 3): Resident: Definition in relation to a natural person – Physical presence test (8 February 2006)

Management by these directors or senior managers refers to the execution and implementation of policy and strategy decisions made by the board of directors. It can also be referred to as the place of implementation of the entity's overall group vision and objectives.

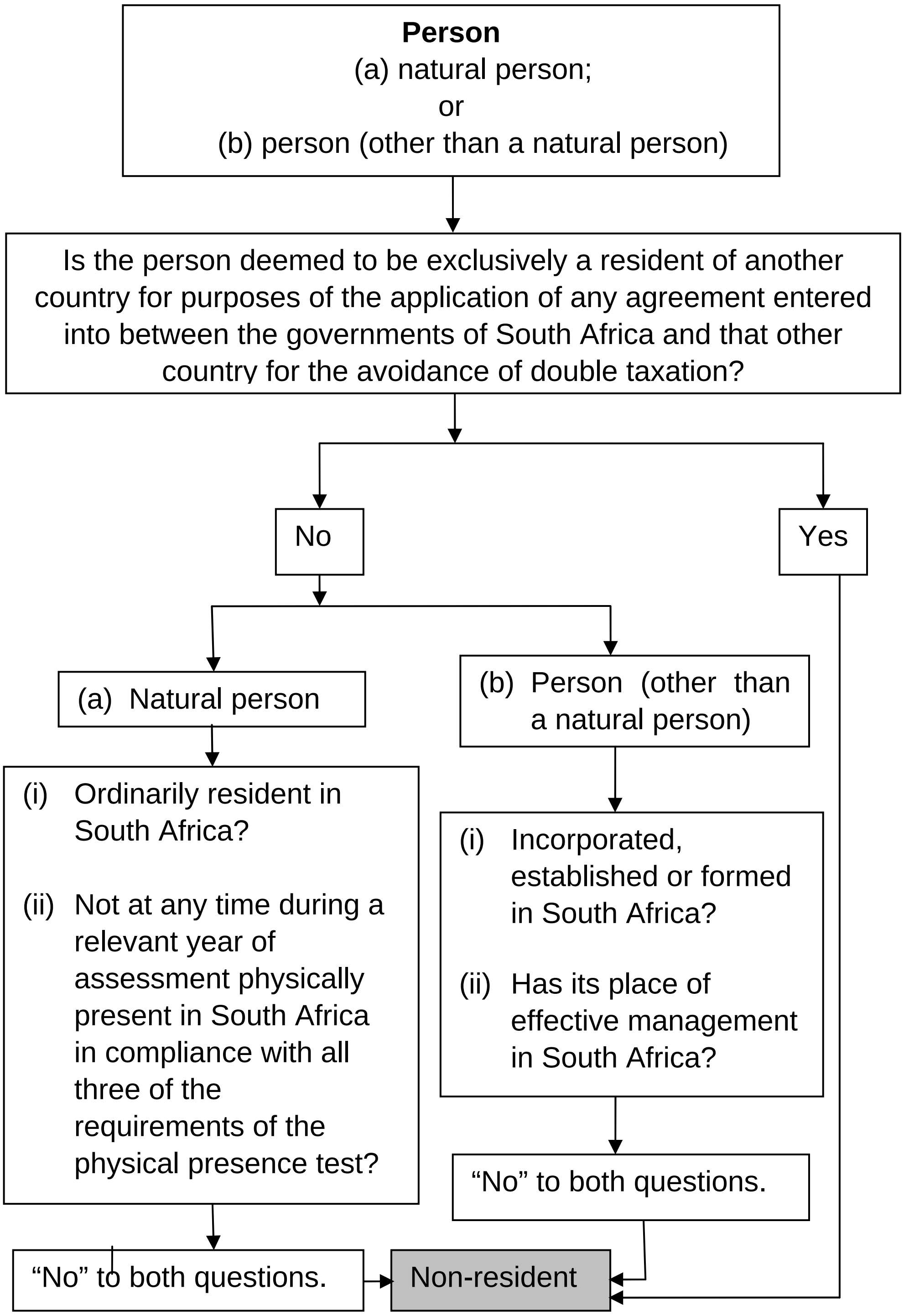
Management structures, reporting lines and responsibilities vary from entity to entity, depending on the requirements of the entity, and no hard and fast rules exist. It is, therefore, not possible to lay down absolute guidelines in this respect.

For more information regarding the concept of "place of effective management" refer to the interpretation note[5] available on the SARS website.

[5] Interpretation Note No. 6: Resident– Place of effective management (Persons other than natural persons) (26 March 2002)

2.4 Conclusion

Based on the above discussion, a non-resident can be illustrated as follows:



3. SARS website

Regarding the taxes levied in South Africa, non-residents can visit the SARS website which serves as a valuable source of tax information for them.

PART B: BUSINESS INVESTMENT IN SOUTH AFRICA

4. Assistance to new investors

South Africa is an emerging market, offering investors exceptional business and investment opportunities. To explore these opportunities investors are advised to make contact with Trade and Investment South Africa (TISA). TISA is a division of the Department of Trade and Industry and is the national trade and investment promotion agency of South Africa

Valuable information can be obtained from the Department of Trade and Industry at their website www.dti.gov.za.

5. Factors to be taken into account when considering a business investment in South Africa

When considering a business investment in South Africa a non-resident investor has to consider which form of business would best suit the type of business investment that they have in mind. The form of business will depend on the nature of the business undertaking planned and the specific needs of the potential investor, which includes, inter alia –

- the number of participants;
- how the business is to be operated from a management and control point of view;
- achieving limited liability for participants;
- tax considerations; and
- statutory requirements as regards annual financial statements.

6. Forms of business investment

A business in South Africa can take place in any of the following forms, namely a –

- company (close corporation / private / public / foreign company);
- partnership (limited or unlimited);
- business trust; or
- sole proprietor.

6.1 Company

- **Introduction**

  - **Formation and existence**

    In South Africa companies are formed and governed by the Companies Act. A company is a separate legal entity as from the date of incorporation and continues in existence until it is deregistered or liquidated, irrespective of whether there is a change in shareholding from time to time. Please note that the Company and Intellectual Property Registration Office (CIPRO) and the Office of Companies and Intellectual Property Enforcement (OCIPE) merged on 1 May 2011 to form the Companies and Intellectual Property Commission (CIPC). For registration procedures see www.dti.gov.za.

  - **Capital**

    A company is formed with share capital which may consist of ordinary, preference, redeemable or convertible shares or a combination thereof. There is a minimum ordinary share capital requirement for a company of R1.

  - **Shareholders**

    Both natural persons and juristic persons can hold shares in a company. There is no requirement that a shareholder must be a resident.

  - **Board of directors**

    A board of directors is appointed by the shareholders. There is no requirement that a director must be a resident. However, a company needs to disclose the nationality of a director on company documents.

  - **Financial assistance – Acquisition of own shares**

    A company is not allowed to provide financial assistance for the acquisition of its own shares, except in the case of a share incentive scheme. The buy back of its own shares is allowable, subject to liquidity and solvency requirements and other provisions of the Companies Act.

  - **Public officer for tax purposes**

    It is a requirement that a company must at all times be represented by an individual who is a resident. Such representative will be known as the public officer. Within one month after a company commences business or acquires an office in South Africa the company must –

- appoint a public officer approved by the Commissioner; and
- appoint a place within South Africa, to be approved by the Commissioner, at which any notice or other documents under the Act affecting the company may be served or delivered or to which any such notices or documents may be sent.

Should a company fail to appoint a public officer the public officer will be the managing director, director, secretary or other officer of the company, as the Commissioner may designate for that purpose. Any default in appointing a public officer or appointing a place for service or delivery of notices will incur a penalty not exceeding R25 for every day during which the default continues.

o **Auditor**

A company must appoint an auditor practicing in South Africa.

- **Close corporation**

Close corporations are governed by the Close Corporations Act, No. 69 of 1984. In relation to a company a close corporation is a simpler, less expensive corporate entity more suitable to single persons or small groups of entrepreneurs. A close corporation is classified as a company for income tax purposes.

In contrast with a company, a close corporation does not have any shares and shareholders, but members' interest and members. The maximum number of members permitted in a close corporation is ten. Their interest in the close corporation must always add up to 100% and be expressed as a percentage. Only natural persons may hold an interest in a close corporation.

A close corporation is a legal entity in its own right. It provides the members with limited liability, but personal guarantees may negate a certain amount of this. It does not have a board of directors as the members manage and own the close corporation.

A close corporation has to appoint an "accounting officer" to submit reliable annual financial statements (a statutory audit is not required) which agree with the accounting records. An accounting officer is a person who is a member of a recognised professional body which as a condition for membership requires its members to have qualified in accounting and related fields of study in order to enable the person to perform the duties of an accounting officer.

As from 1 May 2011 no new close corporation can be formed[6].

- **Private company**

  The Companies Act requires that private companies must submit annual returns in the prescribed form to CIPC. Annual returns reflect the information that companies must submit to CIPC as confirmation that the company is still in business and that the information provided is still valid. For more information, visit www.cipro.gov.za.

  A private company has fewer requirements than a public company which are as follows –

  - a minimum of one director;
  - the company's name ends with "(Proprietary) Limited" or (Pty) Ltd"; and
  - the memorandum of incorporation must –
    - limit transferability of shares;
    - limit the number of shareholders to a maximum of 50 (as from 1 May 2011 the limitation of 50 was removed) and a minimum of one; and
    - prohibit any offer to the public to subscribe for shares or debentures in the company.

  Having regard for the circumstances a private company may prepare audited annual financial statements, reviewed annual financial statements or an annual financial supplement. The annual financial statements may be compiled internally or independently.

- **Personal liability company**

  A personal liability company is a special type of private company, which is usually used by persons in certain professions, for example, attorneys, accountants, etc. The name of this type of company ends with "Incorporated". The directors will be jointly and severally liable, together with the company, for liabilities incurred by the company while they were directors.

  Having regard for the circumstances a personal liability company may prepare audited annual financial statements, reviewed annual

[6] See section 2 of the Close Corporations Act, No. 69 of 1984

financial statements or an annual financial supplement. The annual financial statements may be compiled internally or independently.

- **Public company**

  There are no restrictions on the maximum number of shareholders or the transferability of shares. A public company can be listed on the JSE (Stock Exchange in South Africa). The requirements for a public company are as follows –

  - a minimum of two directors;
  - at least seven shareholders are required (as from 1 May 2011 only one shareholder is required);
  - the name of the company ends with "Limited" or "Ltd"; and
  - disclosure requirements which include the submission of annual and interim financial statements to CIPC.

