

**In your interest 2010/2011**

**OCTAGON**

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# CONTENTS

|   | Page |
|---|------|
| Budget Proposals .....                              | 2    |
| Companies and Close Corporations.....               | 3    |
| Normal Tax.....                                     | 3    |
| Secondary Tax on Companies.....                     | 3    |
| Trusts other than Special Trusts.....               | 3    |
| Special Trusts.....                                 | 3    |
| Micro Businesses.....                               | 3    |
| Individuals.....                                    | 4    |
| Tax Tables.....                                     | 4    |
| Rebates .....                                       | 4    |
| Tax Thresholds.....                                 | 4    |
| Exempt Income .....                                 | 4    |
| Deductions .....                                    | 5    |
| Fringe Benefits.....                                | 5    |
| Share Incentives .....                              | 7    |
| Employees Tax .....                                 | 8    |
| Married Persons .....                               | 8    |
| Minor Children .....                                | 8    |
| Estate Duty.....                                    | 8    |
| Ring Fencing of Assessed Losses.....                | 9    |
| Lump Sum Benefits from Funds.....                   | 9    |
| Micro Businesses.....                               | 10   |
| Companies and Close Corporations.....               | 10   |
| Normal Tax.....                                     | 10   |
| Labour Brokers and Personal Service Providers ..... | 11   |
| Dividend.....                                       | 11   |
| Residence Based Taxation.....                       | 13   |
| Foreign Income.....                                 | 13   |
| Non-residents.....                                  | 14   |
| Public Benefit Organisations (PBO).....             | 15   |
| Capital Gains Tax (CGT).....                        | 15   |
| Donations.....                                      | 19   |
| Provisional Tax.....                                | 20   |
| Primary Residence Amnesty.....                      | 21   |
| Prescribed Interest Rates.....                      | 21   |
| Learnership Allowances.....                         | 21   |
| Research and Development .....                      | 21   |
| Wear and Tear Allowances.....                       | 21   |
| Capital Allowances .....                            | 23   |
| Asset Reinvestment Relief .....                     | 24   |
| Restraint of Trade .....                            | 24   |
| Leasehold Improvements .....                        | 24   |
| Bursaries .....                                     | 25   |
| Pre-trade Expenditure .....                         | 25   |
| Pre-production Interest .....                       | 25   |
| Value Added Tax .....                               | 25   |
| Skills Development Levy (SDL) .....                 | 27   |
| Objections and Appeal .....                         | 27   |
| Advance Tax Ruling .....                            | 28   |
| General Anti-Avoidance Provisions .....             | 28   |
| Voluntary Disclosure .....                          | 28   |
| 2010 FIFA World Cup .....                           | 28   |
| Transfer Duties .....                               | 29   |
| Securities Transfer Tax (STT).....                  | 29   |
| Annual Returns for Companies and Corporations.....  | 30   |
| Foreign Exchange.....                               | 30   |
| Retention of Records .....                          | 34   |
| New Business Start-up Requirements.....             | 35   |
| Financing.....                                      | 35   |
| Forex Rates .....                                   | 36   |
| Prime Overdraft Rates.....                          | 36   |

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## **BUDGET PROPOSALS**

Tabled by the Minister of Finance on 17 February 2010:

### **INDIVIDUAL TAX**

#### **Tax brackets**

The tax brackets have been restructured to increase the tax threshold at which the maximum rate is reached at R552 000 (2010 – R525 000). Tax thresholds have been increased for persons under 65 to R57 000 (2010 – R54 200) and for persons 65 and over to R88 528 (2010 – R84 200).

#### **Interest**

Interest earned by natural persons under 65 is exempt up to R22 300 (2010 – R21 000) and persons 65 and over to R32 000 (2010 – R30 000). Foreign interest and dividends are exempt up to R3 700 (2010 – R3 500).

These exemptions apply to savings from widely available interest-bearing investments and exclude tax planning aimed at shifting taxable income.

#### **Medical scheme contributions**

Monthly tax deductible contributions for a member and first beneficiary have increased to R670 (2010 – R625) and for each beneficiary thereafter to R410 (2010 – R380).

#### **Retrenchment package merger**

It was proposed to merge the exemption into the retirement lump sum exemption. All retirement and retrenchment lump sum payments will be treated equally.

#### **SITE**

The SITE system will be repealed with effect from 1 March 2011.

#### **Company car fringe benefit**

Company car fringe benefits will be tightened by increasing deemed monthly taxable values.

#### **Travel allowance**

With effect from 1 March 2010, 80% of the travel allowance will be included in monthly taxable income. 20% will be allowed as a deduction. For any portion to qualify as a deduction on assessment a logbook must be retained.

#### **Employee deferred compensation and insurance schemes**

Deferred compensation and employer-provided group life insurance will be taxed as fringe benefits. Employer deductions for contributions to group life insurance schemes will be matched to employees' gross income.

#### **Carbon dioxide vehicle emission tax**

A flat rate CO<sub>2</sub> emissions tax will be effective from 1 September 2010, applicable to passenger cars. New cars will be taxed based on certified CO<sub>2</sub> emissions at R75 per g/km for each g/km above 120 g/km.

#### **Gambling taxes**

The exempt status of gambling winnings will be reviewed and measures to limit money laundering opportunities will be considered.

#### **Voluntary disclosures**

A voluntary disclosure programme for previous defaults and to regularise tax affairs will be instituted from 1 November 2010 to 31 October 2011. This will avoid the imposition of interest. The full amount of tax will remain payable. This will also apply to unreported overseas bank accounts.

#### **Estate duty**

Taxes upon death will be reviewed to do away with the perceived double taxation resulting from Capital Gains tax and estate duty.

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## **COMPANIES AND CLOSE CORPORATIONS**

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### **Normal tax rate for years of assessment after 31 March 2010**

|   |     |
|---|-----|
| Companies and close corporations                | 28% |
| Small business corporations                     |     |
| On first R57 000                                | 0%  |
| From R57 000 to R300 000                        | 10% |
| Thereafter                                      | 28% |
| Employment companies                            | 33% |
| Foreign companies with South African activities | 33% |
| South African branches of foreign companies     | 33% |

### **Secondary tax on companies**

|  |     |
|--|-----|
| On dividends declared on or after 1 October 2007 | 10% |
|--|-----|

### **Normal tax rate for years of assessment after 31 March 2009**

|   |     |
|---|-----|
| Companies and close corporations                | 28% |
| Small business corporations                     |     |
| On first R54 200                                | 0%  |
| From R54 201 to R300 000                        | 10% |
| Thereafter                                      | 28% |
| Employment companies                            | 33% |
| Foreign companies with South African activities | 33% |
| South African branches of foreign companies     | 33% |

### **Secondary tax on companies**

|  |       |
|--|-------|
| On dividends declared on or after 1 October 2007       | 10%   |
| Distributions after 14 March 1996 to 30 September 2007 | 12,5% |

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## **TRUSTS OTHER THAN SPECIAL TRUSTS**

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### **Normal tax rate**

|  |     |
|--|-----|
| For years ended 28 February 2003 to 2011 | 40% |
| No primary rebate or interest exemption  |     |

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## **SPECIAL TRUSTS**

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Same rate as individuals.

No primary rebate or interest exemption.

Defined as one created solely for the benefit of a person suffering from a severe mental illness or physical disability, or a testamentary trust established solely for the benefit of minor children related to the deceased.

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## **MICRO BUSINESSES**

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### **Normal tax rate for years of assessment after 31 March 2009**

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

## **INDIVIDUALS**

### **TAX TABLES**

**For the year ended 28 February 2011**

| R                 | R                                     |
|-------------------|---------------------------------------|
| 0 – 140 000       | 18% of income                         |
| 140 001 – 221 000 | 25 200 + 25% of income above 140 000  |
| 221 001 – 305 000 | 45 450 + 30% of income above 221 000  |
| 305 001 – 431 000 | 70 650 + 35% of income above 305 000  |
| 431 001 – 552 000 | 114 750 + 38% of income above 431 000 |
| 552 001 and above | 160 730 + 40% of income above 552 000 |

**For the year ended 28 February 2010**

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

### **REBATES**

|             | <b>2011</b> | <b>2010</b> |
|-------------|-------------|-------------|
| Primary     | R10 260     | R9 756      |
| 65 and over | R5 675      | R5 400      |

### **TAX THRESHOLDS**

|             |         |         |
|-------------|---------|---------|
| Below 65    | R57 000 | R54 200 |
| 65 and over | R88 528 | R84 200 |

### **EXEMPT INCOME**

Limited to

Total interest exemption  
including foreign interest

|                                |         |         |
|--------------------------------|---------|---------|
| Below 65                       | R22 300 | R21 000 |
| 65 and over                    | R32 000 | R30 000 |
| Foreign interest and dividends | R3 700  | R3 500  |

Interest earned by non-residents not carrying on business in South Africa.

War and certain disability pensions.

Pensions received from sources outside South Africa.

Unemployment and Workmen's Compensation benefits.

The R30 000 income tax exemption for retrenchment packages is merged with the retirement lump sum exemption. All retirement and retrenchment lump sum payments are treated equally.

