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Doing Business in South Africa
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mgi  **DOING BUSINESS GUIDE**
IN SOUTH AFRICA

Business Solutions Worldwide

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1 INTRODUCTION AND DISCLAIMER

This publication is a brief summary of information about South Africa for persons wishing to live in, do business with, or invest in South Africa. However, it can only be treated as a guide to some of the issues that may be encountered, and detailed professional advice should be obtained before any action is taken by a prospective immigrant or investor. Whilst every care has been taken in the preparation of this publication, no responsibility can be accepted for inaccuracies. Readers are also advised that the law and practice may change from time to time.

2 THE COUNTRY

2.1 Geography and Statistics

South Africa is a large country of 1 221 000 square kilometres, which is five times the size of Great Britain, or more than the combined area of Germany, France, Italy and Portugal. It stretches from Latitude 22 7' South, which is north of the Tropic of Capricorn to Latitude 34 5' South at its southernmost tip at Cape Agulhas.

Four main metropolitan areas dominate economic activity within the country: Johannesburg and its surrounds (Gauteng province), the coastal Durban/Pinetown areas (KwaZulu-Natal), the Cape Peninsula (which includes Cape Town), and the Eastern Cape's Port Elizabeth/Uitenhage area.

There is a wide variation of climate, from semi-tropical on the North East Coast to a Mediterranean type climate on the South Cape Coast. The eastern stretch of the country has high rainfall, the interior becoming drier further west, until the countryside becomes semi-desert on the West Coast.

The country is an ideal holiday destination with varied scenic beauty, an abundance of sunshine and is well known for its game reserves and beaches. The mother city, Cape Town, was named the Best World City in the 2008 Telegraph Travel Awards.

The mid-2009 population is estimated at approximately 49 million people with an estimated population growth rate of 0.281%. Africans are in the majority at about 79% of the total South African population, the white population is estimated at 9.6%, the coloured population at 8.9% and the Indian / Asian population at 2.5%.

There are 11 different official languages, but English is now used almost exclusively in business and government. Afrikaans, a predominant language in the past, is seen to be losing its status, while the other nine official African languages are seldom used except socially.

The majority of the population is nominally Christian, but there are substantial numbers of Muslims, Hindus and Jews.

2.2 Economy

South Africa is a middle-income, emerging market with an abundant supply of natural resources and well-developed financial, legal, communications, energy and transport sectors. South Africa is the economic powerhouse of Africa, with a gross domestic product (GDP) four times that of its Southern African neighbours and comprising around 25% of the entire continent's GDP.

The South African economic policy is fiscally conservative but pragmatic, focusing on controlling inflation, maintaining a budget surplus, and using state-owned enterprises to deliver basic services to low-income areas as a means to increase job growth and household income.

South Africa is ranked 45th out of 134 countries in the World Economic Forum's Global Competitiveness Index for 2008/2009. The index is based on 12 "pillars of competitiveness", namely:

- Institutions
- Infrastructure
- Macroeconomic stability
- Health and primary education
- Higher education and training
- Goods market efficiency
- Labour market efficiency
- Financial market sophistication
- Technological readiness
- Market size
- Business sophistication
- Innovation

South Africa ranks 32nd in the World Bank and International Finance Corporation's Doing Business 2009, an annual survey of the time, cost and hassle involving in doing business in 181 countries around the world. The survey tracks indicators of the time and cost

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involved in meeting government requirements in business start-up, operation, trade, taxation, and closure.

Export commodities include: gold (2nd largest producer in the world), diamonds, platinum, other metals and minerals, agricultural products and machinery and equipment

Import commodities include: machinery and equipment, chemicals, petroleum products, scientific instruments and foodstuffs

The JSE Limited is the 14th largest exchange in the world by market capitalisation (some R2.3-trillion as of September 2009). The JSE's rules and their enforcement are based on global best practice, while the JSE's automated trading, settlement, transfer and registration systems are the equal of any in the world.

South African banking regulations rank with the best in the world. The sector has long been rated among the top 10 globally. There are 23 locally controlled banks, 7 foreign-controlled banks, 15 branches of foreign banks and 2 mutual banks.

Strict money laundering legislation is also in place in the form of the Financial Intelligence Centre Act of 2001 and the Prevention of Organised Crime Act of 1998. This legislation, in keeping with worldwide trends, aims at curbing the use of the proceeds of crime and money laundering. Rigorous compliance obligations are imposed on "accountable institutions" (including banks) in terms of this legislation in the form of the following required procedures:

- Identification and verification of all new and existing clients
- Record keeping of identities of clients and all transactions entered into with clients
- Reporting of certain transactions to the authorities
- Training of employees; and
- Appointment of a compliance officer

Economic growth

South Africa's economic growth was robust from 2004 to 2008 as South Africa reaped the benefits of macroeconomic stability and a global commodities boom, but began to slow in the second half of 2008 due to the global financial crisis' impact on commodity prices and demand.

The following are the most important economic figures:

	2008	2007	2006
GDP (est.)	\$491 billion	\$476.2 billion	\$453.1 billion
GDP growth rate	3.1%	5.1%	5.3%
Inflation (est.)	11.3%	6.5%	

(Currently the inflation rate is fluctuating between 6 and 7%)

Investment ratings

South Africa was rated the most competitive economy in the sub-Saharan region and the most attractive country in Africa to invest in by the World Economic Forum's 2004 annual Global Competitiveness Index.

A decade of comprehensive institutional reform and sound economic management have also been rewarded with solid credit ratings, implying less risk for investors and cutting the cost of capital for the country's public and private sector borrowers.

2.3 Challenges

2.3.1 Environment

Environmental challenges include the following:

- Lack of important arterial rivers or lakes requires extensive water conservation and control measures;
- Growth in water usage outpacing supply;
- Pollution of rivers from agricultural runoff and urban discharge;
- Air pollution resulting in acid rain; and
- Soil erosion

2.3.2 Health

It is estimated that 18.1% of the South African population has HIV/AIDS, resulting in increased pressure on healthcare facilities as well as the workforce. Industries heavily reliant on manual labour are feeling the effects due to increased sick days and mortality rates.

2.3.3 Unemployment

Unemployment remains high and an outdated infrastructure has constrained growth in industries, thereby escalating the problem.

2.3.4 Energy supply

The biggest immediate threat to South Africa's continued economic growth is a capacity constraint that has arisen because of the country's strong economic performance in recent years.

The growth, coupled with the rapid industrialisation and mass electrification programme of the last decade, finally led, in January 2008, to demand for electricity outstripping supply.

The resulting power cuts prompted the government to move quickly to address the crisis. The response plan includes spending about R343 billion over five years to fund a new generation of power stations.

2.3.5 Other

Other economic problems include poverty, lack of economic empowerment amongst the disadvantaged groups and a shortage of public transportation.

2.4 Currency and Banking

The currency is the Rand and the following rates were the average rates for September 2009:

- R 7.53 per US Dollar
- R 10.98 per Euro
- R12.31 per GB Pound

The South African Government exercises control through the Reserve Bank over transfers of monies into and out of the country, and a foreign investor must obtain permission to transfer money. These controls are more fully dealt with in the paragraphs under the heading of "Exchange Control".

2.5 Government and Politics

South Africa is a democracy. The ruling party is the African National Congress (ANC) and the President is Jacob Zuma. The main opposition party is the Democratic Alliance (DA).

2.6 Legal System

The Law in South Africa is based on Roman Dutch Law, influenced by English Law, and is a combination of Common Law and Statutory Law. Statutory Law is acts of Parliament as well as certain other Provincial Acts, etc. Where the provisions of a statute are in conflict with the common law, the statute will prevail. Where, however, the statute is not a total codification of that particular area of law, the common law complements and works together with the Statute. While Roman Dutch law is the basis of the South African law system, English law has had a great influence on civil and criminal procedure, as well as the law of evidence, and a large portion of South African commercial law is derived from English Law.

The South African Courts are highly respected and function entirely independently from any government interference (known as the separation of powers). Their independence is protected by the Constitution, which is the highest law of the Land. The courts are generally divided into 3 categories, viz. the Superior Courts, the Magistrates' Courts and certain Special Courts such as the Labour Court, the Income Tax Court, the Small Claims Court and the Southern Divorce Court, which all have limited jurisdiction in certain areas of law. These special Courts are created by Statute. The Superior Courts consist of the Constitutional Court, the Supreme Court of Appeal and the various High Courts, as well as some of the Special Courts.