  A public company must prepare audited annual financial statements. The annual financial statements may be compiled internally or independently.

- **Foreign company**

  A foreign company may conduct its business in South Africa in its own name either through a South African branch or a South African subsidiary.

  - **South African branch of a foreign company**

    The branch –

    - must register with CIPC as an "external company" within 21 days of establishing a place of business in South Africa or owning immovable property in South Africa;
    - does not exist as a separate locally registered company. (the external company is to be registered as a foreign company for income tax purposes);
    - must comply with the provisions of the Companies Act, which includes the filing of –
      - a certified copy of the Memorandum of Incorporation (or other documents defining its constitution) of the external company with CIPC; and
      - annual financial statements with CIPC;

- is not required to appoint a local board of directors and can therefore have the same board of directors as the foreign company;
- must appoint an auditor practicing in South Africa as well as a public officer who is resident in South Africa; and
- may be converted to a local private company.

The legal liabilities of the branch are not limited to the extent of its South African assets.

- o **South African subsidiary of a foreign company**

  The subsidiary –

  - is registered as a South African company;
  - exists separately from the foreign company;
  - must comply with the provisions of the Companies Act, which includes the filing of –
    - a certified copy of the Memorandum of Incorporation (or other documents defining its constitution) of the company (South African subsidiary) with CIPC; and
    - annual financial statements with CIPC;
  - is required to appoint a board of directors;
  - must appoint an auditor practicing in South Africa; and
  - must appoint a public officer who is resident in South Africa.

  The subsidiary may also be more beneficial for an enhanced image and easier access to credit facilities. It may also be an advantage when obtaining Government contracts.

  The legal liabilities of the subsidiary are limited to the extent of its South African assets.

6.2 Partnership

A partnership is not governed by statute and may be formed between at least two persons up to a maximum of 20 persons, except in the case of certain professional partnerships, for example, accountants, attorneys, etc.

No registration or specific formalities are required to form a partnership. Normally a partnership is formed by way of the partners entering into a partnership agreement.

Note: A partnership is not regarded as a legal entity for income tax purposes and each partner, notwithstanding the fact that he/she may be a limited partner, is deemed to be carrying on a trade or business. For VAT purposes the partnership is regarded as a separate entity and therefore the partnership is to be registered as a vendor.

The characteristics of a partnership are as follows –

- at least two or more persons, not exceeding 20, agree to act jointly;
- each partner makes a contribution (either in the form of cash, assets, skills or a combination thereof) to the partnership in terms of the partnership agreement;
- the objective of the partnership is to make a gain;
- profits/losses of the partnership are divided between the partners according to his/her contribution to the partnership;
- each partner is taxed on his/her share of the partnership's profits
- a partnership is not a separate legal person from the partners;
- each time there is a change in partners (due to death, insolvency or otherwise), the partnership terminates; and
- no details of the financial position of the partnership needs to be made available to the public.

6.3 Business trust

A business can be carried on by the trustees of a trust for the benefit of nominated beneficiaries. The profits of the trust are subject to income tax in the hands of the beneficiaries or trust to the extent that such profits vest in both or either of them.

Other than for income tax purposes a trust does not have a separate legal personality. The trust deed must be lodged with the Master of the High Court. Written authorisation must be obtained from the Master before a trustee can act in such capacity.

The Master can request security from the trustee, but the Master can also be requested to waive this requirement.

The provisions of the Companies Act do not apply to a trust. A trust does not have to submit financial statements to CIPC and does not have to appoint an auditor. There is no limitation on the number of trustees or beneficiaries of a trust.

6.4 Sole proprietor

There are no statutory regulations (for example, regulations of a statutory body like CIPC) relating to the registration of a sole proprietor, except that proper books and records of trading activities must be maintained for tax purposes.

A balance sheet and an income statement must be prepared in respect of a business carried on in a personal capacity, whether under a trading name or otherwise. Although this documentation will be used to complete an income tax return (ITR12) to be submitted (either manually or electronically) to SARS, it must not accompany the return. However, all relevant documentation must be retained for a period of five years from the date upon which the return was received by SARS, should SARS require it for audit purposes. The profits of the business are taxed in the hands of the sole proprietor. The financial statements do not need to be audited and no public disclosure of the affairs of the sole proprietor needs to be made.

In the event of insolvency of the business, the sole proprietor’s private estate is at risk of being sequestrated.

PART C: TAXES

7. Introduction

Taxation in South Africa consists of various taxes, duties and levies including the following types:

Taxes	**Duties**	**Levies**
Income tax	Estate duty	Skills development levy (SDL)
Secondary tax on companies (STC)	Transfer duty	Unemployment insurance fund contributions (UIF contributions)
Donations tax	Customs duty	
Value-added tax (VAT)	Excise duty	
Securities transfer tax (STT)		
Withholding tax on royalties		
Mineral & petroleum resources royalties		

Note: Capital gains tax (CGT), employees' tax (PAYE and SITE) and provisional tax are not separate taxes in South Africa, but form part of the income tax system[7].

8. Income tax

The income (which includes business income, remuneration and investment income) of a non-resident that will be subject to income tax in South Africa refers to income received by or accrued to or in favour of the non-resident from a source within South Africa or deemed to be from a source within South Africa.

8.1 Introduction

Income tax in South Africa is governed by the provisions of the Act. Income tax (referred to in the Act as "normal tax") is an annual tax and consists of –

- normal tax in respect of natural persons including insolvent and deceased estates (also referred to as personal income tax) and special trusts;
- normal tax in respect of trusts (other than special trusts); and

[7] See **8.10**, **8.20** and **8.21** of this brochure

- normal tax in respect of companies (also referred to as corporate income tax).

8.2 Registration as a taxpayer and the submission of income tax returns

- **Registration**

  Every non-resident who is required to submit an income tax return[8] must register as a taxpayer in South Africa.

- **Submission**

  A non-resident who is liable for income tax or who carries on any trade in South Africa is required to submit (either manually or electronically) an income tax return after the end of a year of assessment, but within the prescribed period[9] (the notice contains full details of which persons will be required to submit income tax returns). A late submission or failure to submit a return is an offence punishable by the imposition of a fine, penalty and/or additional tax.[10]

- **eFiling**

  SARS eFiling is a free, online process for the submission of tax returns and related functions. This free service allows individual taxpayers, tax practitioners and businesses to register and submit tax returns, make payments and perform a number of other interactions with SARS in a secure online environment.

  Taxpayers registered for eFiling can engage with SARS online for the submission of returns and payments in respect of the following taxes/duty/levy/contribution:

  - Value-added tax (VAT)
  - Income tax
  - Skills Development Levy (SDL)
  - Secondary tax on companies (STC)
  - Transfer duty
  - Pay-as-you-earn (PAYE)
  - Provisional tax

[8] See the Notice to furnish returns for the specific year of assessment published yearly in the Government Gazette by the Commissioner.
[9] See the Notice to furnish returns for the specific year of assessment published yearly in the Government Gazette by the Commissioner.
[10] See **Part F** of this brochure

- Unemployment Insurance Fund contributions (UIF contributions)

The eFiling service is on a par with international standards, being comparable with services offered in the US, Australia, Singapore, Ireland, Chile and France.

For more information visit the SARS eFiling website at www.sarsefiling.co.za.

8.3 Tax threshold for natural persons

The tax threshold is the amount of gross income for a specific year of assessment at which a natural person, (depending on his/her age) becomes liable to submit an income tax return. For the 2012 year of assessment the threshold is as follows:

- persons below the age of 65 years = R59 750;
- persons aged 65 years or older = R93 150; and
- persons aged 75 years or older = R104 261.

8.4 Assessment

An assessment is the determination by the Commissioner which reflects the taxpayer’s tax liability or refund (whichever applicable), in respect of a specific year of assessment.

8.5 Year of assessment

A year of assessment in respect of a natural person commences on 1 March of one year and ends on the last day of February in the following year. In the case of a company the year of assessment normally coincides with the company’s financial year-end. If the year-end of the company falls on a day other than the last day of February, approval must be obtained from the Commissioner to submit returns to such date. If the company wishes to change its current financial year-end, approval must first be obtained from the Commissioner.

8.6 Gross income of a non-resident

In respect of any year of assessment, the gross income of a non-resident is calculated on a source basis. It follows that the total amount received by, or accrued to or in favour of that non-resident from a source within, or deemed to be within South Africa, is taken into account in order to calculate the gross income of the non-resident. This includes:

- **Remuneration**

It is internationally accepted that income from employment (remuneration) should be taxed in the source country, that is, the country where the services are actually rendered, as opposed to the country where the employee is resident. Therefore a non-resident receiving income in the form of remuneration derived from a source within South Africa would be liable for tax in South Africa in accordance with domestic tax legislation.

The taxation of such a person may be affected by an agreement for the avoidance of double taxation entered into between the Government of South Africa and the Government of the foreign country in which the non-resident resides. In the absence of a double taxation agreement, the income will be taxable in South Africa.

Any taxable benefit enjoyed by seconded non-resident employees (temporarily transferred to South Africa) will be subject to income tax in South Africa on the same basis as any resident employee.

Taxable benefits subject to income tax includes, for example, the following –

- cost of leave;
- children's education expenses;
- security costs; and
- storage of furniture.

Non-resident employees who render services in South Africa for short periods may be subject to income tax on the rental value of accommodation provided (free or subsidised) to them by their employer in South Africa for the duration of their stay in South Africa, while performing their duties of employment.

Any benefit received by or accrued to a non-resident employee by virtue of the fact that his/her employer has borne some expenditure incurred in consequence of the employee's transfer from one place of employment to another, or on termination of the employee's employment is exempt from income tax in South Africa.

No tax liability will arise in respect of amounts paid to non-resident employees for reimbursement by a foreign employer for the loss on sale of vehicles and residences outside South Africa as these amounts are not from a source or deemed to be from a source in South Africa. For more in-depth information on employees' tax, for example, the value that must be placed on any taxable benefit received by or accrued to non-resident employees, reference can be made to the guide[11] available on the SARS website.

For more information on the residence basis of taxation and the taxation of foreigners refer to the guides[12] available on the SARS website.

Note: Individuals not ordinarily resident in South Africa should bear in mind the physical presence test[13].

- **Investment income**

  - **Interest**

    Interest received by a non-resident from a source within or deemed to be within South Africa forms part of the non-resident's gross income. However, certain exemptions can apply.[14]

    Interest derived from the utilisation or application in South Africa of any funds or credit obtained in terms of a financial arrangement, is deemed to be from a source in South Africa.