## **DEDUCTIONS**

### **Pension fund contributions**

Greater of: R1 750, or

7,5% of income from retirement funding employment.

### **Retirement annuity fund contributions**

Greater of: R1 750, or

R3 500 less current pension fund contributions, or  
15% of taxable income from non-retirement funding  
income, before deducting medical aid contributions  
and expenses, and before deductible donations.

Reinstated fund contributions are limited to R1 800, whilst excess contributions may be carried forward to the following year.

### **Medical and physical disability expenses**

Over 65            All expenses

Under 65        Monthly medical aid contributions limited to R670  
for taxpayer, R670 for first dependent and R410  
for each additional dependent plus expenses in  
excess of 7,5% of taxable income.

Medical expenses include the balance of the medical aid contributions, all expenditure incurred not refunded by the medical aid, including non-South African expenses.

Physical disability expenditure includes necessary expenditure incurred as a result of the disability. The definition of disability covers a moderate to severe limitation of a person's ability to function normally as a result of physical, sensory, communication, intellectual or mental impairment if it has lasted or has a prognosis to last more than a year as diagnosed by a duly registered medical practitioner.

### **Donations to public benefit organisations**

Limited to 10% of taxable income before deducting medical expenses and donations, provided made to organisations which issue receipts in terms of S18A. A detailed schedule of the types of organisations which qualify as public benefit organisations has been issued by SARS.

### **Home study expenses**

A deduction will only be allowed if the study is used exclusively for trade, or where the income is derived mainly from commission and the duties are not carried out in an office provided by the employer, or where the employee carries on his duties mainly from the home study.

## **FRINGE BENEFITS**

### **Medical aid**

For years of assessment commencing on or after 1 March 2012 the full amount of medical aid contributions by employers will be a taxable fringe benefit. Until then the amount in excess of the monthly capped amounts is a fringe benefit.

## Subsistence allowance

The allowance relates to expenditure on meals and incidental costs incurred whilst being absent from home for at least one night. It is taxable to the extent that the employee has not spent the required nights away from home by the last day of the following month. No proof is required where allowance is R260 per day for meals and incidental costs or R80 per day for incidental costs in South Africa.

SARS has issued a table listing the daily allowance for meals and incidental costs outside South Africa denominated in the appropriate currency, such as:

|                |            |
|----------------|------------|
| Australia      | – 175 AU\$ |
| Botswana       | – 799 PULA |
| United Kingdom | – 107 GBP  |
| USA            | – 157 US\$ |

## Right of use of motor vehicle

The monthly fringe benefit is computed at 2,5% of the determined value of the first vehicle and 4% of each additional vehicle. Should a travel allowance be granted, the right of use of a motor vehicle will be 4% of the determined value.

The determined value is the cash cost (excluding VAT) of the vehicle or the market value in the case of a lease or donation. The cost is reduced by 15% for each completed year from the date of acquisition by the employer to the date the employee was granted the use of the vehicle.

## Travelling allowance

The allowance may be paid at a fixed monthly rate or per kilometre. PAYE on 80% of the allowance is deductible where the allowance is not based on actual business travel costs.

A logbook must be kept detailing the business and total kilometres travelled. Costs may be based on the table issued by SARS or actual costs incurred.

## Scale for determining the costs of travelling

| Value of the vehicle<br>(including VAT) | Fixed Cost<br>(R p.a.) | Fuel Cost<br>(c/km) | Maintenance Cost<br>(c/km) |
|---|------------------------|---------------------|----------------------------|
| 0 – R40 000                             | 14 672                 | 58,6                | 21,7                       |
| R40 001 – R80 000                       | 29 106                 | 58,6                | 21,7                       |
| R80 001 – R120 000                      | 39 928                 | 62,5                | 24,2                       |
| R120 001 – R160 000                     | 50 749                 | 68,6                | 28,0                       |
| R160 001 – R200 000                     | 63 424                 | 68,8                | 41,1                       |
| R200 001 – R240 000                     | 76 041                 | 81,5                | 46,4                       |
| R240 001 – R280 000                     | 86 211                 | 81,5                | 46,4                       |
| R280 001 – R320 000                     | 96 260                 | 85,7                | 49,4                       |
| R320 001 – R360 000                     | 106 367                | 94,6                | 56,2                       |
| R360 001 – R400 000                     | 116 012                | 110,3               | 75,2                       |
| exceeding R400 000                      | 116 012                | 110,3               | 75,2                       |

The recipient may opt to be reimbursed at R2,92 per km where less than 8 000 km relate to business, provided no other travel allowance is received.

## **Low interest loans**

The benefit arises on the difference in the official rate of interest and that charged to the employee on loans greater than R3 000. Study loans are excluded.

The official interest rate of interest is:

|                                     |      |
|-------------------------------------|------|
| 1 March 2008 – 31 August 2008       | 12%  |
| 1 September 2008 – 28 February 2009 | 13%  |
| 1 March 2009 – 31 May 2009          | 11%  |
| 1 June 2009 – 30 June 2009          | 9.5% |
| 1 July 2009 – 31 August 2009        | 8.5% |
| 1 September 2009 to date            | 8%   |

## **Cellphones and computers**

No fringe benefit accrues through the private use of cellphones and computers provided by the employer used mainly for business purposes.

## **Payment of professional fees on behalf of employees**

If membership of a body is a condition of employment such payment is not a taxable fringe benefit. Other fees paid by the employer will also be tax free if such payments largely benefit the employer.

## **SHARE INCENTIVES**

### **Broad-based employee share plan**

This plan is defined as one in terms of which:

- equity shares are acquired at the minimum required by the Companies Act
- in which employees who participate in any other share equity plan cannot participate
- at least 80% of non-excluded employees are entitled to participate
- the shares have full voting rights
- no restrictions are placed on the disposal of the shares except at full market value or in terms of the rules of the plan for at least five years from date of the grant
- the market value of the shares acquired during a 5 year period in terms of this plan cannot exceed R50 000.

The gain made on the sale of the qualifying shares within 5 years from the date of the grant is taxable as income. Thereafter the gain is subject to CGT.

The employer may deduct R10 000 per year.

### **Equity instruments issued to directors and employees**

Regulations are applicable to equity instruments acquired by virtue of employment or office.

Gains or losses are taken into account on the vesting of the equity instrument. Vesting occurs on the acquisition of an unrestricted equity instrument:

in the case of a restricted equity instrument, the earliest of:

- when all restrictions cease to exist
- immediately before the disposal of the instrument
- immediately after an option terminates or a convertible instrument is converted
- immediately before the taxpayer dies if all restrictions are lifted on death.

The gain on the vesting of the instrument constitutes remuneration and is subject to employees' tax.

## **EMPLOYEES TAX**

### **Standard income tax on employees (SITE)**

SITE is a final deduction of normal tax from net remuneration up to R60 000. SITE only taxpayers are not required to lodge a tax return. Where the employee works for less than a full year the SITE payments may be refundable. SITE does not apply to directors, or remuneration which may be set off against an assessed loss, or from which expenses may be claimed or travel allowances. SITE will be repealed with effect from 1 March 2011.

### **Pay as you earn (PAYE)**

Employers are required to deduct PAYE on all remuneration paid to employees, including directors and members of close corporations, unless a tax deduction directive is issued by SARS.

From the 2011 tax year SARS can raise an assessment on the employer if the value of a fringe benefit has not been taken into account or undervalued for PAYE purposes. The payment does not constitute a taxable fringe benefit.

## **MARRIED PERSONS**

Married persons are taxed separately on his/her income. Donations between spouses are not subject to donations tax, though should the donation be made purely to avoid tax, the income earned will attribute to the donating spouse.

Persons married in community of property will be taxed on half of the property rentals and interest. Income from independent trade or from assets which are not part of the joint estate or from purchased annuities will be taxed in the hands of the spouse entitled thereto.

## **MINOR CHILDREN**

Minor children are taxed on income received by them, unless such income is derived from assets or income donated by a parent. In this case the parent is taxed on such income.

## **ESTATE DUTY**

Estate duty is levied at 20% on the dutiable amount of the estate after taking into account an abatement of R3,5 million.

Where the person was at date of death the spouse of a previously deceased spouse, the estate duty abatement can be doubled and reduced by the amount of the abatement utilised by the pre-deceased spouse. This amendment applies to the estates of persons dying on or after 1 January 2010.

The deemed property of the estate includes all assets and liabilities of the deceased, insurance policies on the life of the deceased as well as any accrued claim against the surviving spouse. Benefits arising from pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds are not included in the estate of persons dying on or after 1 January 2009.

Certain deductions are allowed, which include funeral, tombstone and deathbed expenses; costs of administering and liquidating the estate, CGT, bequests to approved PBO, all assets bequeathed to the surviving spouse.

## RING FENCING OF ASSESSED LOSSES

Ring fencing can only be applied to natural persons subject to the maximum marginal tax rate who have incurred a trading loss in 3 out of 5 years in a trade listed in the Income Tax Act.