The Constitutional Court is the highest court in the Country. The Constitutional Court hears constitutional matters and must also confirm any finding by a High Court as to the Constitutionality of any Statute of Parliament, before the finding will be of any effect. The Constitutional Court, however, remains the Highest Court of Appeal in all cases. It consists of a bench of 11 judges, who are appointed by the State President in conjunction with the Judicial Services Commission.

The Supreme Court of Appeal, the highest non-constitutional court in the country, deals only with appeals against decisions of the High Court and the various Special Courts.

The Supreme Courts are also known as the High Courts, and are divided into divisions of a provincial or local nature, and deal with large civil matters, as well as serious criminal matters. In certain instances the High Court also confirms criminal sentences imposed by Magistrates' Courts. The High Court is also a Court of Appeal against decisions of a Magistrates' Court.

The Magistrates' Court presides over civil matters, which are of a smaller monetary nature as well as less serious criminal offences. Each Magistrate's Court has jurisdiction over a defined geographical area. The Income Tax Special Court, consisting of a judge, assisted by an accountant and a commercial member, presides over disputes between taxpayers and the South African Revenue Service. Appeals against its decisions are argued before the Supreme Court of Appeal.

The Labour Courts preside over disputes between employees and employers, trade unions, employers' associations and bargaining councils, and any related labour disputes. As a precursor to certain labour matters, there is a Commission for Conciliation, Mediation and Arbitration, which attempts to resolve the disputes before they become litigious. The Labour Court also has a special Labour Appeals Court to hear its own appeals.

2.7 Black Economic Empowerment (BEE)

The South African government promulgated The Broad Based Black Economic Empowerment Act 53 in 2003. The objective of this act is to promote and facilitate significant participation by previously disadvantaged individuals and black people in the South African economy. The definition of BEE in the Government's Strategy for Broad-Based BEE is "an integrated, coherent socio-economic process which contributes directly to the economic transformation of South Africa, bringing about significant increases in the number of black people who manage, own and control the country's economy as well as significantly decreases in income inequalities." This process must therefore include employment equity, resource development, preferential procurement, enterprise development and the investment, ownership and control of enterprises and economic assets.

For this process to be successful, the following key principles must be present: it must be inclusive, broad-based, associated with superior governance and it must form part of the country's overall growth strategy. The BEE process is well regulated and is driven by legislation. The Skills Development Act, the Employment Equity Act, the Preferential Procurement Act and the Black Economic Empowerment Act all promote the BEE process.

The BEE Act contains a Balance Scorecard which measures the progress made in achieving BEE in different sectors and enterprises and measures the following core elements of BEE:

- The direct empowerment by means of ownership and control of enterprises and assets.
- The development of human resources and employment equity.
- The indirect empowerment by means of preferential procurement, enterprise development and corporate social investment.

The scorecard allows government departments, public agencies and state-owned enterprises to bring into line their own procurement practice and BEE strategies and aid in the process of setting measurable targets for BEE.

The BEE Act is complemented by the Code of Good Practice, which allows for some flexibility in that it can be adapted to particular circumstance in specific sectors or enterprises, while introducing a measure of standardization to the definition and measurement of BEE.

It is important that BEE is implemented in the context of the global economy and the Government is aware that South Africa must not suffer any detrimental effects in the implementation thereof. Sectoral BEE charters are also being developed so that specific industries can adopt a consistent approach to BEE, for example charters for Financial Services and Mining. A number of draft charters are currently being compiled in certain industries.

The level of BEE activity has increased dramatically over the last three years, and it is expected to have far reaching repercussions on South African business activity. There is already active seeking for BEE business partners in progress and it is expected that procurement will become one of the major business drivers over the next few years.

The BEE initiative is essential for the development of South Africa's socio-economic resources and for the stimulation of growth of a potentially powerful and dynamic economy.

3 FORMS OF BUSINESS ENTERPRISES

3.1 Sole Proprietorship

The method of investment in South Africa that requires the least documentation is for a non-resident individual to commence business as a sole proprietor. This procedure carries with it the following disadvantages:

- No limitation with regard to personal liability.
- Estate Duty could be charged on the capital value of the business on the death of the investor.

3.2 Partnership

It is possible for a Non-Resident to enter into Partnerships with either residents or non-residents, and carry on business in South Africa. The same disadvantages apply to a Partnership that applies to individuals carrying on business, but, in addition, South African Law allows that insolvency of any partner of the Partnership can result in the liquidation of the assets of the Partnership as well as those of the partners. There is no legislation governing Partnerships and no formal Partnership Agreement or registration is required.

3.3 Branch of a Foreign Company

A foreign registered company can establish a branch in South Africa and this branch will be taxed as if it were a South African registered company. Profits of branches of foreign companies are taxed at 33%, as opposed to the standard 28% applicable to South African companies. Branches of foreign companies are, however, exempt from Secondary Tax on Companies (STC) which is applicable to other South African companies at the prescribed rate of 10%. The profits after tax are transferable out of South Africa subject to any restrictions imposed, as described under the heading of "Foreign Exchange". The only formality required to carry on business in this way is to register with the Income Tax Authorities. The advantages of this type of investment are:

- The business could be closed down at short notice, as there is no capital structure involved.
- Any funds invested might more easily be transferable out of South Africa.
- There are small savings to be made in the avoidance of the cost of incorporation and audit requirements.
- A name could be used which might not be permitted if the company was incorporated in South Africa.
- Depending on the rules of the country of registration of the foreign company, it might be possible to offset any losses incurred in South Africa against the profits in the foreign country.

The disadvantage is that in the event of insolvency of the South African branch, the excess of liabilities over assets in South Africa may become recoverable from the foreign investor, but subject to any international law regulating this.

3.4 Trusts

A Trust may be registered in South Africa with the Master of the Supreme Court. In general, a Trust exists where money or assets are placed by one party with another party (the Trustee) for the benefit of third parties (the Beneficiaries). The Trust may either be a separate tax entity, or the income may be apportioned among the Beneficiaries. The main purpose for the formation of Trusts in South Africa is to provide for the management of an estate after death, when it is intended by a testator or testatrix that assets in the estate should not be immediately distributed among the beneficiaries. A Trust can also be created during the lifetime of the person creating the Trust. This is usually done to reduce the effect of Estate Duty.

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Note: Legislation surrounding Companies and Close Corporations, discussed below, are the Companies Act, 61 of 1973 and the Close Corporations Act. During 2009 the Companies Act, 71 of 2008 was approved by parliament, date of enactment expected in 2010, this act replaces the previous Companies and Close Corporations Acts. Discussed below are the most important regulations around these entities; incorporating the expected changes resulting from the revised legislation.

3.5 Companies

As a general rule, the foreign investor will invest in South Africa in the form of a company; this ensures a clean cut-off between the affairs of the South African Company and the affairs of the investors (shareholders), protecting the investor in the event of insolvency. The same applies to an investment in the form of a Close Corporation, but this would probably not be suitable to a foreign investor due to the limitations described in paragraph 3.6.

Companies must be registered with the Registrar of Companies in terms of the Companies Act, 61 of 1973 (or the Companies Act, 71 or 2008 once enacted). Registration consists of the lodging, usually by a firm of attorneys, of the Company's regulations, called the "Memorandum and Articles of Association". The Memorandum and Articles of Association set out the Rules under which the Company must operate and deal with items such as:

- The main activity that the Company may conduct.
- Regulations governing the rights and duties of shareholders and directors.
- Regulations governing the Company's transactions, such as its borrowing powers.

In the case of a Public Company, the Annual Financial Statements must be lodged with the Registrar of Companies.

Any member of the public may examine the documents lodged with the Registrar of Companies and may also examine the Share Register, which must be kept at the registered office of the company.