    As from the years of assessment commencing on or after 1 January 2012 the determination of the source of interest will be based on a two-part test, namely –

    (i) the residence of the debtor paying/incurring the interest; or

    (ii) the place in which the loan funds are utilised or applied

    Therefore, interest will be sourced in South Africa if –

    (i) paid by a resident; or

    (ii) the interest is derived from the use or application of loan funds in South Africa.

  - **Dividends**

    The origin of dividend income will be the shares giving rise thereto. The shares, in turn, are located where title and ownership of the shares is registered. It follows, therefore, that the source of dividend income will be where the share register is located.

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[11] AS-PAYE-05-G2 - Guide for employers in respect of fringe benefits (2012 Tax year)
[12] Guide on the residence basis of taxation for individuals and Guide on the taxation of foreigners working in South Africa
[13] See **2.3** of this brochure
[14] See **8.7** of this brochure

If shares are purchased in a resident company, the source of the dividends will be within South Africa. However, dividends received from resident companies are generally exempt[15] from income tax.

As from the years of assessment commencing on or after 1 January 2012 the determination of source of dividends will be as follows –

(i) dividends from resident companies will be South African sourced; and

(ii) foreign dividends will be foreign sourced.

The share register concept of common law will no longer be relevant.

- **Business income**

  - **Rental**

    Rental is normally received in respect of movable property or fixed property. The source of rental income in respect of movable property is generally regarded to be where the property is utilised on a day-to-day basis. In the case of fixed property, the source of the rental is where the property is located. The rental income received by or accrued to a non-resident, who invested in property (whether movable or fixed) in South Africa, will, therefore, be subject to income tax in South Africa.

  - **Royalties**

    Generally, the source of royalty income will be where the originator applies his/her wits and labour. Royalty income (normally referred to as payments for “know-how”) includes income derived from the use, right of use or the grant of permission to use patent rights, trade marks, films, etc. in South Africa.

    In the case of non-residents, “know-how” payments received for the use, or right of use of intellectual property in South Africa, are subject to a final withholding tax of 12% (or a rate determined in a relevant agreement for the avoidance of double taxation) on the payments received.

    The withholding tax is levied at 12% on the gross amount of the royalty and is regarded as a final payment made on behalf

[15] See **8.7** of this brochure

of the non-resident. No deductions are allowed against royalty income.

This withholding tax provision does not apply in respect of any royalty received by or accrued to a non-resident if such royalty is effectively connected with a permanent establishment of that non-resident in South Africa.

A person who incurs a liability to pay a royalty amount to a non-resident or who receives payment of such royalty on behalf of that non-resident must pay the withholding tax to the Commissioner within 14 days after the end of the month during which the liability is incurred or the payment is received.

As from the years of assessment commencing on or after 1 January 2012, the determination of the source of royalties will be based on the residence of the party paying the royalties. In addition, South African source royalties will exist if the royalties relate to the use, right of use or grant of permission to use intellectual property within South Africa. Any focus on the party creating, devising or developing intellectual property is therefore removed.

The two-part test is based on –

(i) the residence of the payer except where the payment for the know-how is attributable to a permanent establishment of the payer located outside South Africa; or

(ii) where the know-how will be used or applied in South Africa.

- **Services rendered**

  The source of services rendered is located where the service is actually rendered and is not dependent on where the service contract is signed or where payment is made. All amounts paid to a non-resident for services rendered in South Africa will, therefore, be taxable in South Africa. A director of a company, for example, who is a non-resident, is taxable on director’s fees earned for services rendered in South Africa.

  The source for services rendered for the various tiers of government is deemed to be South African sourced without regard to where those services were rendered.

- **Other business income generated through a branch**

  The source of business income is where the business is carried on or where the business capital is employed. Where business income is received by or accrued to a non-resident from carrying on a trade/business within South Africa, the source of that income is within South Africa. The taxability of the income may be affected by an agreement for the avoidance of double taxation.

8.7 Exemptions

- **Interest**

The Act makes specific provision for the exemption of interest received by or accrued to any person who is a non-resident. Under this exemption the full amount of the interest is exempt from income tax. This exemption is not applicable if that person –

- is a natural person who was physically present in South Africa for a period exceeding 183 days in aggregate during that year of assessment; or
- at any time during that year of assessment carried on a business through a permanent establishment in South Africa.

If the above exemption is not applicable, a further exemption is available to natural persons. Under this further exemption, interest income from a South African source not exceeding R22 800 (if the person is below the age of 65 years) or R33 000 (if the person is aged 65 years or older) is exempt from income tax for the 2012 year of assessment.

- **Dividends**

Dividends received by or accrued to a non-resident from South African resident companies are generally exempt from income tax.

8.8 Deductions

- **General**

The rules regarding the deductibility of expenses for income tax purposes are no different when claimed as a deduction by a resident or a non-resident.

The Act contains a general deduction formula with which an expense must comply in order to be deductible as well as various other provisions which allow for specific allowances/deductions in respect of certain types of expenditure incurred.

In order for expenditure and losses to be deductible in terms of the general deduction formula they must be –

(i) actually incurred;

(ii) during the year of assessment;

(iii) in the production of income;

(iv) not of a capital nature; and

(v) laid out or expended for the purposes of trade.

- **Allowances**

  Specific allowances/deductions that the Act makes provision for which will be deductible notwithstanding the fact that the expenditure is of a capital nature, relate to, for example:

  - **Patents, inventions, copyrights, designs, other property and knowledge (Intellectual property) -– Registration or renewal of registration**

    A deduction will be allowed in respect of the following expenditure actually incurred, provided that such property is used by the taxpayer in the production of income –

    - obtaining the grant of any patent;
    - the restoration of any patent;
    - the extension of the term of any patent;
    - the registration of any design or the extension of the registration period of any design; or
    - the registration of any trade mark or the renewal of the registration of any trade mark.

  - **Machinery, plant, implements, utensils and articles (excluding manufacturing)**

    An allowance, equal to an amount which the Commissioner may think just and reasonable by which the value of the asset(s) owned and used by the taxpayer for the purpose of his trade has been diminished by reason of wear and tear or depreciation. For more information in respect of this allowance, see the interpretation note[16] available on the SARS website.

[16] Interpretation Note No. 47: (Issue 2),– Wear and tear or depreciation allowance (11 November 2009)

- o **Expenditure and losses incurred prior to commencement of trade (pre-trade costs)**

  Pre-trade costs that would have been allowed had trade commenced are deductible in the year of assessment in which trade actually commences, irrespective of the year in which the cost was incurred. These costs are not defined but they would include costs such as advertising and marketing, promotion, insurance, accounting and legal fees, rent, telephone, licenses and permits, market research and feasibility studies, but exclude capital costs such as the purchase of buildings and motor vehicles and pre-trade research and development expenses.

  Pre-trade costs incurred prior to the commencement of trade can only be set off against income from that trade after the deduction of any amounts allowable in that year of assessment in terms of any other provisions of the Act. For more information see the interpretation note[17] available on the SARS website.

- o **Scientific or technological research and development**

  A deduction will be allowed in respect of expenditure actually incurred by a taxpayer on or after 2 November 2006 directly in respect of activities undertaken in South Africa for scientific or technological research and development purposes.

  The following deductions will be allowed from income derived by the taxpayer's trade:

  - **Operational expenditure**

    An amount of 150% of so much of any expenditure incurred by the taxpayer in respect of activities undertaken for the purposes of –

    - the discovery of novel, practical and non-obvious information of a scientific or technological nature intended to be used by the taxpayer in the production of his/her income; or
    - devising, developing or creating any –
      - invention as defined in the Patents Act, 1978 (Act No. 57 of 1978);
      - design that qualifies for registration under the Designs Act, 1993 (Act No. 195 of 1993);

[17] Interpretation Note No. 51: Pre-trade expenditure and losses (4 November 2009)

- computer program as defined in the Copyright Act, (Act No. 98 of 1978);
- knowledge essential to the use of such invention, design or computer program if that information, invention, design, computer program or knowledge is of a scientific or technological nature and is intended to be used by the taxpayer in the production of his/her income.

- **Capital expenditure**

  An amount over three years equal to 50%, 30%, and 20% in respect of –

  - the cost of any building, part of a building or improvement thereto brought into use in a research and development project. The building must be regularly used and suitably equipped for research; and
  - the cost of any machinery, plant, implement, utensil and article or improvement thereto brought into use for the purposes of research which–
    - is owned by a taxpayer or acquired under an instalment sale agreement; and
    - is new or unused when brought into use by the taxpayer solely and directly for purposes of research and development.

For more information see the interpretation note[18] available on the SARS website.

- **Machinery, plant, implements, utensils and articles used for farming and bio-fuel production**

  - **Farming**

    An allowance in respect of these assets, brought into use for the first time by a taxpayer in the carrying on of farming operations, equal to –

    - 50% of the cost of the asset, including the cost of any improvements thereto, to the taxpayer in the year of assessment in which the asset is so brought into use;

[18] Interpretation Note No. 50: Deduction for scientific or technological research and development (28 August 2009)

- 30% of such cost in the 2nd year of assessment; and
- 20% of such cost in the 3rd year of assessment.

- **Production of bio-fuels**

  An allowance in respect of these assets, brought into use for the first time by a taxpayer for the purposes of the taxpayer's trade to be used for the production of bio-fuels (bio-diesel and/or bio-ethanol), equal to –

  - 50% of the cost of the asset, including the cost of any improvement thereto, to the taxpayer in the year of assessment in which the asset is so brought into use;
  - 30% of such cost in the 2nd year of assessment; and
  - 20% of such cost in the 3rd year of assessment.

- **Machinery or plant (manufacture)**

  In respect of any new or unused machinery or plant acquired by a taxpayer under an agreement formally and finally signed by every party to the agreement on or after 1 March 2002 and brought into use by the taxpayer on or after that date directly in a process of manufacture or similar process, an allowance equal to –

  - 40% of the cost to the taxpayer, including the cost of any improvement thereto, in the year of assessment in which the machinery or plant is so brought into use for the first time; and
  - 20% of such cost in each of the three subsequent years of assessment.

- **Agricultural co-operatives**

  In respect of plant or machinery used for storing/packing farming products and brought into use for the first time, an allowance equal to 20% (5 year straight line basis) of the cost to the taxpayer.