The affected trades relate to sport practices, dealing in collectibles, animal showing, performing or creative arts, betting or gambling carried on by the taxpayer or a relative; or the rental of residential accommodation, vehicles or aircraft unless 80% used by persons not related to the taxpayer for at least 6 months; farming or animal breeding unless on a fulltime basis.

The ring fencing can be prevented where the trade constitutes a business and “facts and circumstances” are presented for consideration unless the losses were incurred in 6 out of 10 years commencing on 1 March 2004.

## LUMP SUM BENEFITS FROM FUNDS

### On retirement

Lump sum benefits from pension and retirement funds are limited to one third of the value of the fund, unless the remaining two thirds is equal to or less than R50 000. In effect, retirement fund values of R75 000 or less can be withdrawn as lump sum.

### On retirement or death

Table of taxes for years of assessment commencing on or after 1 March 2009.

| R                  | R  |
|--------------------|--|
| 0 – 300 000        | 0%   |
| 300 001 – 600 000  | + 18% of the amount above R300 000         |
| 600 001 – 900 000  | 54 000 + 27% of the amount above R600 000  |
| 900 001 – and over | 135 000 + 36% of the amount above R900 000 |

## PAYE

PAYE will be deducted by the administrators based on the tax directives received. Where recipient earned less than the tax threshold in the previous year no PAYE will be deducted.

### On withdrawal, resignation or divorce

The tax free portion is R22 500 plus the amounts paid into another pension or retirement fund subject to the maximum deduction being the lump sum and the minimum being the contributions not previously allowed as deductions.

Table of taxes for years of assessment commencing on or after 1 March 2009.

| R                  | R  |
|--------------------|--|
| 0 – 22 500         | 0%   |
| 22 501 – 600 000   | + 18% of the amount above R22 500          |
| 600 001 – 900 000  | 103 950 + 27% of the amount above R600 000 |
| 900 001 – and over | 184 950 + 36% of the amount above R900 000 |

Post-retirement annuity payments converted into a lump sum will be treated in the same way as retirement lump sum benefits.

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## ***MICRO BUSINESSES***

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A turnover tax for micro businesses with a turnover of up to R1million became effective from 1 March 2009.

The turnover tax is a substitute for income tax, CGT, STC and VAT and applies to sole proprietors, partnerships, close corporations, companies and co-operatives. The turnover tax is optional.

The applicable tax is according to the table on page 3. It is levied annually on the year of assessment ending in February. It includes two six monthly interim payments.

If elected, the turnover tax will apply for at least 3 years unless the conditions for registration no longer apply. If deregistered the business cannot reregister for 3 years.

Micro businesses will be exempted from CGT, but 50% of the amounts recovered from disposal of the business assets will be included in taxable turnover.

Micro businesses will be exempted from STC to the extent that dividends do not exceed R200 000. Any excess will be subject to STC.

The VAT threshold is R1 million with effect from 1 March 2009 and micro businesses registered for the turnover tax system will be excluded from registration.

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## ***COMPANIES AND CLOSE CORPORATIONS***

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### **NORMAL TAX**

#### **Normal companies**

Close corporations are included in the definition of company and are taxed in the same way.

The normal tax rate for years ending on or after 31 March 2008 is 28%.

#### **Small business corporations**

These entities are entitled to certain allowances and reduced tax rates. They are defined as corporations where all the shareholders or members were natural persons for the entire year, the gross income does not exceed R14 million, no shareholder holds any interest in any other company (except listed companies, shareblock companies and body corporates) during the year and less than 20% of the income is investment income or personal service income.

The tax rates applicable to these entities are according to the table on page 3.

The incentive allowances include:

100% write off of all plant and machinery used in the process of manufacture or similar process, 50: 30: 20 write off of all other assets.

## **LABOUR BROKERS AND PERSONAL SERVICE PROVIDERS**

Labour brokers and personal service providers (companies and trusts) are classified as employees and the persons paying them are required to deduct employee tax.

The employee tax deduction is: 40% where the personal service provider or labour broker is a trust and 33% if a company.

A labour broker is a natural person who provides a client with other persons to render a service or perform a service and who remunerates such persons. The definition applies from 1 March 2009 and does not include companies, close corporations or trusts. Such entities are dealt with under the definition of personal service provider.

A labour broker can apply for an exemption certificate.

A personal service provider is company or trust which renders any service personally by a person who is a connected person so such company or trust and:

- such person is regarded as an employee of the client if the services were rendered directly; or
- where the duties are performed mainly at the premises of the client or are subject to the control and supervision of the client as to the manner in which the duties are performed; or
- where more than 80% of the income of such company consists on amounts paid directly or indirectly by one client, except where such company or trust employs 3 or more full-time employees throughout the year of assessment who are not connected persons.

Personal service companies cannot qualify as micro businesses.

## **DIVIDEND**

The definition of dividend was amended with effect from 1 October 2007.

Dividend means any amount distributed by a company to its shareholders and includes specifically:

- liquidation and deregistration dividends
- going concern dividends
- reductions in share capital pursuant to share “buybacks” and excludes specifically:
  - capitalisation issues from share premium
  - reductions in share capital or share premium
  - amounts distributed to a shareholder in the same group of companies to the extent that the shareholder reduces the cost of the shares in terms of generally accepted accounting policies
  - amounts distributed by co-operatives by way of bonus to the extent that they are deductible from the co-operatives income.

Profits distributed by way of dividend include both realised and unrealised profits whether or not the unrealised profits have been recognised in its financial records.

## **Liquidation and deregistration dividends**

A portion of distributions made by a company that is being liquidated, wound up or deregistered is not deemed to be dividends.

The profits that are included in dividends are:

- revenue profits
- capital profits on assets acquired on or after 1 October 2001
- capital profits earned after 1 October 2001 on assets acquired before 1 October 2001.

Profits excluded from dividends are:

- capital profits earned before 1 October 2001.

The exemption only applies where the company has taken the steps to liquidate, wind up or deregister within 6 months of the distribution. Suitable resolutions and notifications must be lodged with the Registrar of Companies, Registrar of Close Corporations and South African Revenue Services.

Dividends declared will be treated in the same way as going concern dividends.

## **Secondary Tax on Companies "STC"**

Dividends declared on or after 1 October 2007 are subject to STC at 10%. The STC is paid on the amount by which the dividend declared is greater than the dividends received in the dividend cycle.

The dividend cycle is the period between dividend declarations – the earliest date being 1 September 1992.

The STC is payable by the end of the month following that in which the dividend is declared. Interest will be charged at the prescribed rate on late payments.

## **Deemed dividends**

Benefits received by a shareholder or person connected to the shareholder can be deemed as dividends for STC and include:

- cash or assets distributed for the benefit of the recipient
- release of recipient's monetary obligation to company
- settlement of recipient's obligation to third party
- amounts applied for the benefit of the recipient
- distributable reserves when the company ceases to be resident.

The above deeming provisions will not apply where the distributions are:

- capitalisation issues paid out of share premium
- distributions from share premium account
- remuneration due to recipient
- in excess of the reserves available for distribution
- loans subject to interest at a rate not less than the official rate
- loans in terms of normal loan scheme available to employees
- loans made to a trust to acquire shares in the company in terms of a share incentive scheme
- loans repaid before the end of the next financial year, not included in any subsequent loan and where this provision has not been applied by the company in any previous year of assessment
- loans made to a company within the same group of companies and the deemed dividend has been taken into account in the profits of the recipient company.

## **RESIDENCE BASED TAXATION**

A resident is:

- a natural person ordinarily resident in South Africa
- a natural person who complies with the physical presence test
- any entity incorporated, established or formed in South Africa or which has its place of effective management in South Africa, but excludes any person deemed to be resident of country with which a double taxation agreement is in force.

The physical presence test which must be performed each year requires a resident to comply with all three requirements which are:

- 91 days in aggregate during the current year of assessment
- 91 days in aggregate during each of the previous five years of assessment
- 915 days in aggregate during the previous five years.

A person ceases to be a resident if physically absent for 330 continuous days.

## **FOREIGN INCOME**

All foreign income must be included in taxable income. Individuals are entitled to R3 700 exempt income from foreign investments in the form of dividends or interest subject to a total exemption of R22 300 (over 65 – R32 000) including local interest.

SARS has the discretion to impose a deemed amount as foreign income on assets taking into account any information it may have relative to assets held, transferred or disposed of during the period. The income is attributed at the official interest rate – currently 8%.

### **Investments**

Interest, net rental income and income from unit trusts must be included in income. Losses incurred on rental property may not be set off against South African income but may be carried forward to future foreign income.

### **Employment**

South African residents who render services outside South Africa for a period which in aggregate exceeds 183 days commencing or ending during the period of assessment and for a continuous period exceeding 60 days during that 183 days period will not be subject to taxation on their remuneration for the period they are absent from South Africa.

### **Pensions**

Pensions are included in gross income except where they are received in terms of the social security system of another country or relate to past employment in another country.

### **Trading activities**

Income earned from a business owned as a sole proprietor outside South Africa is taxed in the normal course, except where restrictions are imposed by the foreign country on the remittance of income. In this instance the income is taxed when remitted. Losses may not be set off against income earned in South Africa.