The following types of companies may be registered in terms of the Act:

Companies Act, 61 of 1973

- a) **Public Companies** (name ends with the word "Limited")
- b) **Private Companies** (name ends with the words "(Proprietary) Limited")
- c) **Section 21 Companies** (name ends with the words "Association Incorporated Under Section 21")
- d) **Personal Liability Companies** (name ends with the word "Incorporated")

Companies Act, 71 of 2008

- a) **Non-Profit Companies** (name ends with "NPC")
- b) **Profit Companies**
 - Private Companies (name ends with the words "(Proprietary) Limited")
 - Public Companies (name ends with the word "Limited")
 - Personal Liability Companies (name ends with the word "Incorporated")
 - State-Owned Company (name ends with the words "SOC Limited")

The major difference between these companies is that shares in Public Companies are freely transferable, whereas Private Companies must restrict transfer to some extent. Public Companies may advertise offers for shares in the form of a Prospectus, details of which are set out in the Companies Act. Private Companies are not permitted to make public offers of their shares.

Section 21 Companies (in terms of the 1973 Act) and Non-Profit Companies (in terms of the 2008 Act) are companies trading not for gain as defined by the Act.

Personal Liability Companies (in terms of both Acts) are those companies where the directors are held liable for the debts and liabilities of the company. This form of company is used for example by firms of attorneys or auditors.

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The following companies are required to have an audit performed by a member of the International Regulatory Board of Auditors:

Companies Act, 61 of 1973

- a) All companies

Companies Act, 71 of 2008

- a) Public companies

Note: *Further companies may be required to have an audit based on their turnover, work force or the nature and extent of their activities. Specific regulations in this regard are still to be decided by the Minister.*

Corporate governance requirements for companies

The King committee on corporate governance issued its report in March 2002 (King II). King II advocates principles of openness, integrity and accountability. It identifies seven primary characteristics of good governance namely discipline, transparency, independence, accountability, responsibility, fairness and social responsibility. King II is not a statute; it is a set of guidelines.

Listed companies (Public Companies) are required to disclose in their annual reports the degree to which they have complied with the provisions of King II. Private companies are encouraged but not obliged to comply with the provisions of King II. King II promotes the concept of triple bottom-line accounting which highlights the company's performance from an overall sustainability perspective, incorporating the economic, environmental and social aspects of the company's activities.

Several of the King II principles have been legislated in the Companies Act, 71 of 2008, resulting in the issue of an updated draft report, King III.

King III applies to all entities regardless of the manner and form of incorporation or establishment. The principles, if adhered to, will result in any entity practising good governance. For that reason, the Code does not address the application of its principles and each entity will have to consider the approach that best suits its size and complexity. Application of the Code is not mandated by law or regulation, but may however be required by JSE Limited Listing Requirements for example.

Where entities have applied King III, a positive statement to this effect should be made to stakeholders. In situations where the board of directors charged with governance decide not to apply a specific principle or recommendation, this should be explained fully to the entity's stakeholders.

3.6 Close Corporations

Close Corporations must be registered with the Registrar of Close Corporations by the lodging of a founding statement. This sets out:

- The main activities that the Close Corporation may conduct.
- Names, addresses and identity numbers of the members.
- The monetary contribution to be made by each member and his or her percentage share in the Close Corporation.

Any member of the public may examine the founding statements lodged with the Registrar of Companies.

In most respects, the operation of a Close Corporation is similar to that of a Company. The major differences are:

- In a Company, shareholders have no liability for the debts of the company, and directors can only be held liable if it can be shown that they knowingly caused the company to trade while it was insolvent without prospect of recovery. In the case of a Close Corporation, all the members become liable for its debts if the Close Corporation continues to trade while insolvent.
- In a Close Corporation the number of members is limited to ten in number. Non-residents are allowed to be a member of a Close Corporation (for administration purposes, a certified copy of the non-resident's passport is required and a letter from Accounting Officer that states that the individual is a non-resident and therefore does not have an ID number). An amendment was made to the Close Corporations Act in 2005 allowing trusts inter vivos to become, in certain circumstances, members of close corporations.

Close Corporations are required to draw up Annual Financial Statements, which must be certified to agree with the books of account by their Accounting Officer. Any person deemed by the Registrar of Companies as suitably qualified, may be approved by him as the Accounting Officer. The Accounting Officer need not be a Chartered Accountant.

Note: *The Companies Act, 71 of 2008 has the following effect on Close Corporations:*

- *Close Corporations in existence on the effective date may continue in that form.*
- *Alternatively Close Corporations may be converted into Companies.*
- *No Close Corporations may be incorporated after the effective date of the Companies Act, 71 of 2008.*

4 TAXATION OF INDIVIDUALS

4.1 Income Tax

With effect from years of assessment commencing in the 2001 calendar year, taxpayers who are South African residents will have to pay tax on their worldwide income at progressive rates (refer Appendix 1 for an explanation regarding residence based tax).

Non-residents are taxed on income from a South African source, subject to the double tax agreements as discussed at 5.8 and withholding tax provisions per 5.9.

The tax rates applicable to individuals are as follow for the year ending 28 February 2010:

Taxable income	Rates of tax
R 0 – 132 000	18% of each R1
R 132 001 – 210 000	R 23 760 + 25% of the amount above R 132 000
R 210 001 – 290 000	R 43 260 + 30% of the amount above R 210 000
R 290 001 – 410 000	R 67 260 + 35% of the amount above R 290 000
R 410 001 – 525 000	R 109 260 + 38% of the amount above R 410 000
R 525 001 and above	R 152 960 + 40% of the amount above R 525 000

Individuals qualify for a further rebate on income tax as follows (this amount is deducted from the amount of tax calculated per the above table):

Primary rebate:	<u>2008 / 2009</u>	<u>2009 / 2010</u>
Natural Person	8 280	9 756
Additional rebate:		
Natural Persons 65 years and older	5 040	5 400

Individuals are subject to taxation on fringe benefits (as listed below) and have limited deductions/exemptions for the purposes of determining taxable income. Mentioned below are the most important and widely used of these deductions.

- **Tax on Fringe Benefits**

The cash equivalent, as determined under the provisions of the Income Tax Act, of the value during the year of assessment of any benefit or advantage granted in respect of employment or to the holder of any office, being a taxable benefit as defined in the said Act is to be included in the taxpayer's income.

Examples of Fringe Benefits:

- the use of an employer-owned car;
- the use of residential accommodation;
- schooling for children of employees paid for by the employer;
- the use of any employer-owned asset;
- services provided by the employer to the employee;
- low interest loans;
- excessive travelling and entertainment allowances;
- acquisition of an asset (other than money) for no consideration or for inadequate consideration;
- medical aid contributions (on the amount paid by the employer above 2/3rd of the total. An amendment was made to include as a taxable benefit so much of the employer's contribution as exceeds the amount specified in paragraph 12A. The amendment effects the situation where employer contributions are made in such a way that an appropriate portion thereof cannot be attributed to a particular employee).

- **Interest exemption:**

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2008 / 2009

2009 / 2010

Persons under 65 years	19 000	21 000
Persons 65 years and older	27 500	30 000

Only R3 500 of foreign interest and foreign dividends is exempt. The R3 500 exemption applies first to foreign dividends and then to foreign interest.

Non-residents are generally exempt from tax on interest.

- **Dividend Exemption:**

Local dividends and dividends from foreign companies in which more than 20% of the equity is held are exempt. (Other foreign dividends paid to a South African resident by a non-resident company are taxable).

Dividends paid to non-residents are exempt from income tax and are not subject to withholding tax.

- **Medical and Physical Disability Expense:**

Taxpayers 65years and older – no limit

Taxpayers under 65 year – are not taxed, or may deduct contributions to medical schemes up to R625 for each of the first two persons covered under the medical scheme (taxpayer and one dependant) and R380 for each additional dependant; in addition they can claim a deduction for medical scheme contributions above the caps and any other medical expenses to the extent that the total exceeds 7.5% of the taxable income.

Taxpayers under age of 65 and physical handicap (taxpayer, spouse or child) – no limit

- **Pension Fund Contributions**

Current contributions:

Limited to greater of:

- R1 750; or
- 7.5% of remuneration from retirement-funding employment

Arrear contributions:

R1 800 per annum

- **Retirement Annuity Contributions:**

Current contributions:

Limited to greater of:

- 15% of net income, other than income from retirement funding employment (i.e. pensionable earnings); or
- R3 500 less deductible current contributions to a pension fund; or
- R1 750

Reinstatement contributions:

R1 800 per annum

Note: Provident fund contributions made by an individual are not tax deductible.

