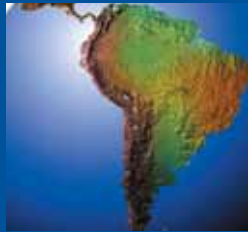




# Doing Business In South Africa



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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 kilometers, 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. 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 country is self-sufficient in most of its agricultural supplies and makes substantial exports of agricultural products. South Africa is very rich in minerals and mining is the biggest industry in the country. The most famous of the mined products, because of their natures, are gold, diamonds and platinum, but, in addition to this, there is a vast range of minerals exported from South Africa.

The mid-2005 population is estimated at approximately 46.9 million people. Africans are in the majority (approximately 37.2 million) and constitute about 79% of the total South African population. The white population is estimated at 4.4 million, the coloured population 4.1 million and the Indian / Asian population 1.1 million.

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 nine official African languages are seldom used except socially. The majority of the population is nominally Christian, but there are substantial numbers of Moslems, Hindus and Jews.

### 2.2 Economy

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 country leads the continent in industrial output (40% of total output) and mineral production (45%) and generates most of Africa's electricity (over 50%).

Its major strengths include its physical and economic infrastructure, natural mineral and metal resources, a growing manufacturing sector, and strong growth potential in the tourism, higher value-added manufacturing and service industries.

South African banking regulations rank with the best in the world. The sector has long been rated among the top 10 globally. There are 55 locally controlled banks, 12 foreign-controlled banks and five mutual banks. Some of the world's leading institutions have announced their intention to enter the local banking sector through mergers and acquisitions.

The JSE Limited is the 18th largest exchange in the world by market capitalisation (some R3.3-trillion as of September 2005). 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.

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.

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The financial and industrial sectors are concentrated in Gauteng province, which on its own accounts for over 30% of the country's GDP.

### **Economic growth**

South Africa's economy has been in an upward phase of the business cycle since September 1999 - the longest period of economic expansion in the country's recorded history.

During this upswing - from September 1999 through to June 2005 - the annual economic growth rate averaged 3.5%. In the decade prior to 1994, economic growth averaged less than 1% a year.

According to the South African Reserve Bank, there is no sign of this period of expansion coming to an end. Gross domestic product (GDP) growth was running at an annualised 4.8% in the second quarter of 2005 (compared to 3.7% in 2004 and 2.8% in 2003).

Consumer inflation has been on a downward trend since 2002, when consumer prices increased to an average 9.3% following the September 11 tragedy in New York. Consumer inflation averaged 6.8% in 2003 and 4.3% in 2004 - compared to 9.8% in 1994.

At the same time, prudent fiscal management has seen South Africa's budget deficit come down from 5.1% of GDP in 1994 to 2.3% of GDP in 2004. In the first quarter of 2005, this figure fell to 1.6%, with the SA Revenue Service collecting nearly US\$3.5-billion more than expected.

The source of the revenue windfall was not higher individual or corporate taxes - both have fallen since 1994 - but the performance of the economy, consumer confidence, and a dramatic increase in the number of registered taxpayers, from 2-million in 1994 to more than 5-million in 2004

### **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.

In August 2005, Standard & Poor's raised South Africa's long-term foreign currency credit rating, citing the country's improved economic stability, reduced vulnerability to external shocks, a moderate debt burden, and strong and stable political institutions.

The agency upgraded SA's long-term foreign currency sovereign rating from BBB to BBB+ - equal to that of Poland and Thailand, and a notch above Mexico - and the local currency rating from A to A+.

Rival agency Fitch had South Africa on a positive ratings watch at the time, while Moody's, the third big ratings agency, upgraded SA's credit rating in January 2005.

"The upgrade reflects South Africa's strong track record of macro-economic management and improved prospects of sustainable higher GDP growth rates," Standard & Poor's said.

## Challenges

The International Monetary Fund (IMF), in its 2005 annual country assessment, commends South Africa's authorities for the remarkable economic progress achieved since democracy in 1994.

"The economy is now growing strongly, inflation has been lowered and has become more predictable, public finances have been strengthened, and the external position has improved markedly," the IMF said. "The expansion in economic activity has created additional jobs.

"Given South Africa's position in the region, the country's strong economic performance has benefited the rest of Africa."