## **Foreign dividends**

Foreign dividends received from a non-resident company, including deemed dividends, are taxable, except where:

- taxpayer holds more than 20% of the equity
- the company is a dual listed company and residents hold more than 10% of its equity share capital
- the company is a controlled foreign company (CFC) and the dividends do not exceed amounts deemed to be the resident shareholder's income under the CFC rules
- the profits from which the dividends were declared are taxable in South Africa or arose from dividends declared by a resident company.

Interest is deductible where it is incurred in the production of foreign dividends to the extent that they are included in gross income. Excess interest paid may be carried forward to the following tax year. The withholding tax paid is allowed as a credit.

## **Controlled foreign companies (CFC)**

A CFC is a non-resident entity in which South African residents hold more than 50% of the participation rights or voting control. The net income of the CFC is imputed as income of the taxpayer in the ratio of the participation share if the tax payer holds more than 1% of the participation rights. Any loss must be carried forward for set off against future income.

Each cell in a protected cell company may be deemed as a separate company and each must comply with the 50% ownership requirements.

The proportionate share of the tax payable by the CFC will be allowed as a tax rebate.

The net income of a CFC attributable to a foreign business establishment is excluded.

Where the taxpayer holds between 10% and 20% of the participation rights and voting control, an election can be made to treat the investment as a CFC.

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## **NON-RESIDENTS**

### **Interest**

Interest paid to non-residents is exempt from tax provided the taxpayer is physically absent from South Africa for 183 days and did not carry on a business and is not deemed to be ordinarily resident.

### **Dividends**

All South African dividends are exempt from tax.

### **Royalties**

A withholding tax of 12% is levied on royalty payments subject to the International agreement in force.

### **Sale of immovable property**

Non-residents are subject to CGT on the disposal of immovable property or the assets of a permanent establishment, branch or agency through which a trade is carried on situated in South Africa. The purchaser of the property is required to withhold the following amounts from the price paid on the sale of immovable property unless a directive is provided by the seller:

- 5% where the seller is a natural person
- 7,5% where the seller is a company
- 10% where the seller is a trust.

### **Estate duty**

Assets located in South Africa will be subject to estate duty, subject to International agreements.

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## **PUBLIC BENEFIT ORGANISATIONS (PBO)**

These bodies as well as new entities wishing to conduct public benefit activities have to be approved as PBOs after complying with the qualifying provisions, the most important of which are that the main object of the entity must be to carry on substantially in the Republic in a non-profit manner in one or more public benefit activities in the following categories to qualify as a PBO the main object of the entity must be to carry on substantially in the Republic in a non-profit manner one or more public benefit activities in the following categories and meet all the qualifying conditions in each category:

- welfare and humanitarian
- health care
- land and housing
- education and development
- religion, belief or philosophy
- cultural
- conservation, environment and animal welfare
- research and consumer rights
- sport
- providing funds, assets or other resources.

Donations to public benefit organisations are exempt as follows:

Company donations limited to 10% of taxable income

Individual donations limited to 10% of taxable income before the deduction of medical expenses, excluding any retirement benefit lump sum.

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## **CAPITAL GAINS TAX (CGT)**

Residents are taxed on capital profits on world-wide assets, whilst non residents are taxed on capital profits arising on the disposal of fixed property, an interest or right in fixed property or the assets of South African permanent establishment.

## Exclusions for natural persons and special trusts

An annual exclusion of R17 500 applies to both gains and losses during the person's lifetime whilst R120 000 applies in the year the person dies.

### Effective rate of tax

| <i>Taxpayer</i>            | <i>Included</i> | <i>Tax rate</i> | <i>Effective rate</i> |
|----------------------------|-----------------|-----------------|-----------------------|
| Natural person             | 25%             | 0 – 40%         | 0 – 10%               |
| Special trust              | 25%             | 0 – 40%         | 0 – 10%               |
| Other trusts               | 50%             | 40%             | 20%                   |
| Companies                  | 50%             | 28%             | 14%                   |
| Small business corporation | 50%             | 0 – 28%         | 0 – 14%               |
| Employment companies       | 50%             | 33%             | 17%                   |

### Primary residence allowance

Where the proceeds exceed R2 million, an allowance of R1,5 million may be deducted from the capital gain.

### Capital losses

Capital losses may not be set off against taxable income but must be carried forward for setoff against future capital gains.

### Disposals include:

- sale
- donation
- expropriation, conversion, grant, cession, exchange
- alienation or transfer of ownership
- forfeiture
- termination
- redemption, cancellation, surrender, discharge, release, waiver, expiry or abandonment
- scrapping, loss or destruction
- distribution of an asset by a company to a shareholder.

### Disposals exclude:

- transfer of assets as security for a debt
- issue or cancellation of own company shares
- grant of option by company to acquire shares or debentures
- distribution of assets by a trust to a beneficiary who has a vested interest.

## Deemed disposals or acquisitions

### Change of residence

When a person leaves South Africa permanently he is deemed to have sold all assets at market value, except immovable property and assets of a permanent establishment and shares and options granted less than 5 years before.

When a person becomes a resident in South Africa he is deemed to have disposed of his assets one day prior to becoming a resident and reacquired them on the day he becomes a resident, excluding immovable property and assets of a permanent establishment.

### Trading stock

The conversion of an asset from a capital asset to trading stock (or vice versa) can trigger income tax or capital gains tax.

### Personal use assets

The disposal of personal use assets is not subject to CGT, a deemed disposal is triggered when an asset ceases to be a non-personal use asset.

## Proceeds on disposal of an asset

These comprise the amount received or accruing to the taxpayer or deemed to have been received or accrued. Proceeds specifically include:

- amount by which a debt is reduced or discharged
- amount received by or accrued to a lessee for improvements to property
- market value of assets donated.

## Base cost

The base cost of assets acquired after 1 October 2001 is the cost of the asset plus any other cost incurred directly in the acquisition, improvement or selling. Only one third of the cost of holding listed shares or unit trusts may be added to the cost in arriving at the base cost. The costs which cannot be taken into account (unless they apply to business assets and are not deductible for normal tax) include borrowing costs, raising fees, rates and taxes and insurance.

Where the asset is acquired by donation the base cost is equal to the deemed proceeds taken into account at date of donation plus a portion of the donations tax depending on who pays the tax (donor or donee).

The base cost of assets acquired before 1 October 2001 may be determined at the option of the taxpayer on one of the following bases:

- market value on 1 October 2001, or
- time-apportioned base cost, or
- 20% of the proceeds on disposal (after taking into account expenditure after 1 October 2001).

The market value is determined as follows:

- South African listed securities using the values published in Government Gazette on 25 January 2002
- other listed securities at listed values on 1 October 2001
- long term insurance policies at the greater of the surrender value or fair market value according to the insurer
- all other assets on a valuation according to willing buyer and willing seller at arms length. No method of valuation is prescribed but it must be reasonable and capable of defence.

The market value should have been established by 30 September 2004.

The time-apportioned base cost requires that the date of acquisition and cost are known and is calculated according to the following formula:

$$B + \frac{[(P - B) \times N]}{T + N}$$

Where:

B = expenditure before 1 October 2001

P = proceeds on disposal (or per adjustment formula)

N = number of years held before 1 October 2001

T = number of years held after 1 October 2001

The adjustment formula applies where allowable expenditure is incurred after 1 October 2001 and is used to compute P in the previous formula as follows:

$$R \times \frac{B}{A + B}$$

Where:

R = actual proceeds

A = expenditure incurred after 1 October 2001

B = expenditure incurred before 1 October 2001

The 20% of proceeds rule is generally used where none of the other information is available. This method should not be disregarded where there has been a dramatic increase in the value of the assets.

The base cost of foreign assets in respect of which amnesty was granted cannot exceed the value of that asset on 28 February 2003 and expenditure incurred after that date.

### **Excluded assets**

Assets which are not taken into account in computing CGT include:

- primary residence where the gross proceeds do not exceed R2 million
- most personal use assets excluding gold or platinum coins, immovable property, aircraft exceeding 450kg, boat exceeding 10 metres in length, financial instrument, usufructuary or fiduciary interest which decreases over time
- lump sum benefits from pension, provident or retirement annuity funds
- long term assurance paid to original beneficiary, spouse, dependent or deceased estate
- small business (where assets do not exceed R5 million) up to R750 000 due to ill health or reaching the age of 55, subject to some conditions
- micro business assets to the extent that the proceeds from such disposals do not exceed R1.5 million over a period of 3 years
- compensation for personal injury, illness or defamation
- gains from gambling, competitions or games by natural persons
- gains or losses made by PBO
- gains and losses made by unit trust funds
- donations or bequests to PBO
- assets used to produce exempt income.

### **Foreign currency assets**

A foreign currency asset constitutes a unit of currency or an amount owing to a person, while a foreign currency liability is a foreign loan.

Any gains or losses are taxable on disposals which include:

- the conversion, sale, donation, expropriation, cession, exchange or any alienation or transfer of that foreign currency asset; or
- the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry, abandonment or loss of that foreign currency asset; or
- the vesting of any foreign currency asset of a trust in a beneficiary of that trust; or
- personal foreign currency assets (amounts that are held for the regular payment of personal expenses) are excluded.