- **Donations**

Donations to certain approved Public Benefit Organisations (PBO's) and to certain institutions are tax deductible and not subject to Donations Tax. The tax deduction

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is limited to 10% of taxable income (before donations under Section 18A and medical expenses).

Note: A claim for a deduction in respect of any donation shall not be allowed unless supported by a Section 18A receipt furnished by the donee organisation.

PBO's include most welfare, education and healthcare organisations.

4.2 Donations Tax

Donations Tax is payable on donations (gifts) made by individuals ordinarily resident in South Africa at a flat rate of 20%, subject to a lump sum exemption of R 100 000 per annum on donations made by natural persons. Donations between spouses are exempt from Donations Tax.

4.3 Estate Duty

Estate Duty (Death Duties) is levied at a flat rate of 20% on the net value of an estate in excess of R 3.5 million. Bequests to a surviving spouse are exempt from this duty.

4.4 Capital Gains Tax

Individuals are subject to Capital Gains Tax as explained in Section 6 of this guide.

4.5 Individuals trading as Sole Proprietors / Partner in a Partnership

In determining taxable income these individuals are allowed the same deductions for expenditure incurred in the production of income as companies (explained in Section 5 of this guide), but is still taxed using the progressive tax rate per the table in Section 4.1.

5 TAXATION OF COMPANIES AND OTHER ENTITIES

5.1 Direct Taxes

5.1.1 Income Tax

- **Tax rates applicable to the various types of entities**

Private and Public Companies	28%
Close Corporations	28%
Personal Service Provider Companies	33%
South African branches of Foreign Companies	33%
Trusts	40%

Special provisions apply to the taxation of Life Assurers and Retirement funds.

- **Preferential corporate tax rate for Small Business Corporations**

The aim of this incentive is to encourage small/medium business development in South Africa. Businesses with an annual turnover of less than R14 million are eligible for this incentive (subject to the requirements listed below). The incentive is in the form of reduced tax rates and accelerated capital allowances.

The tax rates applicable to Small Business Corporations are as follows for the years of assessment ending between 1 April 2009 and 31 March 2010:

Taxable income	Rates of tax
R 0 – R 54 200	0% of each R1
R 54 201 – R 300 000	10% of each R1 above R 54 200
R 300 001 and above	R 24 580 + 28% of each R1 above R 300 000

Requirements to qualify as a Small Business Corporation

- All shareholders/members must at all times during the year of assessment be natural persons
- No shareholder/member may at any time during the year of assessment have an interest in any other company, other than:
 - An interest in a listed company
 - An interest in a portfolio in a collective investment scheme in securities
 - An interest in a body corporate
 - An interest in a share block company
 - An interest in a company incorporated under s21 of the Companies Act 61 of 1973
 - Less than 5% of the interest in a social or consumer co-operative
 - An interest in a friendly society
 - Less than 5% of the interest in a primary savings co-operative bank
 - As from 1 July 2009, an interest in a venture capital company
- The corporation may not be a Personal Service Provider Company
- Not more than 20% of the total receipts and accruals of the corporation may consist collectively of investment income and income from rendering personal services, except where such Small Business Corporation employs 3 or more unconnected full-time employees for core operations

Companies are allowed to deduct all expenditure incurred in the production of income in the year of assessment in which it was incurred, in determining their taxable income.

Any expenditure of a capital nature (e.g. assets bought), however, is not deductible in full in year one, but spread over a few years. As a general rule deduction of the cost price of the assets is allowed over a period of 5 years (s11(e) to the Act), various assets' write off periods are however specifically determined by the South African Revenue Service (SARS) and is therefore set at a different rate. SARS has also implemented various incentive schemes resulting in further deviation from the general rule. Set out below are details of the various allowances and incentive schemes available.

- **Movable assets used in the taxpayers trade:**

Certain assets used in the taxpayers trade's write off period has been set by SARS. Listed below is an extract of this list reflecting some of the main categories:

	Period of Write-Off No. of Years
Computer – main frame	5
Computer – personal	3
Computer software – main frame	3
Computer software – personal	2
Furniture and fittings	6
Motor vehicles - passenger	5
- delivery	4
- fork-lift trucks	4

The South African Revenue Services may allow higher rates on written application.

Small items such as loose tools acquired at a cost of less than R7 000 per item may be written off in full during the year of acquisition.

- **Incentives for plant and machinery used in the taxpayer's trade:**

The aim of the incentive is to stimulate the investment in capital assets. The allowances are available specifically for the following types of assets: Plant and machinery, new or unused assets, use in manufacturing or similar process; hotel equipment and farming equipment. The applicable allowances are as follows:

New or unused plant and machinery	- 40% in 1 st year - 20% in each of the 3 subsequent years
Hotel equipment	- 20% p.a
Farming	- 50% in 1 st year - 30% in 2 nd year - 20% in 3 rd year

- **Building Allowances**

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Manufacturing:

Buildings and improvements erected for the purpose of carrying on a process of manufacture or similar process qualify for an annual allowance on the cost of the qualifying building. The rate of allowance varies depending on when the erection of the building commenced.

- Before 1 July 1985 - 2%
- Between 1 July 1985 and 31 December 1988 - 2% (17.5% initial Allowance)
- Between 1 January 1989 and 30 June 1996 - 5%
- Between 1 July 1996 and 30 September 1999 (Provided that the buildings were brought into use by 31 March 2000) - 10%
- From 1 October 1999 onwards - 5%

Hotels:

An annual allowance may be claimed equal to 5% of the cost of hotel buildings and improvements thereto, implying a write-off period of twenty years. However, as the nature of the hotel trade necessitates that hotel buildings are substantially refurbished at regular intervals of much less than twenty years, improvements to hotel buildings can be written off over five years, provided that such improvements do not increase the size of the building. To the extent that they do extend the building, the normal write-off over twenty years will apply.

- **Urban Development Incentive**

The aim of the incentive is to stimulate urban regeneration and counter decay. The incentive is available to all taxpayers who construct a new commercial or residential building or who refurbish a building within a designated urban zone. The allowances available are as follows:

- Construction of new buildings:
20% in the first year, and 5% p.a. for the next 16 years
- Refurbishment of building:
20% straight line allowance over a 5 year period

- **Infrastructural Development Incentive**

The aim of the incentive is to encourage the private sector to invest in infrastructure. The incentive is available to all private companies who are involved in the erection of pipelines, transmission lines and railway lines. The allowed deduction is granted in respect of any new or unused assets that qualify for the deduction, which is owned by the taxpayer. The granted allowances are as follows:

- Pipelines - 10% of cost p.a.
- All other qualifying assets - 5% of cost p.a.

- **Research and Development costs Incentive**

The aim of this incentive is to stimulate scientific research. Scientific research operating expenditure and approved capital expenditure after 2 November 2006 qualifies for a deduction under section 11D of the Income Tax Act.

Indicated percentage of costs incurred in any year of assessment with regards to the following types of expenditure is deductible in that year of assessment:

- Devising, developing or creating any invention, patent, design, copyright or any other property of a similar nature (excluding trademarks and goodwill)

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Operational (non-capital) expenditure 150%
(Subject to further provisions if funded by a 3rd party)

- Buildings, plant, machinery, implements or articles used for in the development of intellectual property 50%/30%/20%

5.1.2 Turnover Tax

An elective Turnover tax has been implemented for micro businesses with effect on all year ends commencing on or after 1 March 2009. This tax is completely separate from Income Tax and STC. Turnover tax is calculated on the turnover (total receipts) of a micro business and not on its profit as is the case with Income Tax.

Extensive prescriptions as to which entities qualify as a micro business is set out in the Act. The overall requirement is that the qualifying turnover of the entity does not exceed R 1 million for any 12 month period.