At the same time, the IMF's directors noted that serious economic challenges remain: persistent high unemployment, poverty, large wealth disparities and a high incidence of HIV/Aids.

But they came out in support of the SA authorities' approach to these problems, with policies aimed at raising economic growth in a stable economic environment and initiatives to reduce unemployment and improve social conditions.

The IMF said this strategy could be bolstered by labour market reforms and further trade liberalisation.

Key to overcoming the challenges identified by the IMF will be the economic integration of South Africa's previously disadvantaged majority.

South Africa's economy has a marked duality, with a sophisticated financial and industrial economy having developed alongside an underdeveloped informal economy.

While SA's financial and industrial "first economy" has an established infrastructure and economic base with great potential for further growth and development, its informal "second economy" presents both untapped potential and a developmental challenge for the country.

## 2.3 Currency and Banking

**2.3.1** The currency is the Rand and at 13 October 2006 the following rates applied:

R 7.59 per US Dollar

R 9.55 per Euro

**2.3.2** 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".

## 2.4 Government and Politics

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

## 2.5 Legal System

- 2.5.1 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.
- 2.5.2 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.
- 2.5.2 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.
- 2.5.3 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.
- 2.5.4 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.
- 2.5.5 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.
- 2.5.6 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.

## 2.6 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:

- a) *No limitation with regard to personal liability.*
- b) *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

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 34%, as opposed to the standard 29% 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 12.5%. 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:

- a) *The business could be closed down at short notice, as there is no capital structure involved.*
- b) *Any funds invested might more easily be transferable out of South Africa.*
- c) *There are small savings to be made in the avoidance of the cost of incorporation and audit requirements.*
- d) *A name could be used which might not be permitted if the company was incorporated in South Africa.*
- e) *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.*
- f) *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 Limited Liability Company

As a general rule, the foreign investor will invest in South Africa in the form of a Limited Liability Company. This procedure ensures a clean cut-off between the affairs of the South African Company and companies in other parts of the world, 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 3.5.

Limited Liability Companies must be registered with the Registrar of Companies. 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:

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

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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.

Limited companies are divided into two categories:

- a) *Public Companies*
- b) *Private Companies*

Private Companies can be distinguished from Public Companies as they must use the word "Proprietary" in their name before "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.

A Private Company need only have one shareholder and its membership may not exceed fifty.

A Public Company may not have less than seven shareholders.

Companies are required to draw up Annual Financial Statements, which must be audited by a Member of the South African Public Accountants' and Auditors' board.

### **3.5 Close Corporations**

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

- a) *The main activities that the Close Corporation may conduct.*
- b) *Names, addresses and identity number of the members.*
- c) *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 Limited Liability Company. The major differences are:

1. In a Limited Liability 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.
2. 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.

The Department of Trade and Industry are currently working on new draft legislation in Company Law, which regulates Companies and Close Corporations, and is to be promulgated during 2007.

### **3.6 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.

## 4 DIRECT TAXATION

### 4.1 Income Tax - Individuals

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, with a maximum rate of 40% (refer Appendix 1 for rates of tax and Appendix 6 for explanations in regard to residence based tax).

### 4.2 Income Tax - Companies

Companies (excluding mining companies, but including close corporations) are taxed at a flat rate of 29%. In addition to this normal tax, secondary tax on companies (STC) is levied on all dividends declared by a company at a rate of 12.5%. South African branches of foreign companies are taxed at a flat rate of 34% but are, however, exempt from STC.

Other tax rates are as follows:

	<u>2006 / 2007</u>
▪ Employment companies	34%
▪ Life assurers	
○ Individual policy holder fund	30%
○ Company policy holder fund	29%
○ Corporate policy holder fund	29%
○ Untaxed policy holder fund	0%
▪ Retirement fund tax	9%

### 4.3 Tax on Capital Gains

This complicated tax came into force on 1 October 2001 – refer Appendix 5 for explanations.

### 4.4 Donations Tax

Donations tax is payable on donations (gifts) made by individuals ordinarily resident in South Africa, and domestic companies at a flat rate of 20%, subject to a lump sum exemption of R50 000 per annum on donations made by natural persons.

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, as well as donations between spouses are exempt from donations tax.

### 4.5 Estate Duties

Estate Duty (Death Duties) is levied at a flat rate of 20% on the net value of an estate in excess of R 2.5 million. Bequests to a surviving spouse are exempt from this duty.