For each foreign currency a pool must be maintained. Any addition to the pool requires the “total asset pool base cost” to be redetermined. Disposals are allocated pro rata to the “total asset pool base cost”. The average exchange rate for the year is used in the computations.

### **Rollovers**

In certain cases the gain on the disposal of certain assets can be deferred until a subsequent CGT event, including:

- transfer of assets between spouses (provided both are resident)
- involuntary disposals – where the asset is expropriated, lost or destroyed provided the full proceeds are reinvested in a similar asset in terms of a contract entered into within a year and the asset is brought into use within 3 years
- reinvestment in replacement assets that are subject to certain tax allowances, if brought into use within 3 years and in terms of a contract entered into within a year, and the full proceeds are used to replace the asset. The gain may be deferred over annual instalments, over the same period that a tax allowance may be claimed for the replacement asset..

### **Trusts**

Capital gains retained in trust are taxed in the trust's hands whilst those distributed in the same year are taxed in the beneficiary's hands.

Donations to trusts not vesting in beneficiaries are taxed in the hands of the donor.

## **DONATIONS**

Donations tax is payable on the value of any gratuitous disposal of property including disposals for inadequate consideration by a taxpayer.

Donations tax is payable at 20% and within three months of the donation.

Exemptions include donations:

- by natural persons not exceeding R100 000 per year
- to a spouse
- to an approved PBO
- casual donations up to R10 000 by donors other than natural persons
- by a public company.

## **PROVISIONAL TAX**

The following taxpayers are required to register as provisional taxpayers:

- companies and close corporations
- individuals who earn taxable income of at least R20 000 which is not remuneration as defined.

Natural persons over 65 years old, other than a director of a private company whose taxable income is less than R120 000, who do not carry on business are exempt from provisional tax.

If the basic amount is based on the most recent assessment, and that assessment is older than one year before the current tax year, the amount must be increased with 8% per annum.

### **Basic amount**

The basic amount is computed as:

- the taxable income according to the last assessment issued not less than 60 days before due date,
- less any capital gain included in the income,
- less (in the case of individuals) the taxable portion of any lump sum payments on termination of service or retirement fund benefit.

Should the last year of assessment be more than one year prior to the current tax period, an increase of 8% per annum must be included in the basic amount.

### **First provisional payment**

The first payment is due six months before the end of the tax year. The payment must be based on the basic amount or a lower estimate approved by SARS.

### **Second provisional payment**

The second payment is due on the last day of the tax year. The payment must be based on an estimate of the taxable income for the year. A two tier model is in force.

- income less than R1 million – the estimate must be equal to lesser of the basic amount or 90% of the actual taxable income, or
- income greater than R1 million – the estimate must be equal to 80% of the actual taxable income.

The penalty may be 20% of the difference between the income disclosed and the actual taxable income if SARS is not satisfied that the estimate was seriously calculated or was not deliberately or negligently understated.

### **Additional provisional payment**

Where the taxable income of an individual exceeds R50 000 and of a company exceeds R20 000, additional payments of tax are required six months after the year end to obviate interest being levied on the amounts due.

### **Penalties and interest**

Penalties may be imposed as follows:

- 10% of amount not paid by due date for the late payment of provisional tax, or
- 20% of the under-payment on under-estimation of income, or
- 20% of the actual assessed tax less amounts paid on due date on late submission of the second provisional.

Interest will be charged from the end of the period within which payment is required at the prescribed rate.

Penalties and interest paid to SARS are not tax deductible.

Interest will be paid where the taxable income of an individual exceeds R50 000 and of company exceeds R20 000 calculated from six months after the year end at the prescribed rate. Interest is taxable in the year the assessment is raised.

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## **PRIMARY RESIDENCE AMNESTY**

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Companies or trusts whose sole asset is a domestic residence and who distribute the residence to the individuals that use it as their home, are not subject CGT, transfer duty and STC. This concession is available until 31 December 2011.

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## **PRESCRIBED INTEREST RATES**

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| <b>Period</b>            | <b>Payable to taxpayer (taxable)</b> | <b>Payable by taxpayer (non-deductible)</b> |
|--------------------------|--------------------------------------|---|
| 01/11/2004 to 31/10/2006 | 6,5%                                 | 10,5%                                       |
| 01/11/2006 to 28/02/2007 | 7,0%                                 | 11,0%                                       |
| 01/03/2007 to 31/10/2007 | 8,0%                                 | 12,0%                                       |
| 01/11/2007 to 29/02/2008 | 9,0%                                 | 13,0%                                       |
| 01/03/2008 to 31/08/2008 | 10,0%                                | 14,0%                                       |
| 01/09/2008 to 30/4/09    | 11,0%                                | 15,0%                                       |
| 01/05/2009 to 30/06/2009 | 9.5%                                 | 13.5%                                       |
| 01/07/2009 to 31/07/2009 | 8.5%                                 | 12.5%                                       |
| 01/08/2009 to 31/08/2009 | 7.5%                                 | 11.5%                                       |
| 01/09/2009 to date       | 6.5%                                 | 10.5%                                       |

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## **LEARNERSHIP ALLOWANCES**

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For years of assessment commencing on or after 1 January 2010 the allowance is as follows where an employer enters into a registered Learnership agreement with a learner:

- R30 000 (or R50 000 for learners with disabilities) for each year that the learner is registered for a learnership linked to the employer's trade. The allowance is apportioned for a part of the year if the learnership was not in place for the full 12 months, or
- in the year that the learnership is successfully completed, R30 000 (or R50 000 for learners with disabilities) for each completed year of the Learnership.

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## **RESEARCH AND DEVELOPMENT**

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Research and development performed for the purposes of

- discovering novel, practical and non-obvious information of a scientific or technological nature or,
  - creating any invention, patent, design or computer copyright or similar property of a scientific or technological nature
- qualifies for incentive allowances whereby
- 150% of the operating expenses are deductible and
  - capital expenditure is depreciated on a 50:30:20 basis.

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## **WEAR AND TEAR ALLOWANCES**

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Wear and tear can be calculated on a straight-line basis provided the taxpayer complies with certain requirements:

- adequate records must be maintained
- the method must be applied to all assets in the same class
- the taxpayer must be able to provide a detailed schedule of assets disposed of including date of acquisition, tax value in the previous tax year, the price on disposal or scrapping, the final written down value of the asset to be reflected at R1, the records must be maintained so that each asset's value can be established at any point in time.

Interpretation note 47 sets out write-off periods that are acceptable to SARS. The most common of which are:

| <b>Item</b>   | <b>No of years</b> |
|---|--------------------|
| Air-conditioners (window type, moving parts only)                         | 6                  |
| Aircraft (light passenger, commercial and helicopters)                    | 4                  |
| Bulldozers, concrete mixers   | 3                  |
| Cellular telephones   | 2                  |
| Cinema equipment  | 5                  |
| Compressors   | 4                  |
| Computers (mainframe or servers)  | 5                  |
| Computers (personal computers)  | 3                  |
| Computer software (mainframes)  |                    |
| • purchased   | 3                  |
| • self-developed  | 1                  |
| Computer software (personal computers)                                    | 2                  |
| Containers  | 5                  |
| Containers (stainless steel – transport of freight)                       | 5                  |
| Crop sprayers, fertilizer spreaders, harvesters, ploughs, seed separators | 6                  |
| Curtains  | 5                  |
| Delivery vehicles   | 4                  |
| Demountable partitions  | 6                  |
| Dental and doctors' equipment   | 5                  |
| Drilling equipment (water)  | 5                  |
| Drills, electric saws   | 6                  |
| Electrostatic copiers   | 6                  |
| Excavators  | 4                  |
| Fax machines  | 3                  |
| Fishing vessels   | 12                 |
| Fitted carpets  | 6                  |
| Fork-lift trucks, front-end loaders                                       | 4                  |
| Gantry cranes   | 6                  |
| Graders   | 4                  |
| Grinding machines   | 6                  |
| Gymnasium equipment   | 10                 |
| Hairdressers' equipment   | 5                  |
| Heating equipment   | 6                  |
| Laboratory research equipment   | 5                  |
| Lathes  | 6                  |
| Laundromat equipment  | 5                  |
| Lift installations (goods and passengers)                                 | 12                 |
| Mobile caravans   | 5                  |
| Mobile cranes   | 4                  |
| Motorcycles   | 4                  |
| Musical instruments   | 5                  |
| Ovens and heating devices   | 6                  |
| Paintings (valuable)  | 25                 |
| Pallets   | 4                  |
| Passenger cars  | 5                  |

| <b>Item</b>                      | <b>No of years</b> |
|----------------------------------|--------------------|
| Photocopying equipment           | 5                  |
| Racehorses                       | 4                  |
| Refrigerated milk tankers        | 4                  |
| Refrigeration equipment          | 6                  |
| Security systems                 | 5                  |
| Shop fittings                    | 6                  |
| Telephone equipment              | 5                  |
| Television and advertising films | 4                  |
| Textbooks                        | 3                  |
| Tractors                         | 4                  |
| Trailers                         | 5                  |
| Trucks (heavy-duty)              | 3                  |
| Trucks (other)                   | 4                  |
| Workshop equipment               | 5                  |
| X-ray equipment                  | 5                  |

Assets costing R7 000 or less can be written off in full in the year of acquisition.