- **Hotelkeepers**

  Machinery/implements/utensils/articles brought into use for the first time and used in a hotel. The allowance deductible is 20% (5 year straight line basis).

- **Aircraft**

  An allowance in respect of an aircraft, equal to 20% of the cost of the aircraft to a taxpayer, is deductible in the year of assessment in which the aircraft is brought into use for the first time by the taxpayer for the purposes of his trade and 20% in each of the four succeeding years of assessment.

- **Ship**

  An allowance in respect of a ship, equal to 20% of the cost of the ship to a taxpayer, is deductible in the year of assessment in which the ship is brought into use for the first time by the taxpayer for the purposes of his trade and 20% in each of the four succeeding years of assessment.

- **Pipelines, transmission lines and railway lines**

  An allowance, not exceeding in any one year of assessment –

  - 10% of the cost incurred by a taxpayer in respect of the acquisition of any new and unused pipeline, used for the transportation of natural oil; and of the improvement of that pipeline; or
  - 5% of the cost incurred by the taxpayer in respect of the acquisition of any new and unused –
    - pipeline used for the transportation of water used by power stations in the process of generating electricity;
    - line or cable used for the transmission of electricity;
    - line or cable used for the transmission of electronic communications; and
    - railway line used for transportation of persons, goods or things,

    and of the cost of improvement to the abovementioned pipeline, line, cable or railway line.

  The pipeline, line, cable or railway line (including any earthworks or supporting structures forming part thereof) must be owned and brought into use for the first time by the taxpayer and used directly by the taxpayer in the production of his income.

  Improvements, to the abovementioned pipeline, line, cable or railway line, brought into use on or after 1 January 2009 will qualify for this allowance.

The allowance will not in the aggregate exceed the amount of such cost.

- **Small business corporations (SBC)**

  An allowance, in respect of plant or machinery brought into use by a SBC (as defined in section 12E of the Act) and used by it directly in a process of manufacture or similar process, equal to 100% of the cost of such asset in the year of assessment in which such asset is brought into use.

  As from 1 April 2005 a SBC will be eligible for a depreciable write-off at 50%, 30% and 20% over a three year period for depreciable assets (other than manufacturing assets referred to above) acquired on or after 1 April 2005.

- **Airport assets**

  An allowance equal to 5% of the cost incurred on airport assets, including the cost of any improvement thereto (that is any new or unused aircraft hanger, apron, runway or taxiway, including any earthworks or supporting structures which form part of such hanger, apron, runway or taxiway), at any airport approved as a designated airport by the Minister in consultation with the Minister of Transport, by notice in the Government Gazette.

  The airport assets must be brought into use for the first time by a taxpayer and used directly by that taxpayer solely for the purposes of carrying on his/her business as airport, terminal or transport operator.

- **Port assets**

  An allowance equal to 5% of the cost incurred on port assets, including the cost of any improvement thereto (that is any new and unused port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot, including any earthworks or supporting structures forming part of such terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or depot).

The port assets must be brought into use for the first time by a taxpayer on or after 1 January 2008 and used solely for the purposes of carrying on his/her business as port authority.

- **Learnership agreements**

  An allowance will be deductible where –

  a) an employer, during a year of assessment and in the course of any trade carried on by the employer enters into a registered learnership agreement with a learner; or

  b) a learner, during a year of assessment and in the course of any trade carried on by the employer of that learner, completes any registered learnership agreement entered into between the learner and employer during that year of assessment

  With effect from the commencement of years of assessment ending on or after 1 January 2010:

  (i) A deduction of R30 000 will be allowed during each year in which a learner is a party to a registered learnership agreement with his/her employer which is entered into before 1 October 2016 and pursuant to a trade carried on by the taxpayer.

  (ii) The deduction is limited to an amount which bears to an amount of R30 000 the same ratio as the number of full months that such learner was a party to that agreement bears to 12 months where a learner was a party to the contract for less than 12 full months.

  (iii) A further deduction will be allowed where a learner is a party to a registered learnership agreement that was entered into pursuant to a trade carried on by that employer and the learner successfully completed that learnership during the year of assessment:

    (a) The learner was a party to the contract for a period of less than 24 full months = R30 000.

    (b) The learner was a party to the contract for a period that equals or exceeds 24 full months = an amount of R30 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(iv) In the case of learners with disabilities the amount of R30 000 mentioned in (i), (ii) and (iii) above must be increased to R50 000.

For more information see the interpretation note[19] available on the SARS website.

- **Buildings used in a process of manufacturing**

  Wear and tear is not normally allowed on buildings or other structures of a permanent nature. However, in the case of industrial buildings or improvements to existing industrial buildings used in a process of manufacture, an allowance, equal to 5% (20 year straight line basis) of the cost to a taxpayer of the buildings or improvements effected thereto, is deductible.

- **Buildings used by hotelkeepers**

  An allowance, equal to 5% (20 year straight line basis) of the cost to a taxpayer of the erection of buildings used in his/her trade of hotelkeeper or improvements thereto effected by the taxpayer, is deductible.

  Improvements to existing hotel buildings which were commenced on or after 17 March 1993 and do not extend beyond the exterior framework of the building, qualify for an allowance equal to 20% (5 year straight line basis) of the cost of such improvements.

  No allowance will be deductible in respect of the cost of the buildings or improvements as has been taken into account in the calculation of any allowance to the taxpayer in terms of the provisions of lease improvements, whether in the current or any previous year of assessment.

  If a hotel building in respect of which an allowance was deducted is sold –

  - the seller has to recoup the building allowance deducted (such recoupment is taxable), but the recoupment may be set off against the cost of a further building erected by him and used in his trade of hotelkeeper; and
  - the purchaser cannot claim any building allowance on the cost to him as he did not erect the buildings or effect the improvements.

[19] Interpretation Note No. 20 (Issue 4): Additional deduction for learnership agreements

- o **Commercial buildings**

  An allowance equal to 5% (20 year straight line basis) of the cost to a taxpayer of new and unused buildings or improvements to buildings owned by the taxpayer (other than the provision of residential accommodation) and used by the taxpayer for purposes of producing income in the course of the taxpayer's trade. The buildings or improvements must have been contracted for on or after 1 April 2007 and the construction, erection or installation commenced on or after the abovementioned date.

  For purposes of the 5% allowance, to the extent a taxpayer acquires a part of a building without erecting or constructing that part –

  - ➢ 55% of the acquisition price, in the case of that part being acquired, will be deemed to be the cost incurred by the taxpayer in respect of that part; and
  - ➢ 30% of the acquisition price, in the case of an improvement being acquired, will be deemed to be the cost incurred by the taxpayer in respect of that improvement

- o **Residential units**

  An allowance equal to 5% (20 year straight line basis) of the cost of any new and unused residential unit, or improvements thereto owned by a taxpayer. The residential unit or improvements thereto must have been acquired or erection commenced on or after 21 October 2008.

  This allowance will be deductible, provided the following requirements are met –

  - – the residential unit must be used by the taxpayer solely for the purposes of a trade carried on by the taxpayer;
  - – the residential unit must be situated in South Africa; and
  - – the taxpayer must own at least five residential units in South Africa, which are used for the purposes of a trade carried on by the taxpayer.

  An additional allowance of 5% of the cost is allowable as a deduction if –

  - – the normal deduction of 5% of the cost of the residential unit is allowed; and

– the residential unit is regarded as a low-cost residential unit as defined.

For purposes of the 5% allowance, to the extent a taxpayer acquires a residential unit (or improvement thereto) representing a part of a building without erecting or constructing that part –

- ➢ 55% of the acquisition price, in the case of that unit being acquired, will be deemed to be the cost incurred by the taxpayer in respect of that unit; and
- ➢ 30% of the acquisition price, in the case of an improvement being acquired, will be deemed to be the cost incurred by the taxpayer in respect of that improvement.

o **Erection or improvement of buildings in urban development zones**

Taxpayers investing in any of the 16 demarcated urban development areas in South Africa will receive special depreciation allowances in respect of the cost of the construction or refurbishment of commercial and residential buildings used solely for trade purposes. These areas are located within the boundaries of the municipalities of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mafikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane.

In certain circumstances a building purchased from a developer will also qualify for the allowance and a certain percentage of the cost to the developer will be deemed to have been incurred by the purchaser.

The following amounts will be allowed as a deduction in the case where erection commenced on or after 21 October 2008 –

- in respect of any new building purchased from a developer or part thereof or the extension of or addition to any building or part thereof, an amount equal to –
  - ▪ 20% of the cost thereof to a taxpayer in the year of assessment in which that building or part thereof is brought into use by the taxpayer solely for the purpose of that taxpayer's trade; and

- 8% of that cost in each of the 10 succeeding years of assessment; or

- in respect of the cost of improvements (including any extension or addition which is incidental to those improvements) to any existing building, an amount equal to –
  - 20% of the cost thereof to a taxpayer in the year of assessment in which the building or part thereof is so improved, extended or added to and brought into use by the taxpayer solely for the purpose of that taxpayer's trade; and
  - 20% of that cost in each of the four succeeding years of assessment.

In respect of the erection, extension or addition which relates to a low-cost residential unit, the amount of the allowance will be equal to –

- 25% of the cost, which is deductible in the year of assessment in which that building is brought into use by the taxpayer;
- 13% of that cost in each of the five succeeding years of assessment; and
- 10% of that cost in the seventh year of assessment.

In respect of improvements to any existing building, including any extension or addition which is incidental to those improvements to the extent that it relates to a low-cost residential unit, the allowance will be equal to –

- 25% of such cost, which is deductible in the year of assessment in which the part of the building so improved, is brought into use; and
- 25% of that cost in each of the three succeeding years of assessment.

For more information see the guide[20] available on the SARS website.

Note: The list of allowances/deductions set out above is not comprehensive.

[20] Guide to the urban development zone tax incentive

8.9 Special provisions

- **Determination of taxable income of certain persons in respect of international transactions**

  - **Thin capitalisation**

    Thin capitalisation refers to financial assistance granted in terms of an international agreement by a non-resident to a resident who are connected persons in relation to each other and the Commissioner, having regard for the circumstances of the case, is of the opinion that the financial assistance is excessive in relation to the fixed capital held in the resident. Financial assistance is regarded as excessive when the financial assistance granted by the non-resident to the resident is more than three times the fixed capital held by the non-resident in the resident. Any interest, finance charge or other consideration payable in respect of the financial assistance, which relates to the amount which is regarded as excessive, must be disallowed as a deduction in the hands of the resident.