### 4.6 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.

### 4.7 Minor Taxes

These include, inter alia, the following:

**4.7.1** Transfer duty – levied on the transfer of land and buildings (refer sub-paragraph 6.2).

**4.7.2** Customs duty – levied on goods imported.

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

**4.7.4** Stamp duty – levied on certain legal documents and written agreements such as leases of immovable property, bills of exchange etc (refer sub-paragraph 6.2).

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

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- 4.7.6** Regional levies – Regional levies were abolished on 30 June 2006. Until then, the various Metropolitan Councils each set their own rates. The rates vary between 0.25% and 0.38% of remuneration and drawings by individuals and partnerships for Regional Services Levies, and between 0.1% and 0.2% of turnover for Regional Establishment Levies.
- 4.7.7** 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, from 1 April 2001.

#### **4.8 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:

- 4.8.1** In force as at 3 March 2006:  
Algeria, Australia, Austria, Belarus, Belgium, Botswana, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Ethiopia, Finland, France, Germany, Greece, Grenada, Hungary, India, Indonesia, Iran, Ireland, Italy, Israel, Japan, Korea, Lesotho, Luxembourg, Malawi, Malta, Mauritius, Namibia, Netherlands, New Zealand, Norway, Oman, Pakistan, Peoples’ Republic of China, Poland, Republic of China (Taiwan), Romania, Russian Federation, Seychelles, Sierra Leone, Singapore, Slovak Republic, Swaziland, Sweden, Switzerland, Thailand, Tunisia, Uganda, Ukraine, United Kingdom, USA, Zambia and Zimbabwe.
- 4.8.2** Treaties in process of negotiation or finalised but not yet signed:  
Bangladesh, Chile, Cuba, Estonia, Germany, Latvia, Lithuania, Malawi, Morocco, Mozambique, Namibia, Portugal, Qatar, Saudi Arabia, Serbia and Montenegro, Spain, Sri Lanka, Switzerland, United Arab Emirates, Vietnam, Zambia and Zimbabwe.
- 4.8.3** Treaties signed but not ratified:  
Netherlands – 10 October 2005, Tanzania – 22 September 2005
- 4.8.4** Comprehensive Treaties ratified in South Africa:  
Brazil, Democratic Republic of Congo, Gabon, Ghana, Kuwait, Malaysia, Nigeria, Rwanda, Turkey

## 5 EXCHANGE CONTROL

### 5.1 Repatriation of Earnings and Royalty Payments:

- 5.1.1** There are no restrictions on the transfer of dividends to non-resident individuals and non-resident companies, provided that the required documentation is provided.
- 5.1.2** 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.
- 5.1.3** 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.
- 5.1.4** 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.

### 5.2 Restrictions on amounts that can be taken out of the Company by South African Residents:

- 5.2.1** Travel Allowances: (per calendar year)
- |                                       |             |
|---------------------------------------|-------------|
| Visit abroad:                         |             |
| For adults                            | R 160 000   |
| For children under 12                 | R 50 000    |
| Omnibus travel facilities – companies | R 2 000 000 |
- 5.2.2** Maintenance Allowances:
- |   |         |
|---|---------|
| To fathers, mothers, brother and sisters per recipient family per month | R 9 000 |
|---|---------|
- 5.2.3** Study Allowance:
- |   |           |
|---|-----------|
| Unmarried – basic allowance per annum                                 | R 160 000 |
| <i>Study fees for vocation abroad subject to proof</i>                |           |
| Students travel allowance per annum                                   | R 50 000  |
| Married – basic allowance per annum                                   | R 320 000 |
| <i>Study fees for vocation abroad subject to proof</i>                |           |
| Student travel allowance (each) per annum                             | R 100 000 |
| Export household/personal jewellery (excluding motor car) per student | R 30 000  |
- 5.2.4** Gifts (per applicant) per annum R 30 000
- 5.2.5** Export limit for RSA bank notes per person R 5 000
- 5.2.6** Transfers for unexpected medical expenses abroad – subject to proof
- 5.2.7** Personal effects, jewellery for export without Reserve Bank authority, export of household and personal effects, and motor car by emigrants – insured value (Valuation certificate required in certain circumstances) R1 000 000
- 5.2.8** Jewellery inherited by non-residents – subject to proof