## **CAPITAL ALLOWANCES**

### **Urban development zone allowance**

The capital allowances will apply until 31 March 2014 to buildings in an urban development zone.

The refurbishment of existing buildings entitles the taxpayer to an allowance of 20% straight-line over 5 years, whilst the construction of a new building entitles the taxpayer to an allowance of 20% in the first year and 8% thereafter provided that the building commenced after 21 October 2008. Where the building commenced prior to that date the annual allowance is 5%.

An enhanced allowance will be considered for private developers who improve another party's land, subject to anti-avoidance measures.

Low-cost residential units qualify for higher allowances. A low-cost residential unit is a building whose cost does not exceed R200 000 or an apartment whose cost does not exceed R250 000. The refurbishment of such units may be written off over 4 years, whilst new units may be written off: 25% in year 1, 13% in years 2 – 6, and 10% in year 7.

### **Residential units**

Residential units acquired or erected after 21 October 2008 qualify for an allowance provided that the unit is new and unused, used solely for the purposes of trade, situated in the Republic and the taxpayer must own at least 5 residential units for the purposes of trade. The annual allowance until the cost is written off is 5% on normal units and 10% on low-cost units.

### **Special depreciation allowance**

Certain assets used for trade qualify for this allowance and include:

- plant and machinery used directly in a process of manufacture
- machinery, implements and utensils used by a hotelkeeper
- aircraft and ships brought into use after 1 April 1995.

These assets all qualify to be written off over 5 years, except for new and unused plant which may be written off 40% in the first year and 20% for the subsequent 3 years.

Farming plant and equipment, assets used for the production of bio-diesel or bio-ethanol or assets used for the production of electricity from wind, sunlight, gravitational water forces or biomass may be written off 50% in year 1, 30% in year 2 and 20% in year 3.

### **Industrial buildings**

Building erected after 30 September 1999 used mainly for manufacture qualify for a 5% annual allowance. The allowance can be claimed by a purchaser of a qualifying building.

### **Hotel buildings**

New buildings erected after 4 June 1988 qualify for a 5% annual allowance, whilst improvements which do not extend the exterior framework of the building qualify for a 20% annual allowance.

### **Commercial buildings**

New and unused buildings erected for the purposes of trade which does not include residential accommodation qualify for a 5% annual allowance.

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## ***ASSET REINVESTMENT RELIEF***

The taxpayer can elect to postpone the recoupment on disposal of an asset where:

- the disposal of the asset was involuntary, or
- the asset disposed of was subject to a capital deduction or wear and tear provided that the replacement assets are brought into use within three years.

The recoupment can be set off over the same period as the wear and tear.

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## ***RESTRAINT OF TRADE***

Restraint of trade payments are taxable in the hands of individuals, labour brokers and personal service providers. Such payments are deductible by the payer over 3 years if the period of the restraint is less than 3 years, or over the period of the restraint if longer.

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## ***LEASEHOLD IMPROVEMENTS***

Improvements made to leasehold property in terms of a lease agreement by the lessee must be included in the income of the lessor. Either the stipulated amount or a fair and reasonable value will be included.

The lessee may deduct such expenditure over the period of the lease. The lessor may be entitled to discount the value of the improvements over the period of the lease or 25 years whichever is the shorter.

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## ***BURSARIES***

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Bursaries are exempt from tax where:

- the bursary is granted to an employee who agrees to reimburse the employer for the bursary if the employee fails to complete his studies
- the bursary is granted to a relative of an employee who earns less than R100 000 per annum and is limited to R10 000.

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## ***PRE-TRADE EXPENDITURE***

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Expenditure which would normally be deductible from income, actually incurred prior to the commencement and in connection with a specific trade can be deducted from the income of that trade. The deduction is limited to income from that trade and any shortfall can be carried forward to the subsequent years of assessment.

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## ***PRE-PRODUCTION INTEREST***

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Interest and finance charges incurred on borrowings raised for the acquisition, installation, erection or construction of machinery, plant, building, etc which are to be used in the taxpayer's trade may be deducted in the year in which the asset is brought into use.

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## ***VALUE ADDED TAX (VAT)***

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VAT is levied on the supply of most goods at 14%.

### **Registration and submission of returns**

An enterprise whose turnover has exceeded R1 million in any twelve month period or if there are reasonable grounds to believe that turnover will exceed R1 million, is required to register as a VAT vendor. Voluntary registration is allowed where turnover is likely to exceed R50 000 (R60 000 in the case of commercial rental).

PBOs can register for VAT even if they do not carry on an enterprise.

VAT returns must be submitted:

- every four months if annual turnover is less than R1,5 million
- every two months if annual turnover is between R1,5 million and R30 million
- every month if annual turnover is over R30 million.

The annual turnover relates to any 12 month period. It is incumbent on the vendor to notify SARS as soon as the turnover exceeds or is expected to exceed R30 million.

### **Exempt supplies**

Certain supplies are exempt from VAT and they include:

- rental of residential accommodation
- education services
- road and rail transport for passengers
- share block and body corporate levies
- certain financial services (unless zero-rated).

## **Zero-rated supplies**

Certain taxable supplies are zero-rated and include:

- sale of a going-concern if both seller and purchaser are registered for VAT
- certain goods for farming purposes
- basic foodstuffs
- petrol and diesel
- gold coins issued by the Reserve Bank
- transport of passengers and goods to and from export country, including insurance
- certain services rendered to non-residents who are outside South Africa at time service is rendered
- welfare activities, including provision of food and lodging, etc
- municipal property rates from 1 July 2006.

## **Input tax**

Input tax can only be claimed where:

- the tax is incurred by the vendor for the purpose of making taxable supplies
- there is a valid tax invoice which is required for any supply in excess of R3 000, which states the name and VAT number of the customer as well as full details of the supplier.

Notional input tax can be claimed where

- the record keeping requirements for second hand goods are met
- the supplier of a property was not registered for VAT limited to the amount of transfer duty paid.

The VAT may not be claimed on:

- entertainment expenses, including food, beverages, amusement or recreation
- fees or subscriptions in respect of club or society membership
- on motor cars (including hire). Game-viewing vehicles and hearses have been excluded from the motor car definition.

## **Time of supply**

The time of supply is generally the earlier of:

- date of invoice or
- date of payment of any part of the price.

The actual date of supply is not regarded unless the parties are connected.

Rentals or periodic supplies take place at the earlier of when payment is due or made.

## **Value rules**

Generally the value is the consideration paid.

Where the enterprise deregisters as a vendor, all goods on hand are valued at the lesser of cost or market value.

The VAT on motor vehicle fringe benefits is calculated monthly as follows: cash cost of vehicle (excluding VAT) x 0,3% x 14/114.

## **Penalties and interest**

VAT returns are to be submitted and payment made by the last business day on or before the 25th day of the month unless the returns are eFiled, in which case the due date is the last business day of the month.

The late submission of a VAT return results in a penalty of 10% of the VAT payable and interest at the prescribed rate for the month or part thereof.

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## ***SKILLS DEVELOPMENT LEVY (SDL)***

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The levy is utilised to develop the skills of the workforce, improve productivity and the quality of life of the workers.

Employers are encouraged to create an active learning environment by being eligible for grants if their training programs meet the Sector Education and Training Authority (SETA) requirements.

Employers with a payroll in excess of R500 000 are required to register and pay the 1% levy on the total remuneration used to compute employees' tax.

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## ***OBJECTIONS AND APPEAL***

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If a taxpayer disagrees with any tax assessment, an objection may be lodged followed by an appeal to the Tax Board or the Tax Court.

Provision is also made for the matter to be dealt with by way of an alternative dispute resolution (ADR) process.

The process is as follows:

Receive assessment and lodge objection thereto within 30 days by way of ADR1 form, including the grounds for the objection. The Commissioner may condone a "late" objection in certain circumstances.

The Commissioner then has 90 days from the date of the objection to respond. He may allow, partially allow or disallow the objection.

The taxpayer may lodge an appeal against the decision by way of an ADR2 document within 30 days of the notice of disallowance. The lodging of an appeal does not take away the obligation to pay the assessed tax.

The matter can then be heard by the Tax Board and possibly followed by the Tax Court, or

- proceed directly to the Tax Court, or
- go to ADR and thereafter the Tax Board or Tax Court, if necessary.

The Income Tax Act governs the procedures for all the legal steps. At any of the stages, the parties may not accept the findings and proceed to the next level, until it reaches the Tax Court.

The final costly step in the process is for the matter to be heard by the Appellate Division of the High Court of South Africa, at which stage the decision is final and binding.

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## **ADVANCE TAX RULINGS**

A taxpayer may apply for an advance tax ruling from SARS to obtain certainty and clarity on the Commissioner's interpretation and application of the tax laws on proposed transactions. This ruling will be binding provided full and accurate disclosure has been made. It is proposed that this service will only be available to compliant taxpayers ie all tax returns must be submitted up to date and all outstanding taxes paid.