Tax rates applicable are as follow:

Turnover	Rates of tax
R 0 – 100 000	0%
R 100 001 – 300 000	1% of each R1 above R 100 000
R 300 001 – 500 000	R 2 000 + 3% of the amount above R 300 000
R 500 001 – 750 000	R 8 000 + 5% of the amount above R 500 000
R 750 001 and above	R 20 500 + 7% of the amount above R 750 000

5.1.3 Secondary Tax on Companies and Dividends Tax

Secondary Tax on Companies (STC) is levied on all dividends declared by a company at a rate of 10%.

In future Dividends Tax will replace STC as tax on dividends (enactment date still to be introduced). Dividends tax will be payable by the shareholder and not the company as in the case of STC. The company will be required to withhold Dividend Tax on all dividends paid at a rate of 10%.

5.1.4 Capital Gains Tax

Companies are subject to Capital Gains Tax as explained in Section 6 of this guide.

5.2 Indirect taxes

5.2.1 Value Added Tax (VAT)

This is an invoice-based tax at a flat rate of 14%. This tax is levied on a broad basis with few exemptions, although exports are zero-rated.

5.3 Other taxes

5.3.1 Donations Tax

Donations to certain approved Public Benefit Organisations (PBO's) and to certain institutions are tax deductible and not subject to Donations Tax.

A claim for a deduction in respect of any donation shall not be allowed unless supported by a Section 18A receipt furnished by the donee organization.

PBO's include most welfare, education and healthcare organizations.

Donations tax is payable at a flat rate of 20% on all donations and gifts to a third party. Where the donor is a private company, the exemption is limited to an amount not exceeding R10 000. Donations to approved public benefit organizations are exempt from tax, subject to certain conditions. Donations by public companies and between group companies are exempt from donations tax.

5.3.2 Transfer Duty

Transfer duty is levied on the transfer of land and buildings. The rates applicable are as follow:

Transfer duty rates (if purchased by a natural person):

Property value	Rate
R 0 – R 500 000	0%
R 500 001 – R 1 000 000	5% on the value above R500 000
R 1 000 001 and above	R 25 000 plus 8% on the value above R 1 000 000

Transfer duty rate (if purchased by companies, close corporations or trusts):

On purchase consideration 8%

5.3.3 Customs Duty

Customs duty is levied on goods imported.

5.3.4 Excise Duty

Excise duty is levied on a wide variety of goods including gasoline, diesel, alcohol and tobacco.

5.3.5 Stamp Duty

Stamp duty is levied on certain legal documents and written agreements such as leases of immovable property, bills of exchange etc. Stamp duty was abolished with effect from 1 April 2009.

5.3.6 Securities Transfer Tax

Securities transfer tax replaces stamp duty as from 1 July 2008.

It is a tax levied on every transfer of a security. A security in essence means any –

- Listed or unlisted share in a company (companies incorporated in South Africa or incorporated outside South Africa but listed on the South African exchange);
- Member's interest in a close corporation; or
- Any right or entitlement to receive any distribution from a company or close corporation

The applicable tax rate is 0.25%, to be applied to the taxable amount.

5.3.7 Municipal Taxes

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Municipal taxes include rates based on the value of a property and charges for electricity, water and waste removal.

5.3.8 Skills Development Levy

A skills development levy has been introduced to finance training initiatives. Every employer (subject to certain exemptions) must pay a monthly skills development levy of 1% of the "leviable amount", based on remuneration paid to employees.

5.4 Taxation of foreign enterprises

Taxation of foreign enterprises and foreign concerns operating in South Africa would be taxed as if the concern or person was a resident of South Africa subject to Double Taxation Agreements.

5.4.1 Double Taxation Agreements

Double taxation agreements are designed to avoid the full taxation of the same income under the laws of two different countries. The following agreements have been entered into by South Africa:

- In force as at 29 September 2009:
Algeria, Australia, Austria, Belarus, Belgium, Botswana, Brazil, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Ethiopia, Finland, France, Germany, Ghana, Greece, Hungary, India, Indonesia, Iran, Ireland, Italy, Israel, Japan, Korea, Kuwait, Lesotho, Luxembourg, Malaysia, Malawi, Malta, Mauritius, Mozambique, Namibia, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Peoples' Republic of China, Poland, Portugal, Republic of China (Taiwan), Romania, Russian Federation, Saudi Arabia, Seychelles, Singapore, Slovak Republic, Spain, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, USA, Zambia and Zimbabwe.
- Treaties in process of negotiation or finalised but not yet signed:
Angola, Bangladesh, Cameroon, Chile, Cuba, Estonia, Germany, Kenya, Latvia, Lithuania, Madagascar, Morocco, Qatar, Senegal, Serbia and Montenegro, Sri Lanka, Switzerland, Syria, United Arab Emirates, Vietnam.
- Treaties signed but not ratified:
Germany – 9 September 2008, Mexico – 19 February 2009
- Comprehensive Treaties ratified in South Africa:
Democratic Republic of Congo, Gabon, Rwanda, Sudan.

5.4.2 Withholding Tax

Various payments made by a resident to a non-resident are subject to withholding tax.

- Withholding tax on royalties – where a non-resident receives a royalty from a resident it is subject to 12% withholding tax

With effect from 1 January 2009 certain limitations on the deduction of these royalties to the South African taxpayer have been implemented.

The limitation applies where the intellectual property used by the South African (and on which the royalties or licence fees are payable) was previously owned or developed by the South African taxpayer (or a person connected to it) and sold to a foreign company falling outside the South African tax net.

In such instances the royalty or licence payment will not be allowed as a deduction in the hands of the South African taxpayer.

However, if the royalties or licence fees are subject to the above mentioned withholding tax (without any Double Tax Agreement relief), one third of the expenditure will be allowed as a deduction.

If the Double Tax Agreement relief exists, the one third deduction will still apply provided that the withholding tax rate is not reduced to less than 10%.

- Withholding tax on payments for immovable property acquired from a non-resident – withholding tax ranging from 5% to 10% is payable
- Withholding tax on payments to foreign entertainers and sportspersons – withholding tax at 15% is payable

5.4.3 Thin Capitalisation

One of the methods of manipulating a country's tax is through a method known as thin capitalisation, which can come about by a foreign investor financing a South African company with a small amount of share capital and a large amount of loan capital. The loan interest would be deductible for tax purposes by the South African company, but not taxed in the hands of the foreign recipient.

The thin capitalisation rules, when applied, disallow the deductibility of interest paid by the South African resident to the foreign lender, to the extent that such interest is considered to be excessive by the South African Revenue Services. In broad terms, the rules will not be applied if the debt/equity ratio falls within the ratio of 3:1, or the interest rate does not exceed the weighted average of prime plus 2% for South African Rand denominated loans, or the weighted average interbank rate plus 4% for loans in other currencies.

5.4.4 Transfer Pricing

The anti-transfer pricing provisions contained in the Income Tax Act may be applied where goods or services are supplied or acquired in terms of an international agreement concluded between connected persons (essentially between group companies). Legislation has been introduced, and the South African Revenue Services, in determining the taxable income of either the supplier or recipient, may adjust the consideration paid or received to reflect an arm's length price (if the consideration was not at an arm's length price).

6 CAPITAL GAINS TAX

It is important to note that capital gains tax (CGT) is not a separate tax from income tax. The legislation is incorporated into the Income Tax Act and a portion of the taxpayer's capital gain is subject to normal income tax. If a person is not registered as a taxpayer, that person will have to lodge a special income tax return declaring the capital gain made during the year.

The portion of a capital gain to be included in a taxpayer's taxable income is as follows:

• Natural persons	25%
• Special trusts (see below)	25%
• Individual policyholder fund of an insurer	25%
• Untaxed policyholder fund of an insurer	0%
• Other persons (such as companies, close corporations, trusts, insolvent estates, deceased estates)	50%

The ostensible reason for including only part of the gain is to cater for the effects of inflation and for the fact that carrying or holding costs cannot always be added to the cost of the asset for CGT purposes.

A special trust is a trust created solely for the benefit of a person who suffers from a mental illness or a serious physical disability, where the illness or disability incapacitates the person from earning sufficient income for his or her maintenance or which incapacitates the person from managing his or her own financial affairs.