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**5.2.9** Import limits on postage stamps for philatelic use and coins for numismatic use – subject to proof

**5.2.10** Annual release of blocked funds to emigrants for **local visits** (per family, per calendar year) max.

Adults per day	R 75 000
Children under 12 per day	R 3 000
	R 1 500

**5.2.11** Directors' fees for emigrants - subject to proof

**5.2.12** Directors' fees for non-residents (per company) – subject to proof

**5.2.13 Foreign Allowance**

Private individuals are permitted to invest R2 million per person off-shore, provided they are over 18 and taxpayers who have obtained a clearance certificate from SARS prior to the approval of any foreign investment (R4 million in respect of family units).

**5.2.14** Use of credit or debit cards not exceeding R20 000 per transfer is permitted for miscellaneous payments for goods and services. (eg. Internet transactions)

**5.2.15 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.

**5.2.16 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.

**5.3 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.

Non-resident wholly-owned subsidiaries may borrow locally up to 300 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

$$300\% + \left\{ \frac{\% \text{ South African interest}}{\% \text{ Non-resident interest}} \times \frac{100\%}{1} \right\}$$

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Thus, a company with a 25 per cent local shareholding will have maximum allowable local borrowings of 333 per cent of the effective capital.

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

#### 5.4 Emigrants

An emigrant is a person who has been permanently resident in South Africa for the past three years or more, and who leaves the country permanently.

Emigrants may apply for the following allowances:

(a)	Foreign allowance per family unit	R4 000 000
(b)	Foreign allowance single person	R2 000 000
(c)	Household and personal effects, motor vehicles, etc, - insured value	R1 000 000
(d)	Emigrants' travel facility – per adult	R 160 000
(e)	Emigrants' travel facility – per child under 12	R 50 000

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.

#### 5.5 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. If approved, the transfer of the funds must take place within 21 days to 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.

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- 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.

### **5.6 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 declared out of profits earned after the date of emigration or 1 January 1984, whichever is the later date.*
- *Dividends from private companies with local borrowings will require Exchange Control approval.*
- *Distributions from a close corporation.*
- *Interest.*
- *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.*

**NOTE:**

1. Royalty payments are transferable subject to Exchange Control approval.
2. Retirement annuity payments require initial Exchange Control approval.
3. Income from a trust other than a will trust requires annual Exchange Control approval. Audited financial statements, and forms MP 1330, MP 1331 or MP 1332, must support the application.

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

## 5.7 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.

## 5.8 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 the declaration (refer Appendix 7) and to provide the S A Reserve Bank with the following documentation:

- (a) *Copy of work permit.*
- (b) *Letter from their employer stating the terms and conditions of the employment and stating the salary.*
- (c) *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.

## 6 OTHER FORMS OF TAXATION

### 6.1 VAT (Value Added Tax)

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.

### 6.2 Stamp and Transfer Duties

IMMOVABLE PROPERTY	RATE
<b>Transfer duty (if purchased by a natural person)</b>	
Property value:	
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
<b>Transfer duty (if purchased by companies or close corporations or trusts)</b>	
On purchase considerations	8%
LEASES OF IMMOVABLE PROPERTY	RATE
Leases entered into on or after 1 January 2005 For every R 100 or part thereof of aggregate rent and other consideration payable in respect of the lease period	50 cents
Where the duty calculated does not exceed R 500, the lease is exempt from stamp duty.	
SHARES AND DEBENTURES	RATE
<b>Original Issue</b> All financial transaction taxes were abolished on the issue of shares on or after 1 January 2006.	
<b>Increase in authorized share capital –</b> For every R 1 000 or part thereof of the nominal value	
	R 5
<b>Registration of transfer (other than through a stockbroker)</b> For every R10 or part thereof of the consideration	
	2.5 cents
<b>Registration of transfer (through a stockbroker)</b> No transfer duty is payable but MST (Marketable Services Tax) is payable based on the consideration of shares Purchased	
	0.25%
AGREEMENTS AND CONTRACTS	RATE
For which no other duty is provided	Nil
DUPLICATES of stamped originals	Nil