    For more information regarding the concept of thin capitalisation refer to the practice note[21] available on the SARS website.

  - **Transfer pricing**

    Transfer pricing provisions are applied in situations where it is necessary to adjust the prices of goods and services in terms of certain transactions concluded between parties who are connected persons in relation to each other in order to reflect an arm's length price which would have applied had the transaction been concluded on normal commercial grounds between unrelated parties. The effect of the application of transfer pricing provisions is to neutralise the tax benefit arising from such transactions.

    For more information regarding the concept of transfer pricing refer to practice note[22] available on the SARS website.

[21] Practice Note No. 2:, Income Tax: Determination of taxable income where financial assistance has been granted by a non-resident of the Republic to a resident of the Republic (14 May 1996)

[22] Practice note No. 7: Determination of the taxable income of certain persons from international transactions: Transfer pricing (6 August 1999)

- **Assessment of owners or charterers of ships or aircraft who are non-residents**

  Any non-resident who is an owner or charterer of any ship or aircraft and embarks passengers or loads livestock, mail or goods in South Africa, will be deemed to have derived therefrom, (apart from any taxable income derived by him from other sources) a taxable income of 10% of the amount payable to him/her or to any agent on his/her behalf. It does not matter whether the payment is made inside or outside South Africa.

  This deeming provision will not be applicable if accounts, which satisfactorily disclose the taxable income derived by him/her from embarking of passengers or the loading of livestock, mail and goods, are submitted by the taxpayer. However, the Act provides for an exemption from income tax in respect of a person who is a non-resident with regard to taxable income derived in South Africa from a business carried on as owner or charterer of any ship, provided the country of residence of the non-resident grants a similar exemption with regard to the same type of income derived by a resident of South Africa in that country.

8.10 Capital gains tax (CGT) on the disposal or deemed disposal of property in South Africa by non-residents

CGT is only applicable to the disposal or deemed disposal of an asset on or after 1 October 2001.

Non-residents are liable to pay CGT on the taxable capital gain made on the disposal of the following assets –

- immovable property situated in South Africa (for example, land and buildings);
- any right or interest in immovable property in South Africa (for example a long-term lease);
- shares in a company where 80% or more of the market value of its net assets comprises immovable property in South Africa, and the non-resident holds directly or indirectly 20% or more of the shares in the company; and
- assets of a permanent establishment (for example, a branch of a foreign company) situated in South Africa.

A non-resident does not need to register separately for CGT if that person is already registered for income tax. However, if a non-resident is a natural person, who is not registered for income tax purposes, for example, as a result of not receiving any income from a source in South Africa or a source deemed to be within South Africa and an asset is disposed of in South Africa resulting in a capital gain or a capital loss exceeding R20 000, then the non-resident will have to register as a taxpayer and submit an income tax return.

A capital gain in respect of the disposal of an asset during a year of assessment is equal to the amount by which the proceeds received or accrued in respect of the disposal exceed the base cost of that asset.

A capital loss in respect of the disposal of an asset during a year of assessment is equal to the amount by which the base cost of that asset exceeds the proceeds received or accrued in respect of that disposal.

Natural persons and special trusts are entitled to an annual exclusion (deduction) of R20 000 from any capital gains or losses during a year of assessment. In the case where a natural person passed away, the annual exclusion of R20 000 is increased to R200 000 for the year of assessment as at date of death.

In the case of natural persons and special trusts, only 25% of the net capital gain, after deducting from the net capital gain the amount of the annual exclusion, is included in taxable income when calculating the tax payable. For companies, closed corporations and trusts, 50% of the net capital gain is included in taxable income. Roll over relief or deferral is available where the asset is either disposed of involuntarily and is replaced or is disposed of in order to acquire another similar business asset that qualifies for an allowance as discussed in **8.8** of this brochure.

8.11 Taxable income of a non-resident

The taxable income of a non-resident is calculated as follows:

	R
Gross income	XXX
Less: Exemptions	(X)
Income	XXX
Less: Deductions and allowances	(X)
Add: Taxable capital gain	XX
Taxable income	XXX

8.12 Turnover tax payable by micro businesses

As part of the South African government's broader mandate to encourage entrepreneurship and create an enabling environment for small businesses to survive and grow, a presumptive tax (turnover tax) was introduced to reduce the tax compliance burden on micro businesses with a turnover of up to R1 million a year. This simplified tax system is essentially an alternative to the current income tax, CGT, STC and VAT systems, meaning that a micro business still has the option to use the conventional tax system. It is available to sole proprietors, partnerships, close corporations, companies and co-operatives and came into effect from 1 March 2009.

Except for specific inclusions and exclusions, the turnover tax is calculated by applying a prescribed tax rate to the taxable turnover of the micro business. A micro business only becomes liable to pay the turnover tax if its taxable turnover exceeds R100 000. This means that the first R100 000 of taxable turnover of all businesses registered for turnover tax will be free of tax.

For more information refer to the guide[23] available on the SARS website.

8.13 Rates of normal tax in respect of natural persons & special trusts

Taxable income (R)	**Rates of tax for the 2011/12year of assessment**
Not exceeding 150 000	18% of taxable income
Exceeding 150 000 but not exceeding 235 000	R27 000 + 25% of the amount by which taxable income exceeds R150 000
Exceeding 235 000 not exceeding 325 000	R48 250 + 30% of the amount by which taxable income exceeds R235 000
Exceeding 325 000 but not exceeding 455 000	R75 250 + 35% of the amount by which taxable income exceeds R325 000
Exceeding 455 000 but not exceeding 580 000	R120 750 + 38% of the amount by which taxable income exceeds R455 000
Exceeding 580 000	R168 250 + 40% of the amount by which taxable income exceeds R580 000

8.14 Rebates in respect of natural persons

Income tax as calculated per the above table is reduced by the following rebates in the case of natural persons:

Rebates	**Amount for the 2011/12 year of assessment**
Primary rebate	R10 7550
Secondary rebate – Age 65 years or older	R6 012
Tertiary rebate – Age 75 years or older	R2 000

[23] Tax Guide for micro businesses 2011/12

8.15 Rates of normal tax for trusts (other than special trusts)

Taxable income (R)	Rate of tax for 2011/12 year of assessment
R1 and more	40% of taxable income

8.16 Rates of normal tax for companies

Company type/Taxable income (R)	Rate of tax for the 2011/12 year of assessment
Standard companies – Taxable income of R1 and more	28% of taxable income
Small business corporations – Taxable income Not exceeding 59 750	0% of taxable income
Exceeding 59 750 but not 300 000	10% of the amount by which taxable income exceeds R59 750
Exceeding 300 000	R24 025 + 28% of the amount by which taxable income exceeds R300 000
Personal service providers that are companies – Taxable income of R1 and more	33% of taxable income
Non-resident companies which trade in South Africa through a branch or agency or derived taxable income – Taxable income of R1 and more	33% of taxable income

8.17 Rates of normal tax in respect of micro businesses

Taxable turnover (R)	Rate of tax for 2011/12 year of assessment
Not exceeding 150 000	0% of taxable turnover
Exceeding 150 000 but not exceeding 300 000	1% of the amount by which taxable turnover exceeds R150 000
Exceeding 300 000 but not exceeding 500 000	R1 500 + 2% of the amount the amount by which taxable turnover exceeds R300 000
Exceeding 500 000 but not exceeding 750 000	R5 500 + 4% of the amount the amount by which taxable turnover exceeds R500 000
Exceeding 750 000	R15 500 + 6% of the amount the amount by which taxable turnover exceeds R750 000

8.18 Payment of income tax per assessment

The amount of income tax due by a taxpayer must be paid not later than the second due date as indicated on the notice of assessment. If a taxpayer fails to pay the full amount by the second due date, interest is payable at the prescribed rate on the outstanding balance in respect of each completed month during which any portion of the balance remains unpaid.

8.19 Withholding of amounts from payments to non-resident sellers of immovable property

The disposal of immovable property situated in South Africa, which is held by a non-resident as a capital asset, is subject to capital gains tax as discussed above. However, if immovable property constitutes trading stock of such non-resident, the proceeds on the sale will be included in gross income.

In terms of income tax legislation, a purchaser of immovable property is obliged to withhold the following amount from the amount payable by him to the non-resident seller (seller)–

- 5% of the amount payable if the seller is a natural person, or
- 7.5% of the amount payable if the seller is a company, or
- 10% of the amount payable if the seller is a trust.

The obligation of the purchaser to withhold an amount came into operation on 1 September 2007 and is applicable to the sale of any immovable property situated in South Africa by a non-resident owner on or after that date. The non-resident seller may apply for a directive that no amount or a reduced amount be withheld if certain conditions are met.

The amount withheld by the purchaser is an advance in respect of the seller's liability for normal tax for the year of assessment in which the property is disposed of by the seller. The purchaser must pay the amount so withheld to SARS within –

- 14 days after the date on which the amount was so withheld, if the purchaser is a resident; or
- 28 days after the date on which the amount was so withheld, if the purchaser is a non-resident.

The income tax legislation is not applicable if the total amount payable for the immovable property does not exceed R2 million.

8.20 Withholding tax on foreign entertainers and sportspersons

With effect from 1 August 2006 residents who are liable to pay amounts to foreign entertainers and sportspersons for their performances in South Africa must deduct or withhold tax, known as the tax on foreign entertainers and sportspersons, at a rate of 15% on all payments and pay the amount so deducted over to SARS on behalf of the foreign entertainers and sportspersons.

If it is not possible for the tax to be deducted or withheld (that is, the payer is a non-resident), the foreign entertainer or sportsperson will be held personally liable for the 15% tax and must pay the amount over to SARS within 30 days after the amount accrues to or is received by the foreign entertainer or sportsperson.

The 15% tax is a final tax, which means there will be no need to submit an annual return of income.

8.21 Employees' tax

An employer, as an agent of government, is required to deduct employees' tax from the earnings of employees and pay the amounts deducted over to SARS on a monthly basis. This employees' tax is not a separate tax, but forms part of the Pay-As-You-Earn (PAYE) system. Based on the PAYE system the employees' tax deducted serves as an income tax credit that is to be set off against the income tax liability of an employee, calculated on an annual basis in order to determine the employee's final income tax liability for a year of assessment.

Every employer who pays remuneration to an employee must register as an employer for employees' tax purposes. That means that any business that pays a salary or a wage to any of its employees that is above the threshold amount[24] must register with SARS for employees' tax purposes.