6.1 Special Considerations

- A basic R17 500 per year primary exclusion applies to the net capital gains or losses in respect of all capital assets disposed of by a natural person or special trust during any tax year.
- Where a person dies during the year of assessment, the person's annual exclusion is increased from R17 500 to R120 000 for the year.
- All capital profits and losses for the year are aggregated. If the person makes a net loss, it is not set off against his or her other taxable income, but is carried forward to be set off against capital profits in a later year of assessment.
- If a person receives income, which must be taxed at his or her average rate of tax (such as a pension lump sum), the average is calculated by excluding capital gains from the person's taxable income.
- If a person is a provisional taxpayer, he can ignore the capital gain when calculating his provisional tax for the year.
- The capital gain is not shown on a separate assessment, but is included in the taxpayer's normal income tax assessment for the year.

6.2 Base Cost

The base cost is the actual or deemed cost where the asset was acquired after CGT came into operation, and the market value or valuation date value of assets acquired before CGT came into operation.

In simple terms, if an asset was acquired before 1 October 2001, the base cost is its value at 1 October 2001 (subject to certain exceptions, adjustments, etc). If the asset is not valued, a time-apportioned base cost must be calculated. Basically, a time-apportioned base cost is calculated by apportioning the capital gain over the period of holding of the asset to arrive at a portion "earned" before CGT comes into effect. Only the portion apportioned to the period of holding after 1 October 2001 is subject to capital gains tax.

If no valuation has been done and the cost of the asset is unknown, the base cost is treated as 20% of the proceeds from the disposal of the asset. In other words, the capital gain is treated as 80% of the proceeds arising on the disposal of the asset.

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These are the basic rules for determining the base cost of an asset acquired before 1 October 2001 but they do not always apply. The circumstances under which they change become fairly complicated.

For example, where the proceeds on disposal of an asset (acquired before 1 October 2001) do not exceed the market value at the valuation date, and the person had adopted the market value as the base cost of the asset, the market value cannot be deducted from the proceeds.

Instead, the deduction is (in simple terms) the higher of:

- The cost of the asset (incurred before 1 October 2001); and
- The proceeds on disposal of the asset.

There are also certain instances where a person may not use the time apportioned base cost of an asset.

6.3 Deemed Disposals

It is not only the sale of an asset that can give rise to capital gains tax. The following events are treated as disposals (deemed disposals) of an asset:

- The donation of an asset
- The destruction of an asset
- The loss of an asset
- The distribution of an asset by a company to its shareholders, or by a close corporation to its members
- The transfer of an asset from a trust to a beneficiary
- The death of a person (in respect of all assets held by him or her at the date of death)
- The giving up of South African residence by a person (in respect of all assets held by him or her when becoming a non-resident - except for immovable property and certain business assets situated in South Africa).

The above is not a complete list of the deemed disposals, but just some of the more common ones.

6.4 Exclusions

One of the most important exclusions from CGT is the "primary residence exclusion". This exclusion covers the first R1 500 000 of profit made on the disposal of a person's primary residence.

A "primary residence" is one which is owned by a natural person and in which that person, or his spouse, ordinarily resides as his or her main residence, and is used mainly for domestic or private residential purposes. The terms "residence" includes a boat, caravan, or mobile home. If the residence is built on a large property, only two hectares is included in the exclusion.

Another exclusion is personal use assets, however the following are not deemed to be personal use assets:

- Coins made mainly from gold or platinum;
- Immovable property;
- An aircraft with an empty mass exceeding 450 kg;
- A boat exceeding 10 metres in length;
- A financial instrument;
- Any fiduciary, usufructuary or like interest which decreases in value over time.

Other exclusions include the following:

- Certain assurance and retirement benefits (not second-hand policies);
- Compensation for personal injury, illness or defamation;

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- Certain small business assets sold by a person over 55 years of age, or who is disposing of the assets in consequence of ill-health, infirmity, superannuation or death (limited to a profit of R 750 000 in total during the person's lifetime);
- Proceeds from gambling, games and competition.

6.5 Non-residents

Non-residents are only subject to CGT in respect of immovable property (and interest immovable property) situated in South Africa and the assets of a permanent establishment in South Africa.

7 EXCHANGE CONTROL

7.1 Repatriation of Earnings and Royalty Payments:

There are no restrictions on the transfer of dividends to non-resident individuals and non-resident companies, provided that the required documentation is provided.

There are no restrictions on the transfer of profits of local branches of foreign parents, subject to an auditor's letter confirming that the profits are from trading activities.

Interest payments are freely transferable to both non-resident companies and non-resident individuals, provided that the rate is not excessive with regard to current interest rates, the risk involved, etc, and that the loan has been approved by the SA Reserve Bank.

All payments for royalties, "know-how" and technical and management services require approval. The most important consideration is whether the services are equally available in South Africa. Agreements for the payment of royalties must be confirmed by the Reserve Bank prior to acceptance by the parties to the agreement. The withholding tax on royalties is imposed at the rate of 12% of the payment concerned.

7.2 Restrictions on amounts that can be taken out of the country by South African Residents (Natural persons):

Single discretionary allowance (Individuals over the age of 18)

Residents (natural persons), who are over the age of 18 years may be permitted to avail of a single allowance within an overall limit of R 750 000 per individual per calendar year, without the requirement to obtain a Tax Clearance Certificate, which may be apportioned as follows:

- Monetary gifts & loans
- Donations to missionaries
- Maintenance transfers
- Travel allowance
- Study allowance

This discretionary allowance is in addition to the existing R 4 million individual foreign capital allowance which can be utilised for off-shore investments

This allowance may not be availed by residents living temporarily abroad.

(A special Reserve Bank application can be done by the individual in order to increase this limit for a specific year.)

Individuals under the age of 18

Travel allowance per calendar year R 160 000

Temporary exportation of personal effects and jewellery R 200 000

Value of good in excess of this amount is subject to Exchange Control approval

Residents proceeding abroad on a temporary basis

Subsistence allowance – adults (per year) As outlined in 7.2.1

Subsistence allowance – under age of 18 (per year) R 160 000

Export of household and personal effects R 1 000 000

Study facilities

Restricted to residents enrolled in full-time courses

Allowance (per year) As outlined in 7.2.1
 Export of household and personal effects (including jewellery) R 200 000

Export limit for South African Reserve Bank notes R 5 000

Maintenance

Alimony and child support (per month) R 9 000
 (over and above amount awarded by the court)
 To fathers, mothers, brothers & sisters (per month) R 9 000

Use of credit or debit cards

Transfer for miscellaneous payments for goods and services. (e.g. internet transactions) - R20 000

Gifts

In the form of Krugerrand coins (per year) R 30 000
 Other gifts As outlined in 7.2.1

Transfers for unexpected medical expenses abroad

Subject to proof

Jewellery inherited by non-residents

Subject to proof

Import limits on postage stamps for philatelic use and coins for numismatic use

Subject to proof

Income and capital

The Rand equivalent income earned abroad and capital introduced into South Africa on or after 1 July 1997 by private individuals resident in South Africa may be re-transferred abroad provided that the authorized dealer concerned reviews documentary evidence confirming that the funds were previously converted into Rand.

Post amnesty

The Rand equivalent of post amnesty capital introduced into South Africa may be transferred abroad subject to the approval by the authorized dealer.

7.3 Restrictions on amounts that can be taken out of the country by South African Residents (companies):

Companies are allowed to invest R 500 million per applicant company, per calendar year in a foreign direct investment. (Without prior approval by Exchange Control)

Directors' fees for emigrants - subject to proof
 Directors' fees for non-residents (per company) – subject to proof
 Omnibus travel facilities (per year) R 2 000 000

7.4 Local Financial Assistance to Affected Persons (Borrowings)

An affected person is a body corporate, foundation, trust or partnership operating in the Republic, or an estate, in respect of which:

- 75 per cent or more of the capital, assets or earnings thereof may be utilized for payment to, or for the benefit in any manner of, any person who is not resident in the Republic; or
- 75 per cent 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 the Republic.

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Non-resident wholly-owned subsidiaries may borrow locally up to 100 per cent of the total shareholders' investments, which is taken to mean 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. This total is generally known as the company's "borrowing base" or "effective capital".