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ANTENUPTIAL AND POST-NUPTIAL CONTRACTS	Nil
FIXED DEPOSIT RECEIPTS	Nil
BILLS OF EXCHANGE	
Every R 100 or part thereof of the amount w.e.f. 1.4.01	Nil
INSTALMENT SALE AGREEMENTS AND FINANCIAL LEASES	
Not exceeding R 5 000	R 2
Exceeding R 5 000 but not more than R 10 000	R 4
Exceeding R 10 000 but not more than R 20 000	R 8
Exceeding R 20 000 but not more than R 40 000	R 16
Exceeding R 40 000 but not more than R 60 000	R 24
Exceeding R 60 000 but not more than R 80 000	R 32
Exceeding R 80 000 but not more than R 100 000	R 40
Exceeding R 100 000 but not more than R 130 000	R 50
Exceeding R 130 000 but not more than R 150 000	R 60
Exceeding R 150 000 but not more than R 180 000	R 70
Exceeding R 180 000 but not more than R 200 000	R 80
Exceeding R 200 000	R100
PARTNERSHIP AGREEMENTS	Nil
POWER OF ATTORNEY	
Special or general, per grantor	Nil
SECURITY OF SURETYSHIP	Nil
DEBIT ENTRY	Nil

### 6.3 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:

- (a) the use of an employer-owned car;
- (b) the use of residential accommodation;
- (c) schooling for children of employees paid for by the employer;
- (d) the use of any employer-owned asset;
- (e) services provided by the employer to the employee;
- (f) low interest loans;
- (g) excessive traveling and entertainment allowances;
- (h) acquisition of an asset (other than money) for no consideration or for inadequate consideration;
- (i) medical aid contributions (on the amount paid by the employer above 2/3<sup>rd</sup> 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).

#### **6.4 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.

#### **6.5 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).

## 7 INVESTMENT INCENTIVES

### 7.1 Tax Incentives

#### 7.1.1 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 and that employ at least 4 full time employees for core operations are eligible for this incentive. The tax rates applicable to small business corporations are as follows for the 2006/7 year of assessment:

Taxable income	Rates of tax
R 0 – R 40 000	0% of each R1
R 40 001 – R 300 000	10% of each R1
R 300 001 + of taxable income	29% of each R1

#### 7.1.2 Research and development

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

Costs incurred in any year of assessment with effect from a date to be announced:

Devising, developing or creating any invention, patent, design, copyright or any other property of a similar nature (excluding trademarks and goodwill)	150%
Buildings, plant, machinery, implements or articles used for R&D purposes	50%/30%/20%

#### 7.1.3 Employee housing allowance

The aim of this incentive is to promote the erection of housing for employees. There is an allowance available of 50% of the expenditure and / or loan relating to the cost of erecting housing for an employee or his household, limited to R 6 000 per unit.

#### 7.1.4 Depreciation

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 for manufacturing or similar process, hotel equipment, farming, industrial buildings, hotels and hotel refurbishments. The applicable allowances are as follows:

New or unused plant and machinery	- 40% p.a. in 1 <sup>st</sup> year - 20 p.a. for years 2-4
Hotel equipment	- 20% p.a.
Farming	- 50% in 1 <sup>st</sup> year - 30% in 2 <sup>nd</sup> year - 20% in 3 <sup>rd</sup> year
Hotel refurbishment	- 5% p.a. for external - 20% p.a. for internal
Manufacturing buildings	- between 2% and 5% p.a.

#### 7.1.5 Urban Development Allowances

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 depreciation allowance over a 5 year period

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### 7.1.6 Infrastructural development

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.

### 7.2 Double Taxation Agreements

Refer to section 4.8 for a comprehensive list of all the Double Taxation Agreements that are currently in place.

### 7.3 Other grants and finance options

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

#### **EMIA:**

A taxable cash grant on export promotion costs, including exhibitions and international product registration. The grant is calculated as a percentage of costs incurred.

#### **SPII & PII:**

A taxable cash grant for development of innovative commercial products and processes. The grant is 50% of direct development cost. Maximum grant under SPII is R1.5 million. Minimum grant under PII is R1.5 million.

This program has been expanded with the addition of PPD, or "Process / Product Development". PPD is for smaller applicants who do not necessarily target international markets. The grant is 65% of qualifying development costs, but is increased for empowered companies.

#### **THRIP:**

A taxable cash grant to industrialists in respect of R&D costs incurred at an academic institution to find technology solutions. The grant is 50% of the qualifying expenses. Maximum grant is R5 million.