Employees' tax must be withheld when the remuneration is paid or becomes payable to the employees and consists of two components, viz. Standard Income Tax on Employees (SITE) and Pay-As-You-Earn (PAYE). SITE is deducted from remuneration which does not exceed the SITE threshold of R60 000 for a year of assessment. PAYE is deducted from remuneration in excess of the SITE threshold for a year of assessment or any part-time income.

8.22 Provisional tax

Provisional tax is also not a separate tax but refers to provisional tax payments to be made by a provisional taxpayer to the Commissioner in

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[24] See **8.3** of this brochure

a manner provided by the Act. A provisional taxpayer is any person (other than a company) who derives income other than remuneration, any company and any person who is notified by the Commissioner that he or she is a provisional taxpayer.

These payments are based on the taxpayer's estimated taxable income (other than remuneration from which SITE and/or PAYE is deducted - referred to in **8.21** of this brochure) for a year of assessment. The final tax liability will be determined upon assessment. These payments alleviate the burden of one large amount being payable on assessment as it spreads the income tax burden over the tax year.

Provisional tax payments are normally made by way of two payments, the first of which is usually made before/on 31 August and the second payment before/on the last day of February the following year. An optional third payment may be made after the end of the tax year to prevent the accrual of interest on underpayment of provisional tax when the assessment for the relevant tax year is issued. If a taxpayer's year of assessment ends on the last day of February, the third provisional tax payment is to be made not later than seven months after the last day of that tax year. In any other case, the third provisional tax payment is to be made within six months after the last day of that tax year

9. Secondary tax on companies (STC)

STC is not a withholding tax on dividends. It is a tax, levied at a rate of 10% on resident companies in respect of the net amount of dividends declared by such companies or distributed by close corporations during a dividend cycle. A dividend cycle is the period between the last dividend declared and the next or subsequent dividend declaration. The net amount is arrived at by deducting dividends accrued from dividends declared during this cycle.

Non-resident companies, carrying on a trade through a branch or agency within South Africa, are not subject to STC.

STC will be replaced by a withholding tax on dividends.[25]

10. Dividends tax

A new tax on company dividends, to be known as the "dividends tax" will become effective on 1 April 2012 and will replace STC[26]. The difference between STC and the dividends tax is that the liability for STC falls on the company that declares a dividend while the liability for the dividends

[25] See **10** of this brochure
[26] See.**9** of this brochure

tax falls on the shareholder who receives the dividend or to whom the dividend accrues.

Although the shareholder will be liable for the payment of this dividends tax, the company is obliged to withhold the tax from any dividend paid to the shareholder. The date on which the dividends tax must be levied will be the date on which the dividend is paid to the shareholder.

It is the responsibility of either the company paying the dividend or an intermediary who receives the dividend on behalf of the shareholder to withhold the tax. If a dividend is payable to a non-resident shareholder and the dividend is subject to a tax of less than 10% as a result of a double taxation agreement which South Africa has with the country in which the shareholder is resident, the non-resident shareholder will have to submit a form (as prescribed by the Commissioner) to the company or intermediary stating what the reduced tax should be. The non-resident shareholder must also undertake to advise the company or the intermediary should they cease to be the beneficial owner of the shares.

11. Donations tax

Donations tax is not a tax on income but rather a tax payable on the gratuitous disposal of assets by a person who is a resident (the donor) to another person (the donee). Donations made by residents are subject to donations tax, levied at a rate of 20% on the value of the property disposed of.

A non-resident donor is not liable for any donations tax in respect of any donation made to any person. However, where a donation is made by a resident to a non-resident and the resident fails to pay the tax, the non-resident and the donor will be jointly and severally liable for the donations tax. Apart from other exemptions, such as donations to public benefit organisations, donations made by an individual who is a resident, totalling R100 000 per year of assessment will be exempt from donations tax.

Certain foreign located assets are outside the donations tax net, for example, assets acquired by the donor before the donor became a resident.

12. Value added tax (VAT)

12.1 Introduction

Value-added tax (VAT) is an indirect tax levied in terms of the Value-Added Tax Act, No. 89 of 1991 (VAT Act). VAT must be included in the selling price of every taxable supply of goods or services made by a vendor in the course or furtherance of that vendor’s enterprise. A vendor is a person who is registered, or required to be registered for VAT. VAT is a destination based tax, which means that only the consumption of goods and services in South Africa is taxed. VAT is therefore paid on the supply of goods or services in South Africa as well as on the importation of goods into South Africa.

12.2 Rates of tax

VAT is presently levied at the standard rate of 14% on most supplies and importations but there is a limited range of goods and services which are either exempt or which are subject to tax at the zero rate (for example, exports and certain basic foodstuffs are taxed at 0%). Certain goods are also exempt from VAT on importation and the importation of services is only subject to VAT where the importer is not a vendor or where the services are imported for private or exempt purposes. VAT is levied on an inclusive basis, which means that VAT has to be included in all prices on products, price lists, advertisements and quotations

12.3 Who is liable for the payment of VAT?

VAT is levied on all supplies made by vendors in the course or furtherance of their enterprises and only a vendor may levy VAT. Vendors therefore charge and account for VAT on supplies but ultimately, the VAT charge is borne by the final consumers from whom the VAT is collected. A vendor making exempt supplies may, therefore, not charge VAT and may not claim back any VAT borne by the enterprise. Any person who carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds or is likely to exceed the compulsory VAT registration threshold of R1 million in any consecutive 12-month period, must register for VAT. Before 1 March 2009 the compulsory VAT registration threshold was R300 000 in any consecutive 12-month period.

The VAT Act also allows a person to register voluntarily as a vendor if that person carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds R50 000 (but does not exceed R1 million) in the preceding 12-month period. Note, however, that the voluntary registration threshold for persons that supply “commercial accommodation” is R60 000 and not R50 000.

When a vendor is supplied with goods or services by another vendor, VAT is levied by the supplier of those goods or services. The vendor acquiring the goods subtracts the input tax (VAT borne by the vendor) from the output tax (VAT charged by the supplying vendor). The difference is VAT payable to or refundable by SARS. The effect is that VAT is borne by the final consumer of goods and services.

12.4 Supplies subject to the standard rate

The standard rate of 14% applies to the supply of most goods and services supplied by vendors. The importation of most goods and imported services (that is, services acquired for purposes other than making taxable supplies) are also subject to VAT at the standard rate.

12.5 Supplies subject to the zero rate

The following are examples of goods and services that are subject to VAT at the zero rate:

- Goods exported from South Africa where the vendor is liable for the transport of the goods to the foreign country
- Brown bread
- Brown wheaten meal
- Maize meal
- Samp
- Mealie rice
- Dried mealies
- Dried beans
- Rice
- Lentils
- Fruit and vegetables
- Pilchards and sardinella in tins or cans
- Milk, cultured milk and milk powder
- Vegetable cooking oil
- Eggs
- Edible legumes and pulse of leguminous plants
- Dairy powder blends
- Petrol, diesel and illuminating paraffin
- Certain agricultural inputs supplied to VAT registered farmers
- Certain gold coins issued by the South African Reserve Bank, including Krugerrands
- International transport and related services
- Services physically rendered outside South Africa

A zero rating implies that VAT at 0% is levied on supplies made by the vendor. VAT incurred on goods or services acquired by the vendor for purposes of making zero-rated supplies, is deductible as input tax.

12.6 Exemptions

The following goods and services are exempt from VAT:

- Financial services such as interest earned and life insurance benefits
- Public transport of fare paying passengers by road and rail
- The supply of residential accommodation under a lease agreement
- Certain educational services, for example, in primary and secondary schools, universities and technikons
- Medical services and medicines supplied by government (provincial hospitals) but excluding municipal medical facilities
- Any goods or services supplied by an employee organisation to its members to the extent that the supplies are funded from membership contributions
- Child minding services in crèches and after-school centres

An exemption implies that the supplier of goods does not levy VAT (output tax) on those exempt supplies but must bear VAT (input tax) on the purchases incurred in making such supplies.

12.7 Tourists, diplomats and exports to foreign countries

- **Tourists**

VAT borne by foreign tourists may be refunded by the VAT Refund Administrator (VRA) upon departure from South Africa. The tourist must be in possession of a valid tax invoice and have the goods available for inspection upon departure from South Africa. An administration fee is levied by the VRA for processing the refund. This fee may change from time-to-time. At the time of drafting this guide, it was 1.3% of the VAT-inclusive amount of the claim, subject to a minimum of R10 and a maximum of R250.

Contact details for the VRA's Head Office are as follows:

Postal address	**E-mail addresses**
The VAT Refund Administrator PO Box 107 OR Tambo (Johannesburg) International Airport South Africa 1627	General: *info@taxrefunds.co.za* Botswana: *botswana@taxrefunds.co.za* Swaziland: *swaziland@taxrefunds.co.za* Namibia: *namibia@taxrefunds.co.za* Other countries: *generalqueries@taxrefunds.co.za*
Physical address Plot 206/1 High Road Pomona, Kempton Park	**Website** :*www.taxrefunds.co.za* **Telephone** : + 27 87 310 0200 **Facsimile** : + 27 86 503 9530

A VAT refund will only be considered when all of the following requirements are met –

- the purchaser must be a qualifying purchaser;
- the goods must be exported within 90 days from the date of the tax invoice;
- the VAT inclusive total of all purchases exported at one time must exceed the minimum of R250;
- the request for a refund, together with the relevant documentation, must be received by the VRA within three months of date of export; and
- the goods must be exported through one of the 43 designated commercial ports by the qualifying purchaser or the qualifying purchaser's cartage contractor.

Should a qualifying purchaser export the goods, such goods must first be declared to a SARS Customs official at that exit point before approaching the VRA for a refund. In the case where the goods are not kept as hand luggage the tax invoice must be endorsed by the SARS Customs official and be presented to the VRA for a refund or handed in to a SARS Customs official before departure from South Africa. If the goods are exported via a designated commercial port where the VRA is not present, the qualifying purchaser must apply in writing to the VRA for a refund. This also applies in the case where the qualifying purchaser's cartage contractor exports the goods.

The documentary requirements in these circumstances are –

- the original tax invoice;
- a copy of the qualifying purchaser's passport or in the case of a foreign enterprise, a copy of the trading license, as well as the letter of authorisation and a copy of the authorised person's passport;
- a copy of the invoice issued to the qualifying purchaser by his cartage contractor (where applicable); and
- proof that the qualifying purchaser declared the importation of the goods for customs purposes in the export country.