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## **GENERAL ANTI-AVOIDANCE PROVISIONS**

The anti-avoidance provisions apply to schemes or arrangements entered into on or after 2 November 2006.

- Impermissible avoidance arrangements are those whose sole or main object is to obtain a tax benefit and are entered into in a manner not normally employed for bona fide business purposes, or lack commercial substance or create rights and obligations not normally created between persons dealing at arm's length.
- Consequences of such arrangements may result in the Commissioner disregarding, combining or recharacterising any steps of the arrangement, disregarding any accommodating or tax indifferent party, deeming connected persons to be a single person, or treatment of the arrangement as if it had not been entered into.
- Lack of commercial substance exists if the arrangement does not have a substantial effect on the business risks, utilises round trip financing or an accommodating or tax indifferent party and has elements that have the effect of offsetting or cancelling each other.
- Presumption of purpose of the arrangement as being one solely or mainly created to obtain a tax benefit by the Commissioner must be disproved by the taxpayer.

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## **VOLUNTARY DISCLOSURE**

A voluntary disclosure programme will be effective from 1 November 2010 to 31 October 2011, whereby taxpayers may come forward to disclose their defaults and regularise their tax affairs. Individuals may also avail themselves of this dispensation to disclose unreported bank accounts overseas and to fully disclose untaxed revenue. The full amount of the tax will remain due, but will avoid the imposition of interest.

To be applicable, complete disclosure must be made to SARS, who must not have been aware of the default and penalty or additional tax would have been imposed if SARS had discovered the default.

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## **2010 FIFA WORLD CUP**

As part of the bid to host the 2010 FIFA World Cup, various guarantees were issued to FIFA including those dealing with Customs Duties and other taxes. The legislation is effective from 1 April 2006.

A “tax-free bubble” concept applies to Income Tax and VAT and is restricted to FIFA-designated Sites for specified periods. The profit on goods sold or services rendered will not be subject to income tax and the VAT will be zero-rated. Expenses incurred in the production of the tax free income will not be permitted as deductions. The tax relief will apply to both residents and non-residents.

The “tax-free bubble” will only be operative in respect of sub-components of a FIFA-designated Site as follows:

- the stadia, any exclusion zone, official Championship-related parking areas, Championship press and television centres, VIP and other areas and facilities utilised for Official events as agreed by FIFA and SARS for the period commencing one week before the 2009 FIFA Confederation Cup and ending immediately after the closing ceremony;
- training sites for official FIFA sanctioned training days;
- official host city public viewing venues on Championship match days; and
- the FIFA Flagship Store for six months before the 2009 FIFA Confederation Cup and ending one month after the closing ceremony.

Relief from import taxes will apply to qualifying persons including FIFA and its subsidiaries, FIFA National Associations, FIFA confederations, media representatives, commercial affiliates, merchandising partners, licensees, FIFA Flagship Store operators and other FIFA designated service providers, host broadcaster.

## **TRANSFER DUTIES**

### **Transfer duty on immovable property**

Natural persons after 1 March 2006

|                            |    |
|----------------------------|----|
| On first R500 000          | 0% |
| On R500 001 to R1 000 000  | 5% |
| On amount above R1 000 000 | 8% |

Companies, close corporations and trusts 8%

The transfer of shares in a residential property company is subject to transfer duty as above. The residential property company owns a dwelling house, holiday home, land zoned for residential use, other than apartment complexes, and where the fair value of the property is more than 50% of the total fair value of all other assets (other than financial instruments).

## **SECURITIES TRANSFER TAX (STT)**

This tax is imposed at a rate of 0,25% on the consideration relating to the transfer of listed or unlisted securities. Securities consist of shares in companies or member’s interests in close corporations.

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## **ANNUAL RETURNS FOR COMPANIES AND CLOSE CORPORATIONS**

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Public and External Companies, Private and Incorporated Companies and Close Corporations are required to lodge annual returns. The due date is the last day of the month following the registration month.

These returns are lodged on the CIPRO website. Failure to comply will lead to deregistration which can only be reversed by lodging of the applicable return and prior to the final deregistration notice.

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## **FOREIGN EXCHANGE**

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The regulations and restrictions discussed below are in force as at 17 February 2010.

### **Residents**

Residents (natural persons), who are over the age of 18 years may be permitted to avail of a single allowance (“general allowance”) within an overall limit of R750 000 per individual per calendar year, without the requirement to obtain a Tax Clearance Certificate, to cover the following discretionary allowances:

- Monetary gifts and loans
- donations to missionaries
- maintenance transfers
- travel allowance.

Residents (natural persons) under the age of 18 years may only be accorded a travel allowance of up to an amount of R160 000 per calendar year.

Residents living abroad temporarily are permitted to export household and personal effects motor vehicles, caravans, trailers, motorcycles, stamps and coins (excluding coins that are legal tender in the Republic) per family unit or single person within the overall ensured value of R1 million. Such persons must furnish an undertaking that:

- All goods exported on departure together with all accumulated foreign assets, where such foreign assets were acquired with funds transferred from the Republic, or the sale proceeds thereof will be repatriated on resumption of residency in the Republic; and
- local credit and/or debit cards will not be utilised whilst temporarily abroad.

Permanent residents who are taking full-time courses at schools, universities or similar educational institutions abroad may utilise foreign exchange facilities for study purposes available through Authorised Dealers on the basis

- of direct transfer to the institution concerned, the relative tuition and academic fees for the academic year;
- of an allowance in terms of the general allowance. Should a spouse accompany a student, the general allowance may be accorded the spouse;
- of the authorised export, on a Form N.E.P., of any household and personal effects, including jewellery (but excluding motor vehicles), up to a value of R30 000 per student.

Maintenance transfers, included in the general allowance, may be made by Authorised Dealers provided that the beneficiaries are either the father, mother, brother or sister of the applicant and are in necessitous circumstances. Documentary evidence signed by a magistrate or civic official in the city or town in which the beneficiary is resident stating, inter alia:

- The full names of the beneficiary;
- the address of the beneficiary;
- the family relationship with the remitter in the RSA (this relationship may only be father, mother, brother or sister); and
- confirming that the beneficiary is in need.

New documentary evidence must be called for after one year, and thereafter on an annual basis.

Alimony payments may be made by Authorised Dealers on production of a court order. An amount of R9 000 per month over and above the amount awarded may be transferred.

## **Capital investments**

### **Natural persons**

Residents (natural persons) who are tax-payers in good standing and over the age of 18 years, are permitted to make foreign investments of up to R4 million, but, prior to the transfer of any funds, a duly completed "TAX CLEARANCE CERTIFICATE (IN RESPECT OF FOREIGN INVESTMENTS)", issued by the South African Revenue Service, must be presented to the bank.

### **Companies**

Foreign direct investments of up to R500 million per calendar year no longer require approval from the Financial Surveillance department. This applies to new foreign direct investments whereby a minimum of 10% voting right is obtained.

The Authorised Dealers are required to ensure that the investments are bona fide and to report the investments to the Financial Surveillance Department.

Audited financial statements of the target company and its subsidiaries are to be submitted annually to the Financial Surveillance Department.

Foreign dividends repatriated to South Africa may be retransferred abroad at any time and used for any purpose. Such funds may, not be utilised to fund investments or loans in South Africa for any purpose whatsoever via a loop structure. These funds may be invested in investments listed on the JSE Limited or the Bond Exchange of South Africa.

### **Emigration**

Emigrants are required to complete an MP336 (setting out the details of their assets and liabilities) and to obtain written confirmation from the South African Revenue Services that their commitments have been met or that suitable arrangements have been made.

Emigrants are entitled to received the general allowance mentioned if over 18 years of age, and R160 000 if under 18 years of age. They are also entitled to a foreign capital allowance of:

- single persons R4 000 000
- family unit R8 000 000.

Emigrants can apply to transfer blocked assets in excess of the limit at an exit charge of 10% of the amount.

These capital allowances must be reduced by the capital foreign investments.

Household and personal effects, motor vehicles, caravans, trailers, motor cycles, stamps and coins with an insured value of R1 000 000 may be exported.

Assets of emigrants are classified as “blocked” and documents giving title to assets must be lodged with the Authorised Dealer. Blocked assets may be used for:

- Emigration expenses, eg moving and packing
- Investment in listed South African shares, gilts, futures and unit trusts
- Living expenses on return to South Africa limited to
 

|                     |                   |
|---------------------|-------------------|
| Adults              | R3 000 per day    |
| Children (under 12) | R1 500 per day    |
| Maximum per family  | R75 000 per annum |
- Travel cost for return visit to South Africa by most direct route
- Travel cost paid in South Africa to emigrant's new country of residence
- Income tax on income earned prior to emigration
- Tuition and boarding fees paid for children who have remained in South Africa or returned to complete studies
- Rates and taxes on vacant stands
- Membership and subscriptions fees to professional and technical societies
- Premiums on endowment, life assurance and retirement annuity funds taken out prior to departure:
  - capital proceeds will remain blocked
  - annuities will be remittable with approval
- Maintenance payments to a local resident in terms of a court order
- Professional fees for services rendered in connection with blocked assets
- Medical expenses incurred on return visit
- Gifts, donations and maintenance to third parties to maximum of R100 000 pa
- Maintenance and alterations to fixed property to maximum of R100 000 pa.