#### **IDC Finance:**

Industrial Development Corporation of SA Limited loans, equity and quasi-equity finance for new projects, expansion projects and buy-ins and buy-outs in the case of empowerment transactions.

#### **SEDA:**

Recently merged Ntsika and Namac programs. Purpose is to promote the development of small businesses in SA.

**For more information on these and other incentive grants, contact:**

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## **8. 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. According to the 1995 household survey (conducted by South Africa's Central Statistical Service), only 10 million of South Africa's economically active 14,5 million are employed. The implied 4.5 million unemployed figure has no doubt increased since 1995. Although one cannot quantify exactly how many people are unemployed in the informal sector.

## **9. QUALITY OF LIFE**

### **9.1 Housing**

**9.1.1** 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.

**9.1.2** 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.

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

**9.1.4** There are various other costs incurred when a house is purchased such as transfer costs (refer sub-paragraph 6.2) and conveyancers' fees.

### **9.2 Education**

**9.2.1** Attendance at school is compulsory for all children from the ages 7 – 16.

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

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

## APPENDICES

### APPENDIX 1 - RATES OF TAX PAYABLE IN SOUTH AFRICA

INDIVIDUAL TAX FOR THE YEAR ENDED 28 FEBRUARY 2007

#### TABLE 1 – NATURAL PERSONS

TAXABLE INCOME	RATES OF TAX
R 0 – 100 000	18% of each R1
R 100 001 – 160 000	R 18 000 + 25% of the amount above R 100 000
R 160 001 – 220 000	R 33 000 + 30% of the amount above R 160 000
R 220 001 – 300 000	R 51 000 + 35% of the amount above R 220 000
R 300 001 – 400 000	R 79 000 + 38% of the amount above R 300 000
R 400 001 and above	R 117 000 + 40% of the amount above R 400 000

#### TABLE 2 – PERSONS OTHER THAN NATURAL PERSONS (e.g. Trusts)

Financial year end to 28.02.2006 40%

### APPENDIX 2 – INDIVIDUAL TAX REBATES

PRIMARY:	<u>2005 / 2006</u>	<u>2006 / 2007</u>
Natural Person	6 300	7 200
ADDITIONAL REBATE:		
All Persons 65 and Over	4 500	4 500

### APPENDIX 3 – DEDUCTIONS

INTEREST EXEMPTION:	<u>2005 / 2006</u>	<u>2006 / 2007</u>
64 an younger	15 000	16 500
65 and older	22 000	24 500

**Note:** Only R2 500 of foreign interest and foreign dividends is exempt. The R2 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 over age 65 – no limit

Taxpayers under age 65 – are not taxed, or may deduct contributions to medical schemes up to R500 for each of the first two persons covered under the medical scheme (taxpayer and one dependant) and R300 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 pensionable remuneration.

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. The tax deduction is limited to 5% 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 organization.

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

**APPENDIX 4 – DEPRECIATION ALLOWANCES USUAL RATES ALLOWED FOR TAX (STRAIGHT-LINE)**

	Period of Write-Off No. of Years
Adding machines	6
Air conditioning	6
Aircraft	4
Calculators	3
Cellular telephone	3
Compressors	4
Computer – main frame	5
Computer – personal	3
Concrete mixers	3
Demountable partitions	6
Fishing vessels	12
Forklift trucks	4
Furniture and fittings	6
Hotel equipment (not used in staff quarters and offices)	5
Lifts – moving parts	12
Machinery and plant	3
Motor vehicles - passenger	5
- delivery	4
- trucks (heavy duty)	3
- trucks (other)	4
Security systems	5
Tractors	4
Typewriters	6

**Note:** 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 R5 000 per item may be written off in full during the year of acquisition.

**BUILDING ALLOWANCE**

Buildings and improvements erected for the purpose of carrying on a process of manufacture or similar process qualify for a 10% annual allowance, provided the improvement or building commenced during the period 1 July 1996 to 30 September 1999 and was brought into use before 31 March 2000.

For building commencing on or after 1 September 1999, the allowance is 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.

## APPENDIX 5 – EXPLANATIONS IN REGARD TO CAPITAL GAINS TAX

a) 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.

b) 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.

c) Special Considerations

- \* A basic R12 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 during any tax year.
- \* Where a person dies during the year of assessment, the person's annual exclusion is increased from R12 500 to R60 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.

d) 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.