The effect of local participation in non-resident controlled entities is to make the abovementioned norms more liberal, the greater the local participation, i.e. the ability to borrow locally increases. The formula for calculating the "local financial assistance ratio" or permitted percentage of effective capital is

$$100\% + \left\{ \frac{\% \text{ South African interest} \times 100\%}{\% \text{ Non-resident interest} \quad 1} \right\}$$

Thus, a company with a 25 per cent local shareholding will have maximum allowable local borrowings of 133 per cent of the effective capital.

Please note that this limitation does not apply to companies with less than 75 per cent foreign shareholding.

7.5 Emigrants

An emigrant is a person who is leaving or has left the Republic to take up permanent residence in any country outside the CMA. The CMA means the Common Monetary Area, which consist of Lesotho, Namibia, South Africa and Swaziland.

Facilities for which Emigrants qualify:

- Cash allowance
 - Adult As outlined per 7.2.1
 - Per person under the age of 18 R 160 000
- Foreign Capital allowance
 - Per single person Up to R 4 000 000
 - Per family unit Up to R 8 000 000
- Export of household and personal effects
 - Per single person R 1 000 000
 - Per family unit R 1 000 000

Notes regarding the allowance

- (a) A tax clearance certificate must be obtained from the South African Revenue Services for submission to the Exchange Control Department.
- (b) Gifts and donations in excess of R1 000 received by an emigrant within three years of the date of emigration will be deducted from the aggregate of his assets before determining the foreign allowance to be granted.
- (c) Household, personal effects and motor vehicles need no longer to have been held for at least one year prior to departure. Where the total insured value of household and personal effects is more than R1 000 000, the transfer is subject to Exchange Control approval.
- (d) The foreign allowance and the travel allowance are payable at the rate of exchange ruling at the dates of the transactions.
- (e) An emigrant who has not availed him/herself of the foreign allowance may transfer the difference between what had previously been transferred and the present allowance.

7.6 Emigrants - Blocked Assets

The emigrant's assets in excess of his allowance remain "blocked", and fall under the control of an authorized dealer. The emigrant may make application to the Reserve Bank to remit all assets offshore upon payment of a 10% levy. The transfer of the funds may be released for the following:

- Payment in SA for expenses in connection with emigration e.g. packing and moving expenses.
- Payment of living expenses on return visits to SA at the rate of R3 000 per day per adult and R1 500 per day per child, with a maximum of R75 000 per family unit (per calendar year).
- Payment in SA of travel costs in respect of return visits to SA by the most direct route.
- Payment in SA of travel costs to the emigrants' new country of residence.
- Payment of income tax on income earned prior to emigration.
- Payment of tuition and boarding fees in respect of children who have remained in SA or returned to complete studies.
- Payment of rates and taxes on vacant stands (non income earning).
- Payment of membership, subscriptions, fees, etc to professional, engineering and technical societies.
- Payment of premiums on endowment and life assurance policies taken out prior to departure on the basis that the proceeds of such policies would be "blocked".
- Maintenance payments to a local resident in terms of a court order.
- Payment of professional fees due to resident accountants, attorneys, etc in respect of services rendered in connection with the emigrants' "blocked" assets.
- Payment of any medical expenses for emigrants' family units, incurred in SA during return visits.
- R100 000 per calendar year may be donated to a South African resident.
- R100 000 per calendar year may be used in respect of maintenance and alterations to fixed property which form part of the emigrants' controlled assets.
- Payment of Capital Gains Tax in respect of blocked assets sold subsequent to the date of emigration (provided it formed part of emigrant's blocked assets at the time of emigration)
- Payment of short-term insurance premiums in respect of any remaining assets in the Republic which form part of the emigrant's controlled assets

7.7 Emigrants - Income from Blocked Assets

All income earned by an emigrant on his "blocked" assets, is freely transferable.

Income for Exchange Control purposes is defined as:

- Dividends (the declaration of a dividend in specie or a special dividend for any purpose requires the prior approval of the Exchange Control)

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- Distributions from a close corporation
- Interest and profits
- Directors' fees
- Monthly pension payments from a registered pension fund
- Cash bonuses on insurance policies
- Income from a trust created in terms of a last will and testament
- Net rental on fixed property, provided that rent is reasonable in relation to the property

A number of the abovementioned allowances may be increased subject to Reserve Bank approval.

7.8 Retirement annuity policies

The transfer of annuities from retirement annuity policies is permissible, provided the policy was initiated more than five years prior to the date of emigration or where the annuity has been funded from a pension payout from a previous employer.

Where annuity policies were initiated within a period of five years prior to the emigrant's date of emigration from South Africa, an application must be submitted to the Exchange Control and only the actuarially calculated income portion would be allowed to be transferred abroad while the capital portion would have to be credited to the emigrant's blocked account. Requests in this regard must be supported with copies of the retirement annuity contracts.

7.9 Immigrants

An immigrant is a person who has never been a South African resident and comes to this country with the intention of taking up permanent residence.

In terms of current Exchange Control regulations, the Concessions to New Immigrants to South Africa are as follows:

- Within 5 years of immigration they are permitted to re-transfer/re-export all own assets introduced/imported during the 5-year period provided that such transfers are not financed out of local financial assistance facilities, and that they can substantiate the original introduction/importation of such assets.
- After 5 years of the date of immigration, they may re-transfer/re-export all own assets introduced/imported provided that they can substantiate the original introduction/importation of such assets.
- On departure after 5 years of the date of their immigration, they will be regarded as an emigrant from South Africa and will qualify for the prescribed emigration facilities. In addition they will also qualify to re-transfer/re-export all own assets previously introduced/imported provided that they can substantiate the original introduction/importation of such assets and that such transfers are not financed out of local financial assistance facilities.

7.10 Contract Workers / Temporary Residents

These are foreign nationals who have been issued with a work permit and who are employed under contract with a company in South Africa.

They are required to sign a declaration and to provide the South African Reserve Bank with the following documentation:

- Copy of work permit

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- Letter from their employer stating the terms and conditions of the employment and stating the salary
- Copy of their passport

The accounts of contract workers are conducted as resident accounts; however, they may also conduct non-resident transferable accounts.

Therefore, contract workers may be accorded facilities available to South African residents i.e. overdraft limits, bonds, car finance, etc. for the period for which they are employed in South Africa. All facilities on departure must either be repaid or alternatively be brought within the normal borrowing formula.

Contract workers are permitted to repatriate a reasonable amount of their earnings abroad whilst they are in South Africa. On departure, accumulated earnings may also be repatriated.

8 GOVERNMENT INVESTMENT INCENTIVES

Some other grants and finance available to potential investors include, inter alia, the following:

8.1 EIP (ENTERPRISE INVESTMENT PROGRAMME)

This is an incentive grant replacing the Small Medium Enterprise Development Programme. It has two sub programmes with specific industry focus on manufacturing and tourism.

The two sub programmes are the Manufacturing Investment Programme (MIP) and the Tourism Support Programme (TSP). This programme is legislated to run for a six year period ending around July 2014.

Applications under the new incentive programme must be made at least three months prior to the start of production for an establishment or expansion project. Applicants are further required to apply and receive approval for the investment prior to acquiring investment assets.

The benefits are calculated as follows:

- Total Qualifying Investment less than R 5 million: The benefit is calculated at 30% over a three year period of the total qualifying investment.
- Total Qualifying Investment greater than R 5 million and less than R 200 million: The benefit is calculated on a regressive scale from 30% to 15% over a two year period of the total qualifying investment.
- The total benefit is limited to a maximum of R 30 million over the period of the incentive term.

The following broad assets would qualify for incentivisation under the EIP:

- Capitalised machinery and equipment
- Owned land and buildings
- Rented land and buildings – limited to 20% of machinery and equipment qualifying value
- Customised commercial vehicles

A Foreign Investment Grant (FIG) is available to foreign owned legal entities applying for benefits under the MIP in order to assist with the costs of relocating machinery and equipment to South Africa.

The FIG is not available to legal entities applying for TSP benefits. The available benefit under the FIG is calculated at 15% of the qualifying cost limited to a maximum of R 10 million.

Only incorporated legal entities can apply for establishment and expansion investment benefits under both the MIP and TSP. Legal entities in the clothing and textile sector can apply for specific upgrading benefits.

Broad Based Black Economic Empowerment (BBBEE) is a requirement for both the MIP and TSP. BBBEE compliance certificates are required for submission of both applications and claims.