Income which is eligible for remittance to an emigrant is defined by the Financial Surveillance Department as:

- interest and profits;
- dividends (the declaration of a dividend in specie or a special dividend for any purpose requires the prior approval of the Financial Surveillance Department);
- income distributions from close corporations;
- directors' fees/close corporation members' fees;
- monthly pension payments – paid by registered pension funds only;
- cash bonuses on insurance policies;

- income received from a trust created in terms of a last will and testament;
- rentals on fixed property;
- the difference between the purchase consideration and maturity value of quoted gilts;
- monthly annuity payments where the annuity has been in existence for a period of five years prior to the date of emigration; and
- monthly annuity payments where the annuity has been funded from a pension payout from a previous employer.

Applications for the transfer to emigrants of any other form of income must be referred to the Financial Surveillance Department.

Income from the following sources is not eligible for remittance without approval of the Financial Surveillance Department:

- Inter vivos trusts; and
- a donation or gift received by emigrants within the last three years or a capital distribution from a trust inter vivos received within the last three years prior to date of departure.

### **Borrowings**

Prior approval must be obtained for foreign loans from Authorised Dealers or the Financial Surveillance Department, in the case of affected persons. This approval is also required for loan commitments arising from non-payment for imports and overseas services.

The detailed information required includes the denomination of the loan, terms of repayment, interest rate, security, copy of the loan agreement, the relationship between the borrower and lender, confirmation that there is no South African interest in the foreign lender.

Companies (applies to close corporations, foundations, trusts and partnerships) having a non-resident interest of 75% are regarded as affected companies. These companies may not accept or repay loans from their non-resident shareholders without approval from the Financial Surveillance Department. These companies are required to ensure that their local borrowings fall within the restrictions imposed by the local borrowings formula.

### **Inheritances**

#### *Estate of South African resident*

Cash bequests to non-resident beneficiary of a deceased estate of a South African resident may be remitted.

Securities inherited by non-resident are to be endorsed "Nonresident" and the proceeds on disposal are remittable.

#### *Estate of non-resident*

South African assets are freely remittable to non-resident beneficiaries.

Foreign assets inherited by residents from a non-resident estate do not have to be disclosed to an Authorised Dealer but are to be disclosed to the South African Revenue Service if and when applicable.

## **Immigrants**

On arrival, immigrants are required to declare to an Authorised Dealer that they possess foreign assets and to undertake that their foreign assets will not be placed at the disposal of a third party South African resident.

Immigrants may freely deal with their foreign assets and income.

Assets introduced into South Africa may be retransferred together with normal growth during first 5 years.

After 5 years the immigrant will be classified as South African resident and qualifies for foreign capital investment and emigration allowances.

## **RETENTION OF RECORDS**

Below are the recommended retention periods which commence from the date of the last entry in the record.

### **Statutory Records**

Memorandum and Articles of association, certificate to commence business, certificate of incorporation and change of name, founding statement, amended founding statement, minute books and notice of minutes.

Share registers, directors' attendance registers, directors' interests

Cancelled share certificates

### **Originals**

Indefinite

15 years

12 years

### **Accounting records**

Books of prime entry, including cash books, creditors' ledgers, debtors' ledgers, fixed asset registers, general ledgers, journals, purchase and sales journals, subsidiary journals and ledgers

15 years

Vouchers, working papers, bank statements, costing records, creditors' invoices and statements, debtors' invoices and statements, goods received notes, journal vouchers, payrolls, purchase orders and invoices, salary and wage registers, sales tax records, tax returns and assessments

5 years

### **Employee records**

Personnel records, payrolls, tax records

5 years

### **Capital gains tax**

All records to date of sale including base costs and valuations, thereafter from date return lodged

5 years

## **NEW BUSINESS START UP REQUIREMENTS**

First the decision of the best entity to house the business has to be made. The options range from the basic sole proprietorship to complex structures including companies and trusts.

The choice of the entity should take the new Companies Act into account – though the date of implementation of this Act has not been finalised. Specific consideration should be given to the shareholders' agreement should this be deemed necessary.

On selection of company or close corporation, the following documents need to be lodged with the Registrar of Companies or Close Corporations:

Memorandum and Articles of Association and Certificate to Commence Business and confirmation of directors, officers and auditors or Founding Statement.

The opening of bank accounts is dependent on the above documents being duly registered.

Once the company, close corporation is duly registered and the bank account opened, application can be made for VAT registration. The application must be accompanied by a business plan.

The entity must be registered for income tax.

Employers must register for PAYE, Skills Development Levies, Unemployment Insurance and Workmen's Compensation  
The entity must register with the relevant Industrial Council.

## **FINANCING**

The payment required for each R1 000 borrowed is as stated below. For example, a bond of R100 000 for 20 years at 10% is  $100 \times 9.65 = R965$  per month.

### **Mortgage bond**

| <b>Rate</b> | <b>10 years</b> | <b>20 years</b> | <b>25 years</b> | <b>30 years</b> |
|-------------|-----------------|-----------------|-----------------|-----------------|
| 8%          | 12.13           | 8.36            | 7.72            | 7.34            |
| 9%          | 12.67           | 9.00            | 8.39            | 8.05            |
| 10%         | 13.22           | 9.65            | 9.09            | 8.78            |
| 11%         | 13.78           | 10.32           | 9.80            | 9.52            |
| 12%         | 14.35           | 11.01           | 10.53           | 10.29           |
| 13%         | 14.93           | 11.72           | 11.28           | 11.06           |
| 14%         | 15.53           | 12.44           | 12.04           | 11.85           |

### **Short term finance – instalment credit and leases**

| <b>Rate</b> | <b>36 months</b> | <b>48 months</b> | <b>60 months</b> |
|-------------|------------------|------------------|------------------|
| 8%          | 31.34            | 24.41            | 20.28            |
| 9%          | 31.80            | 24.89            | 20.76            |
| 10%         | 32.27            | 25.36            | 21.25            |
| 11%         | 32.74            | 25.85            | 21.74            |
| 12%         | 33.21            | 26.33            | 22.24            |
| 13%         | 33.69            | 26.83            | 22.75            |
| 14%         | 34.18            | 27.33            | 23.27            |
| 15%         | 34.67            | 27.83            | 23.79            |
| 16%         | 35.16            | 28.34            | 24.32            |
| 17%         | 35.65            | 28.86            | 24.85            |

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**FOREX RATES**

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|            | US\$   | UK£     | €       | AUS\$  |
|------------|--------|---------|---------|--------|
| 27/02/2009 | 9.9498 | 14.1347 | 12.5930 | 6.3898 |
| 31/03/2009 | 9.6266 | 13.7429 | 12.7861 | 6.6401 |
| 30/04/2009 | 8.4291 | 12.5602 | 11.2554 | 6.2073 |
| 29/05/2009 | 7.9795 | 12.8138 | 11.1741 | 6.3251 |
| 30/06/2009 | 7.7756 | 12.9362 | 10.9608 | 6.3171 |
| 31/07/2009 | 7.8074 | 12.9131 | 11.0057 | 6.4558 |
| 31/08/2009 | 7.7819 | 12.6106 | 11.1095 | 6.5147 |
| 30/09/2009 | 7.4083 | 11.9108 | 10.8288 | 6.5232 |
| 30/10/2009 | 7.7703 | 12.8466 | 11.5167 | 7.0922 |
| 30/11/2009 | 7.4003 | 12.1960 | 11.1256 | 6.7751 |
| 31/12/2009 | 7.3721 | 11.8934 | 10.6151 | 6.6269 |
| 29/01/2010 | 7.5879 | 12.2712 | 10.6019 | 6.7797 |

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**PRIME OVERDRAFT RATES**

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| Date of change  | Rate<br>% |
|-----------------|-----------|
| 2002 16 January | 14,00     |
| 18 March        | 15,00     |
| 14 June         | 16,00     |
| 14 September    | 17,00     |
| 2003 13 June    | 15,50     |
| 18 August       | 14,50     |
| 15 September    | 13,50     |
| 20 October      | 12,00     |
| 15 December     | 11,50     |
| 2004 16 August  | 11,00     |
| 2005 15 April   | 10,50     |
| 2006 8 June     | 11,00     |
| 3 August        | 11,50     |
| 13 October      | 12,00     |
| 8 December      | 12,50     |
| 2007 8 June     | 13,00     |
| 17 August       | 13,50     |
| 12 October      | 14,00     |
| 7 December      | 14,50     |
| 2008 11 April   | 15,00     |
| 13 June         | 15,50     |
| 12 December     | 15,00     |
| 2009 6 February | 14,00     |
| 25 March        | 13,00     |
| 4 May           | 12,00     |
| 29 May          | 11,00     |
| 14 August       | 10,50     |

Banks do not always adjust their rates on the same day