The following additional documentation must be submitted if the tax invoice has been endorsed at a designated commercial port where the VRA is not present –

- a copy of the export documentation prescribed under the Customs and Excise Act bearing an original South African Customs and Excise endorsement; and
- a copy of the relevant transport documentation indicating that the goods were transported to an export country, for example an airway bill for an export by air or a bill of lading for an export by sea.

For more information refer to the VRA pamphlet which is available from all of South Africa's International Airports or the VRA's website www.taxrefunds.co.za.

- **Diplomats**

Relief from VAT incurred in South Africa is granted to certain persons who are accredited with diplomatic status if the expenses meet certain requirements. Typically, these would be expenses incurred for official diplomatic purposes. The relief is granted in the form of a periodic refund and is effected by way of registration for VAT and the submission of returns on which the refundable amount for the period is indicated. This procedure applies to Diplomatic Missions, Consular Posts, international organisations accredited to the South African Government, Heads of State, and Special Envoys & Transferred representatives.

For more details about the refund procedure refer to the guide[27] available on the SARS website.

- **Exports to foreign countries**

A vendor may apply the zero rate when supplying movable goods and consigning them to a recipient in an export county.

[27] AS-VAT-02 - Quick reference guide (Diplomatic refunds)

If a non-resident or a foreign enterprise purchases goods in South Africa and subsequently exports the goods, the VAT may be refunded by the VAT Refund Administrator. In certain circumstances the vendor may apply the zero rate where the goods are exported by rail, sea or air provided the vendor obtains proof of export as required under the Export Incentive Scheme.

For more information on exports, refer to Chapter 10 of the guide[28] available on the SARS website.

[28] VAT 404: Guide for Vendors

PART D: DUTIES

13. Estate duty

13.1 Introduction

Estate duty is charged on the dutiable amount of the estate of every natural person who dies on or after 1 April 1955.

13.2 An estate

For purposes of the Estate Duty Act, No. 45 of 1955 (the Estate Duty Act) an estate of a person consists of –

- all property of that person on the date of his/her death; plus
- all property which is deemed to be that person's property on the date of death, (for example, life insurance policies, payments from pension funds).

13.3 Property

The term "property" means any right in or to property, whether movable or immovable, corporeal or incorporeal, with specific inclusions and exclusions. In the case of a non-resident who was not ordinarily resident in South Africa at the date of his/her death, the following is excluded from property in respect of that person's estate for purposes of estate duty, namely –

- any right in immovable property situated outside South Africa;
- any right in movable property physically situated outside South Africa;
- any debt not recoverable or right of action not enforceable in the Courts in South Africa;
- any goodwill, licence, patent, design, trade mark, copyright or similar right not registered or enforceable in South Africa or attached to any trade, business or profession in South Africa;
- any stocks or shares held by him/her in a body corporate which is not a company; and
- any stocks or shares held by him/her in a company, provided any transfer whereby any change of ownership in such stocks or shares is recorded is not required to be registered in South Africa.

Any right to any income produced or proceeds derived from the last mentioned four items above is also excluded from property.

13.4 Estate of a non-resident that is subject to estate duty

Based on the exclusions[29], the estate of a non-resident will only be subject to estate duty to the extent that it consists of "property" and "deemed property" of the deceased as defined in the Estate Duty Act.

The Estate Duty Act, unlike the Income Tax Act, does not define the term "resident" and only refers to persons who are "ordinarily resident" or "not ordinarily resident". It follows, therefore, that any natural person, who is not ordinarily resident in South Africa but who became a resident of South Africa in terms of the physical presence test for income tax purposes, will be regarded as a non-resident for estate duty purposes.

13.5 Rate of estate duty

Estate duty is charged at a rate of 20% of the dutiable amount of the estate.

13.6 Dutiable amount

The dutiable amount is calculated as follows:

	R
Value of property + deemed property	4 500 000
Less: Deductions in terms of the Estate Duty Act	(300 000)
Net value of estate	4 200 000
Less: Standard abatement in terms of the Estate Duty Act	(3 500 000)
Dutiable amount	700 000

14. Transfer duty

14.1 Introduction

Transfer duty is payable in respect of the acquisition of any "property" as defined in the Transfer Duty Act, No. 40 of 1949. The definition of "property" was amended to include shares, member's interest and contingent rights in certain circumstances. The amendment was introduced with effect from 13 December 2002 to counter the avoidance of transfer duty whereby residential property is placed in companies, close corporations and discretionary trusts and the shares, members' interest and contingent rights are sold instead of the property. This amendment brings the transfer of these assets within the charging section.

[29] See **13.3** of this brochure

14.2 Rate of transfer duty

Transfer duty is calculated at the following rates, namely –

From 1 March 2006 to 22 February 2011

Person	Purchase price / Fair market value*	Rate
Natural person	On the 1st R500 000	0%
	On the amount that exceeds R500 000 but not R1 000 000	5%
	On the amount in excess of R1 000 000	8%
Person other than a natural person	On the full consideration or fair market value	8%

***** The fair market value is usually the purchase price (consideration). However, where there is no purchase price, transfer duty is payable on the fair market value.

The current rates which came into effect from 23 February 2011 are as follows:

Person	Purchase price / Fair market value	Rate
All persons	On the 1st R600 000	0%
	On the amount that exceeds R600 000 but not R1 000 000	3%
	On the amount that exceeds R1 000 000 but not R1 500 000	5%
	On the amount that exceeds R1 500 000	8%

The current rates apply to all persons. No distinction is made between natural persons and legal persons as was the case before 23 February 2011.

In order to ensure that the sale of fixed property is not subject to both VAT and transfer duty, the Transfer Duty Act contains an exemption from transfer duty to the extent that the supply is subject to VAT. Therefore the payment of VAT normally takes precedence over the payment of transfer duty where the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty as these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

Where the immovable property is supplied as part of an entire enterprise to another VAT vendor which meets the requirements of a going concern, VAT is charged at the zero rate on all the enterprise assets (including the fixed property).

Where the seller is not a vendor for VAT purposes, transfer duty is payable by the purchaser at the rate as set out in the abovementioned table.

14.3 By whom and when is transfer duty payable?

Duty is payable by –

- the person who has acquired the property; or
- the person in whose favour or for whose benefit any interest in or restriction upon the use or disposal of property has been renounced.

The duty is payable within six months of the date of acquisition of the property.

14.4 Value of property on which transfer duty is payable

Normally transfer duty is payable on –

- the amount of the consideration, where consideration is payable by the person who has acquired the property; or
- the declared value of the property, where no consideration is payable.

15. Securities transfer tax

A securities transfer tax (STT) is payable on the transfer of any security issued by a close corporation or company incorporated in South Africa as well as foreign companies listed on the South African stock exchange.

For purposes of this tax a "security" means –

- any share or depository receipt in a company;
- any member's interest in a close corporation; or
- any right or entitlement to receive any distribution from a company or close corporation,

excluding the debt portion in respect of a share linked to a debenture.

Where securities are transferred, the STT is payable by the transferee (purchaser). Where the securities are cancelled or redeemed, the STT is payable by the company or close corporation cancelling or redeeming the shares.

STT is payable at a rate of 0,25% of the taxable amount of the security which in effect is the higher of the consideration paid for or the market value of the security concerned.

16. Customs duty and Excise duty

16.1 Customs duty

One of the core functions of Customs is the control of goods entering (imported into) or leaving (exported from) South Africa. The Customs Tariff may impose the following duties on goods imported into South Africa –

- an ordinary import duty;
- an anti-dumping duty;
- a countervailing duty; and
- safeguard duty

The Customs Tariff may also impose an export duty on goods destined for export from South Africa.

All imported goods arrive in South Africa through an approved entry point by any one of the following modes, namely: air, sea, road, rail, or post, where it may be examined to ascertain if –

- the goods were correctly declared; and
- that the correct duties were levied.

All goods (including locally manufactured products) which are exported leave South Africa through an approved port of exit. Examination facilities are available at most international ports of exit as well as at the transit sheds and container depots. Arrangements may also be made for the examination of locally manufactured products intended for export to be conducted at the premises of the clients. The importation and exportation of a variety of goods is either totally prohibited or restricted in which case the movement thereof is controlled by a physical inspection and/or a permit that has been issued by the relevant authority under whose jurisdiction such goods fall.

Certain goods require an import permit which must be produced at the time of clearance thereof. Application for import permits must be made to the International Trade Administration Commission (ITAC).

The rates of the duties leviable are either –

- duty free;
- a percentage of the value of the goods (ad valorem basis);

- as a specific duty (cents per unit, kilogram or litre)

  (These rates are set out in Schedule 1 to the Customs and Excise Act); or

- a flat rate of 20% on the value of goods up to a value of R20 000 in respect of accompanied baggage.

16.2 Excise duty

Depending on the nature of the product that is manufactured locally the following excise duties may be levied:

- A specific excise duty, for example tobacco and alcohol.
- A specific ad valorem excise duty, for example motor vehicles, cellular telephones.
- An environmental levy, for example Plastic Bag levy and Carbon Emission tax on motor vehicles.
- A Fuel and Road Accident Fund levy on certain petroleum products such as petrol and diesel.

16.3 Air passenger departure tax

From 1 October 2009 to 30 September 2011

(a) Passengers departing to Botswana, Lesotho, Namibia, and Swaziland, R80 per passenger.

(b) Passengers departing to other international destinations, R150 per passenger.

From 1 October 2011 to date

(c) Passengers departing to Botswana, Lesotho, Namibia, and Swaziland, R100 per passenger.

(d) Passengers departing to other international destinations, R190 per passenger.

PART E: LEVIES

17. Skills development levies (SDL)

An employer must pay SDL if the employer pays annual salaries, wages and other remuneration in excess of R500 000. Employers with an annual payroll of R500 000 or less (whether registered for employees' tax purposes with SARS or not) are exempt from the payment of this levy.

This levy (currently 1%) is used for the funding of education and training of employees. It is calculated as a percentage of the leviable amount, which is approximately equal to the earnings of all the employees. The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment. Further information in this regard is available in the guide [30] available at SARS offices and on the SARS website under SDL.

18. Unemployment insurance fund contributions (UIF contributions)

South Africa has an Unemployment Insurance Fund which insures employees against the loss of earnings due to termination of employment, illness and maternity leave. In terms of the Unemployment Insurance Contributions Act, No. 4 of 2002, both the employer and the employee has to make a contribution to the Unemployment Insurance Fund. The contributions made by each of them are calculated as 1% of the gross remuneration (before the deduction of pension fund, retirement annuity fund and qualifying medical aid contributions) paid or payable by the employer to the employee for services rendered.