8.2 PAA (PRODUCTIVE ASSET ALLOWANCE)

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The incentive is geared towards first tier automotive component manufacturers supplying Original Equipment components to motor vehicle manufacturers.

Incentive benefits total 20% of qualifying investment, payable over a five year period in the form of a duty credit certificate to offset import duties on built up vehicle imports.

8.3 EMIA (EXPORT MARKETING INVESTMENT ASSISTANCE)

The purpose of the incentive is to partially compensate exporters for costs incurred in respect of activities aimed at developing export markets for South African products and services and to recruit new foreign direct investment into South Africa

9. LABOUR RELATIONS

Since the first democratic election in 1994, South Africa has continued with efforts to transform its industrial relations system. The Labour Laws are complex and the Labour Court and the Labour Appeal Court are kept busy interpreting regulations and presiding over unfair or incorrect dismissals etc. Once a person has been employed, it is difficult to dismiss that person without good cause. Retrenchments are difficult and costly. The unemployment rate for 2008 was estimated at 22.9%.

10. QUALITY OF LIFE

10.1 Housing

The cost of housing in South Africa is relatively low. The price of property tends to be higher in the major urban areas, particularly in Cape Town, Johannesburg and Durban.

Finance for house or flat purchases may be available from banks and other financial institutions, with the loan normally not exceeding 90% of the value of the property.

Interest on a loan over a property occupied by the taxpayer is not deductible for income tax purposes.

There are various other costs incurred when a house is purchased such as transfer costs (refer sub-paragraph 5.7) and conveyancers' fees.

10.2 Education

School life spans 13 years or grades, from grade 0, otherwise known as grade R or "reception year", through to grade 12 or "matric" – year of matriculation.

Under the South African Schools Act of 1996, education is compulsory for all South Africans from age 7 (grade 1) to age 15, or completion of grade 9.

State education is available to all South African residents free of charge, although in many schools, fees are requested on a voluntary basis.

Private schools are the most expensive, but the education is usually superior to that of the Government schools.

APPENDICES

APPENDIX 1 – EXPLANATIONS IN REGARD TO RESIDENCE BASED TAX

The worldwide tax regime applies to all income earned on or after 1 March 2001. South Africa has introduced what is known as “residence” basis of taxation. This means that South African residents will be taxable on their worldwide income, while non-residents will be taxable on their South African source income (excluding interest and dividends). Some people have interpreted this to mean that prior to 1 March 2001 their foreign-source income is tax-free. Unfortunately, this is not the case. Investment income has been taxable in the hands of South African residents from 1 July 1997, and before that interest income from banks and similar institutions was taxable in the hands of South African residents. Also, with effect from 23 February 2000, foreign dividends became taxable in the hands of South African residents.

The difference is that with effect from 2001, trade income from non South African sources will become taxable in the hands of South African residents.

There are certain exceptions to this general rule, for example, where the income is subject to a double tax agreement and the agreement provides specifically that South Africa can not tax the income.

Unilateral relief from tax is to be given in the form of the following two important exemptions:

- Any amount received under the social security system of any other country; or any pension from a source outside South Africa, which is not deemed to be from a source in South Africa, in consideration of past employment outside the country; and
- Any salary, wages or other remuneration received by a person if the person was outside South Africa for more than 183 days in total during any 12 month period commencing or ending during the year of assessments. The 183 day period need not be continuous, but the person must have been outside the country for more than 60 full days continuously in that 12 month period. The service for which the person is being paid must have been rendered during the periods outside the country.

The Question now asked is: What is a South African Resident for the purposes of the Income Tax Act?

“Resident” is defined in Section 1 of the Act as a natural person who is “ordinarily resident” in South Africa, or who is in South Africa for a certain length of time during the year of assessment (and in prior years of assessment).

A person other than a natural person will be treated as resident in South Africa if it is incorporated, established or formed in South Africa or if it has its place of effective management in South Africa. This provision applies to companies, trusts, and foundations, for example. Therefore, even if a company is formed and incorporated outside South Africa, if it is effectively managed in South Africa, it will have to register as a taxpayer and lodge a tax return.

Returning to natural persons – the tests referred to above can be categorised as follows:

- The ordinary residence test
- The physical presence test

If either of these tests’ requirements is satisfied, the person is treated as a South African resident.

Under the ordinary residence test, the aim is to determine where the person is usually resident:

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While a person may be resident in more than one country at a time, the case law has generally stated that a person can only be ordinarily resident in one country at a time.

The person's life patterns will be looked at to determine his true residence under this test. Factors such as where he owns property, has a car and a bank account, where the centre of his economic interest lies, where his children go to school, where his newspaper subscriptions are sent, etc, will determine where the person regards his true home to be. Therefore a person could be treated as ordinarily resident in South Africa even if he spends less than half the year here.

Under the physical presence test, it is easier to establish whether a person is resident in South Africa:

The test can be summarised as the 91 day, 915 day test. If a person is present in South Africa for more than 91 days in the year of assessment, he is treated as resident here if he was also present in South Africa for more than 91 days in each of the previous 5 years of assessment and was present in South Africa for more than 915 days in aggregate in the previous five years of assessment. Therefore, for example, if a person is in South Africa for less than 91 days in the 2009 year of assessment, he will not be resident for the purposes of the physical presence test for the 2009, 2010, 2011, 2012 and 2013 years of assessment, regardless of how long he is in the country during those later years of assessment.

There is also a proviso to the physical presence test which states that if a person is out of South Africa for continuous period of 330 full days, such person will be deemed not to have been resident in South Africa from the day on which he so ceased to be physically present in the Republic. Note, however, that if the person is, in fact, ordinarily resident in the Republic, this physical presence test does not apply.

Double Taxation Agreements

Refer sub-paragraph 5.8 for double taxation agreements.

Important Note:

We suggest that you do not act solely on material contained in this Booklet as the nature of the information contained herein is general and may in certain circumstances be subject to misinterpretation. Consequently we recommend that our advice be sought when encountering these potentially problematic areas. While every care has been taken in the compilation of this Guide, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors, or omissions.

APPENDIX 2 – OTHER USEFUL WEBSITES

www.southafrica.info

www.sars.gov.za

www.reservebank.co.za

www.capegateway.gov.za

www.idc.co.za

www.dti.gov.za

www.saica.co.za

www.irba.co.za

www.bassgordon.co.za

www.safrica.info

www.acts.co.za

www.oanda.com

APPENDIX 3 – SOUTH AFRICAN MEMBERS OF MGI

J H SMILG & COMPANY

P O BOX 9460
JOHANNESBURG, 2000
TEL (011) 337 4030
FAX (011) 333 6698

DESAI JADWAT INCORPORATED

P O BOX 4969
DURBAN, 4000
TEL (031) 207 7707
FAX (031) 207 7705

VEXILLUM AUDITORS INCORPORATED

25 PETER ROAD
ILLIONDALE, EDENVALE, 1610
TEL (087) 941 3990
FAX (087) 941 3991

APPENDIX 4 – INTERNATIONAL ASSOCIATES

MGI Bass Gordon is associated with MGI, www.mgiworld.com an international association of independent auditing, accounting and consulting firms. MGI has members in the following countries

Argentina	Liberia
Australia	Liechtenstein
Austria	Lithuania
Belgium	Luxembourg
Bermuda	Malaysia
Bolivia	Malta
Brazil	Mexico
Canada	Nepal
Cayman Islands	New Zealand
Chile	Nigeria
China	Norway
Colombia	Pakistan
Congo Democratic Republic	Paraguay
Costa Rica	Peru
Cyprus	Poland
Denmark	Portugal
Ecuador	Qatar
Egypt	Russia
El Salvador	Singapore
Finland	South Africa
France	Spain
Germany	Sri Lanka
Ghana	Sweden
Guatemala	Switzerland
Holland	Taiwan
Hong Kong	Thailand
India	Tunisia
Indonesia	Turkey
Ireland	Turks & Caicos Islands
Isle of Man	Ukraine
Israel	United Arab Emirates
Italy	United Kingdom
Japan	USA
Jordan	Uruguay
Kenya	Venezuela
Kuwait	Yugoslavia
Lebanon	

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