#### e) 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.

#### f) 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 500 000 in total during the person's lifetime);
- \* Proceeds from gambling, games and competition.

**g) 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.

## **APPENDIX 6 – 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;

1. 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
2. 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.

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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 are 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:**

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 center 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, 549 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 3 years of assessment and was present in South Africa for more than 549 days in aggregate in the previous three years of assessment. Therefore, for example, if a person is in South Africa for less than 91 days in the 2002 year of assessment, he will not be resident for the purposes of the physical presence test for the 2002, 2003, 2004 and 2005 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 4.8 for double taxation agreements.

**APPENDIX 7 – DECLARATION BY CONTRACT WORKERS TO SA RESERVE BANK**

THE GENERAL MANAGER  
THE SOUTH AFRICAN RESERVE BANK  
EXCHANGE CONTROL DEPARTMENT  
PRETORIA  
0001

DATE .....

DEAR SIR

I, .....

ADVISE THAT I ENTERED SOUTH AFRICA ON .....

AND AM A FOREIGN NATIONAL TEMPORARILY RESIDENT IN SOUTH AFRICA.

I AM EMPLOYED BY .....  
ON A CONTRACT BASIS.

FURTHERMORE, I ADVISE THAT I HAVE/HAVE NO FOREIGN ASSETS AND HEREBY UNDERTAKE NOT TO PLACE THESE OR ANY PORTION THEREOF, AT THE DISPOSAL OF ANY SOUTH AFRICAN RESIDENT. I UNDERSTAND THAT I MAY DEAL FREELY IN MY FOREIGN ASSETS AND MAY RETAIN THE INCOME THEREON OVERSEAS.

I AM PERMANENTLY DOMICILED IN .....

I DECLARE THAT:

1. I HAVE NEVER PREVIOUSLY RESIDED IN THE REPUBLIC OF SOUTH AFRICA.
2. I PREVIOUSLY RESIDED IN THE REPUBLIC OF SOUTH AFRICA AND MY EMIGRATION FORMALITIES WERE DEALT WITH BY:

AUTHORISED DEALER .....

ADDRESS OF AUTHORISED DEALER .....

DATE OF EMIGRATION .....

3. I HAVE NOT APPLIED FOR SIMILAR FACILITIES THROUGH ANOTHER AUTHORISED DEALER.

MY BANKERS IN SOUTH AFRICA ARE:

BANK: .....

BRANCH: .....

YOURS FAITHFULLY

.....

## APPENDIX 8 – OTHER USEFUL WEBSITES

[www.southafrica.info](http://www.southafrica.info)

[www.sars.gov.za](http://www.sars.gov.za)

[www.reservebank.co.za](http://www.reservebank.co.za)

[www.capegateway.gov.za](http://www.capegateway.gov.za)

[www.idc.co.za](http://www.idc.co.za)

[www.dti.gov.za](http://www.dti.gov.za)

[www.saica.co.za](http://www.saica.co.za)

[www.irba.co.za](http://www.irba.co.za)

[www.bassgordon.co.za](http://www.bassgordon.co.za)

[www.safrica.info](http://www.safrica.info)

[www.acts.co.za](http://www.acts.co.za)

## APPENDIX 9 – 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

## APPENDIX 10 – INTERNATIONAL ASSOCIATES

MGI Bass Gordon is associated with MGI, [www.mgiworld.com](http://www.mgiworld.com) an international association of independent auditing, accounting and consulting firms. MGI has members in the following countries

Argentina	Lebanon
Australia	Liberia
Austria	Liechtenstein
Belgium	Lithuania
Bermuda	Luxembourg
Bolivia	Malaysia
Brazil	Malta
Canada	Mexico
Cayman Islands	Nepal
Chile	New Zealand
China	Nigeria
Colombia	Norway
Congo Democratic Republic	Pakistan
Costa Rica	Paraguay
Cyprus	Peru
Denmark	Portugal
Ecuador	Qatar
Egypt	Russia
El Salvador	Serbia
Finland	Singapore
France	South Africa
Germany	Spain
Ghana	Sri Lanka
Guatemala	Sweden
Holland	Switzerland
Honduras	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	

[www.mgiworld.com](http://www.mgiworld.com)