An employer who is registered for employees' tax and/or SDL will be automatically registered for UIF contributions with SARS. (The application form to register for UIF contributions is the same form that is used to register for PAYE and/or SDL). An employer who is not liable for the payment of employees' tax and/or SDL must register for UIF contributions purposes with the Unemployment Insurance Commissioner at the Department of Labour.

The maximum earnings on which UIF contributions may be calculated have been increased to R149 736 per annum, R12 478 per month or R2 879-53 per week with effect from 1 February 2008.

[30] Quick reference guide for skills development levy"

Employees who earn more than the annual, monthly or weekly maximum amount indicated above are also liable to contribute to the UIF, but contributions payable are limited to an amount calculated on the relevant maximum earnings as reflected above.

Note must be taken of the following. Where an amount of an employee's contribution, which has been deducted by an employer which is a company (other than a listed company), has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, the representative employer and every director and shareholder of that company who controls or is regularly involved in the management of the company's overall financial affairs, will personally be liable for the payment of that amount to the Commissioner or the Unemployment Insurance Commissioner and for any penalty which may be imposed in respect of that payment.

Further information in this regard is available in the guide[31] available on the SARS website.

The Department of Labour's website, www.uif.gov.za also has useful information in this regard.

[31] Quick reference guide on unemployment insurance fund

PART F: PENALTIES AND OR ADDITIONAL TAXES

The Acts in terms of which the different taxes/duties/levies discussed above are payable, contain special provisions regarding penalties and/or additional taxes to be levied on the late payment of these taxes/duties/levies or non-compliance with legislation.

A person may also be liable on conviction to a fine or to imprisonment or both on matters such as non-payment of taxes, failure to complete tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which he/she is not entitled.

Taxpayers who have not complied with tax legislation such as to register or who have omitted income and who voluntarily approach SARS to meet their tax obligations, will be received sympathetically.

Under section 75B of the Act, administrative penalties (determined according to a taxpayer's taxable income/assessed loss – "Fixed Amount Penalty Table") may be imposed for taxpayers who fail to comply with their tax obligations such as failure to –

- submit tax returns;
- register as a taxpayer;
- notify their change of address; or
- reply to a question.

PART G: OBJECTION AND APPEAL

The Acts in terms of which the different taxes/duties/levies discussed in this brochure are assessed also contain provisions regarding objection and appeal procedures to be followed in the event that a taxpayer is aggrieved by any assessment. For more information see the guide[32] available on the SARS website.

[32] Guide on tax dispute resolution

PART H: DOUBLE TAXATION AGREEMENTS

A Double Taxation Agreement (DTA) is an international agreement, the main aim of which is to eliminate or provide relief from international double taxation. However, such agreements also enable exchange of information between tax administrations, provide for a mutual agreement procedure to assist in resolving any conflict arising out of the interpretation or application of the DTA and may allow for tax collection on the other tax administration's behalf. The increasing interdependence and co-operation between the modern world economies and cross border trading has escalated the necessity for countries to enter into such agreements, thereby providing not only security for a country's residents in cross border interactions but also encouraging outside investment.

It must, however, be emphasised that a DTA never imposes tax. (Tax is imposed in terms of a country's domestic law). Its purpose is to allocate taxing rights. Generally, the agreement will provide that the income will either be taxed solely in one country or, if it remains taxable in both countries, that a taxpayer's country of residence is obliged to grant relief in terms of the Article on "Elimination of Double Taxation". In South Africa, should an amount qualify for relief in terms of the said Article, relief will be granted in the form of a credit. Reduced levels of withholding taxes, in situations where double taxation is permitted, are also provided for.

The Double Taxation Agreements in force in South Africa are available on the SARS website.

As each DTA is unique, the relevant agreement must be consulted and the provisions therein adherred to. This website also reflects the progress of DTAs not yet entered into force.

PART I: WORK PERMITS

Although this guide mainly deals with the taxation of business and investment income received by or accrued to non-residents, it is also important to note that other requirements need to be met when a non-resident wishes to work in South Africa. Work permits, for example, will be required and are issued by the Department of Home Affairs. Further information for non-residents is available on the South African Government website at www.gov.za.

PART J: EXCHANGE CONTROL

19. Introduction

Exchange control regulations, restricting the in and out flow of capital in South Africa, still exist. For example, investments into South Africa must be reported and prior approval must be required if loan capital is invested in South Africa.

The administration of exchange control is performed by the South African Reserve Bank (SARB). The SARB has delegated some of its powers to deal with exchange control related matters to commercial banks. These banks are known as “authorised dealers” in foreign exchange.

20. Non-resident – Borrowings from South Africa

Definitions

“affected person” means a body corporate, foundation, trust or partnership operating in South Africa, or an estate, in respect of which –

(i) 75% or more of the capital, assets or earnings thereof may be utilised for payment to, or to the benefit in any manner of, any person who is not resident in South Africa; or

(ii) 75% or more of the voting securities, voting power, power of control, capital, assets or earnings thereof, are directly or indirectly vested in, or controlled by or on behalf of, any person who is not resident in South Africa.

“CMA” means the Common Monetary Area, which consists of Lesotho, Namibia, South Africa and Swaziland**.**

All loans granted by a corporate which is a resident to a non-resident (that is a natural person or a legal entity whose normal place of residence, domicile or registration is outside the CMA) require prior exchange control approval. An individual, aged 18 years or older and who is a resident, may transfer loans within an overall discretionary limit of R4 million per applicant during a calendar year to persons who/which are normally resident outside South Africa.

Non-residents may freely invest in South Africa, provided that suitable documentary evidence is submitted in order to ensure that these transactions are concluded at arm’s length, at fair market related prices and are financed in an approved manner.

The purpose of control over the rendering of financial assistance to non–residents or affected persons is intended as a form of rationing of domestic capital resources. Financial assistance for exchange control purposes includes the following –

- the lending of currency;
- the granting of credit;
- the taking up of securities;
- the conclusion of an instalment and/or hire purchase sale or lease;
- the financing of sales or stock;
- discounting;
- factoring, viz. the buying of trade debts or lending money on the security of trade debts; and
- the guaranteeing of acceptance credits or accepting of any obligation, a suretyship, a buy-back, and a leaseback (excluding normal trade credits).

Local financial assistance facilities to non-residents in respect of bona fide foreign direct investments into South Africa may be authorised without restrictions. However, where the funds are required for the acquisition of residential property in South Africa and/or other financial transactions, for example portfolio investments, securities lending, repurchase agreements, etc, non–residents may borrow up to 100% of the Rand value of funds introduced from abroad and invested in South Africa.

Affected Persons

- There is no restriction on the amount that can be borrowed locally in instances where an affected person wishes to borrow funds to finance a foreign direct investment into South Africa or for domestic working capital requirements. Wholly non–resident owned subsidiaries may borrow locally up to 100% of the total shareholders' investment, in respect of the acquisition of residential property in South Africa and/or other financial transactions, for example portfolio investments, securities lending, hedging, repurchase agreements, etc. Shareholders' investment means the paid-up equity capital, preference shares, undistributed earned profits, shareholders' loans from abroad and in certain instances, the hard core of shareholders' trade credit, which consists of –
    - the granting of credit by a seller in respect of any commercial transaction directly involving the passing of ownership of the goods sold from the seller to the purchaser; and
    - the granting of credit solely in respect of the payment for services rendered.

The participation of resident shareholders in a non-resident controlled entity can increase the ability of the non-resident controlled entity to obtain funds from South Africa. The ratio of financial assistance granted in South Africa is calculated according to the following formula –

$$300\% \times \left[\frac{\%\ \text{South African interest}}{\%\ \text{Non-resident interest}} \times 100\% \right]$$

All requests for local financial assistance facilities in respect of financial transactions and/or the acquisition of residential property in South Africa, in excess of the maximum limit as calculated per the above formula, must be referred for approval.

For more detailed information, visit the website[33] of the SARB.

21. Repatriation of funds

Having introduced funds into South Africa, the next fundamental issue is which of these investment funds and funds generated by the investment in South Africa may be remitted out of South Africa.

21.1 Funds utilised to buy assets

All funds introduced into South Africa –

- to acquire fixed property within South Africa, together with any profits on resale of the property, may be repatriated provided the title deed of the property has been endorsed "non-resident";
- to acquire shares/member's interest in a company/close corporation, together with any profit on resale, may be repatriated provided the relevant securities have been endorsed "non-resident"; and
- in the form of a foreign loan to fund acquisitions of corporate entities which own property in South Africa, together with any profits on resale, may be repatriated in terms of the original loan approval granted by the SARB, provided the relevant securities have been endorsed "non-resident".

If a resident decides to exercise an option in the loan agreement to make an early repayment, in whole or in part or the non-resident has agreed to the borrower's request to make an early repayment, the borrower must first submit an application to Exchange Control to obtain their approval.

[33] www.reservebank.co.za

21.2 After tax profits

A foreign company has an advantage over a registered South African subsidiary in that any after tax profits in an external company may be freely remitted out of South Africa.

21.3 Dividends

Dividends declared by listed South African companies to non-resident shareholders may be remitted to non-residents.

Dividends declared by non-listed South African companies may be remitted to non-resident shareholders in proportion to the percentage shareholding of the non-resident shareholder in question. Such a non-listed South African company will be required to produce an auditor's report stating that the amount to be remitted arises from realised or earned profits on investments owned by the non-resident.

21.4 Loans

Both a foreign company and a South African subsidiary require exchange control approval for the repatriation of funds brought into South Africa as loan capital. The approval might stipulate that the repayment of these loans may only be made out of the profits of the company.

21.5 Other payments, for example, royalties, licence or patent fees

If the products in question are manufactured in South Africa and payments are made to non-residents approval for the payment must be obtained from the Department of Trade and Industry.

If the products in question are not manufactured in South Africa and payments are made to non-residents approval must be obtained from Exchange Control.

All royalty payments have to be substantiated by an auditor's report in which it confirms the basis of calculation and that it is in terms of an approved agreement.

21.6 Interest

Provided exchange control has granted approval for the loan facility, there are no restrictions on interest payments. Non-resident investors should take cognisance of the thin capitalisation and transfer pricing rules[34].

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[34] See **8.9** in this brochure

CONCLUSION

There are numerous tax benefits available to an investor and it is trusted that the information provided in this brochure will encourage and assist non-residents in deciding to do business and/or invest in South Africa. For more detailed information regarding the topics discussed in this brochure you may visit the SARS website.