

**TAX GUIDE FOR
SMALL BUSINESSES**

2006/07



www.sars.gov.za

TAX GUIDE FOR SMALL BUSINESSES 2006/07

This brochure is a general guide dealing with the taxation of small businesses. It is not meant to go into the precise technical and legal detail that is often associated with taxation. It should, therefore, not be used as a legal reference.

The information in this brochure relates to the 2006/07 year of assessment (tax year) that covers in the case of –

- Individuals, the period 1 March 2006 to 28 February 2007
- Companies and close corporations, tax years ending during the period of 12 months ending 31 March 2007.

This guide has been updated to include the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 and the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006.

The Commissioner for the South African Revenue Service is responsible for the administration of tax and customs legislation.

Should you require additional information concerning any aspect of taxation, you may:

- Contact your local SARS office
- Contact SARS Call Centre on 0860 12 12 18
- Visit the SARS website <http://www.sars.gov.za>
- Contact your own tax advisor / practitioner

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SOUTH AFRICAN REVENUE SERVICE

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1. OVERVIEW

This guide contains information about the tax laws and some other statutory obligations that apply to small businesses. It describes some of the forms of business organisations in South Africa – sole proprietorship, partnership, close corporation and a private company – and explains in general terms the tax responsibilities of each.

This edition also contains general information, such as the type of business organisation, registration, aspects of record keeping, relief measures for small business corporations, manufacturing enterprises, how net profit/loss and taxable income/assessed loss are determined. This helps to illustrate the specific tax considerations for the different types of business organisations. Furthermore, it contains information on some of the other taxes you may have to pay in addition to income tax.

The information in this publication applies to different kinds of businesses and is of a general nature. Specific types of businesses are not discussed such as insurance companies, banks and investment companies. However, the requirements of the tax laws regarding registration, filing of tax forms, etc. also apply to them.

1.1 Glossary

| | | |
|--------------|---|--|
| Act | : | Income Tax Act, No 58 of 1962 |
| CGT | : | Capital Gains Tax |
| Commissioner | : | Commissioner for the South African Revenue Service |
| ITAC | : | International Trade Administration Commission |
| PAYE | : | Pay-As-You-Earn (Employees' Tax) |
| RBT | : | Residence Basis of Taxation |
| RSA | : | Republic of South Africa |
| SARS | : | South African Revenue Service |
| SBCs | : | Small Business Corporations |
| SDL | : | Skills Development Levy |
| SMMEs | : | Small, Medium and Micro Enterprises |
| STC | : | Secondary Tax on Companies |
| TCC | : | Tax Clearance Certificate |
| UIC | : | Unemployment Insurance Contributions |
| UST | : | Uncertificated Securities Tax |
| VAT Act | : | Value-Added Tax Act, No. 89 of 1991 |
| VAT | : | Value-Added Tax |

Important Note: Tax Amnesty for Small Businesses

The Minister of Finance announced in the 2006 Budget that Government will introduce a tax amnesty for small businesses.

For more information see page 25 in this Guide under the heading: Tax Amnesty for Small Businesses.

2. GENERAL CHARACTERISTICS OF DIFFERENT TYPES OF BUSINESSES

2.1 Introduction

Once you have decided to start a business, you must also decide (which will be your own choice entirely) what type of business entity to use. There are legal, tax and other considerations that can influence this decision. The legal and other considerations are beyond the scope of this guide while the tax consequences of conducting business through each type of entity will be an important element in making your decision.

The purpose of this guide is not to advise you on the type of business vehicle through which to conduct your business, but to provide entrepreneurs with information to assist them to make their own informed decisions when starting a business.

- **Sole Proprietorship**

A sole proprietorship is a business that is owned / operated by one person. This is the simplest form of business organisation. The business has no existence (therefore not a legal person such as a company) separate from the owner who is called the proprietor. The owner must include the income from such business in his/her own income tax return and is responsible for the payment of taxes thereon. Only the proprietor has the authority to make decisions for the business. The proprietor assumes the risks of the business to the extent of all of his or her assets whether used in the business or not.

Some advantages of a sole proprietorship are:

- It is simple to establish and operate.
- The owner is free to make decisions.
- It has a minimum of legal requirements.
- The owner receives all the profits.
- It is easy to discontinue the business.

Some disadvantages of a sole proprietorship are:

- Unlimited liability of the owner. The individual owner is legally liable for all the debts of the business. Not only the investment or business property, but any personal and fixed property may be attached by creditors.
- Limited ability to raise capital. The business capital is limited to whatever the owner can personally secure. This limits the expansion of a business when new capital is required. A common cause of failure of this form of business organisation is lack of funds. This restricts the ability of a sole proprietor to operate the business effectively and survive at an initial low profit level, or to get through an economic “rough spot”.
- Limited skills. One individual alone has limited skills, although the owner may be able to hire employees with sought after skills.

- **Partnership**

A partnership (or unincorporated joint venture) is the relationship existing between two or more persons who join together to carry on a trade, business or profession. A partnership is also not a separate legal person/taxpayer. Each partner is taxed on his/her share of the partnership profits. Each person may contribute money, property, labour or skills, and each expects to share in the profits and losses of the business. It is similar to a sole proprietorship except that a group of owners replaces the individual owner. The number of persons who may form a partnership agreement is limited to twenty. As is the case for a sole proprietorship the partnership has advantages and disadvantages.

Some advantages of a partnership are:

- It is easy to establish and operate.
- It has greater financial strength.
- It combines the different skills of the partners.
- Each partner has a personal interest in the business.

Some disadvantages of a partnership are:

- Unlimited liability of the partners. Each partner may be held liable for all the debts of the business. Therefore, one partner not exercising sound judgment could cause the loss of the assets of the partnership as well as the personal assets of all the partners.
- The authority for decision-making is shared and differences of opinion could slow the process down.
- It is not a legal entity.
- Lesser degree of business continuity as the partnership technically dissolves every time a partner joins or leaves the partnership.
- Number of partners restricted to 20, except in the case of certain professional partnerships such as accountants, attorneys, etc.

• Close Corporation

A close corporation is similar to a private company. It is a legal entity with its own legal personality and perpetual succession and must register as a taxpayer in its own right. The owners of the close corporation are the members. Members do not hold shares but have a membership interest in the close corporation. This interest is expressed as a percentage. A close corporation has no share capital and therefore no shareholders. Membership, generally speaking, is restricted to natural persons or (from 11 January 2006) a trustee of an inter vivos trust or testamentary trust as contemplated in section 29(1A) or 29(2)(b) of the Close Corporation Act No. 69 of 1984. A close corporation may not have an interest in another close corporation. The minimum number of members is one and the maximum number of members is ten. For tax purposes, a close corporation is dealt with as if it were a company.

Some advantages of a close corporation are:

- It is relatively easy to establish and operate.
- The life of the business is perpetual (i.e. continues uninterrupted as members change).
- The members have limited liability, i.e. they are generally not liable for the debt of the close corporation. However, it should be noted that certain tax liabilities do exist. One such instance is where an employer / vendor is a close corporation, every member and person who performs functions similar to a director of a company, who controls or is regularly involved in the management of the company's overall financial affairs will be personally liable for the employees' tax, value-added tax, additional tax, penalty or interest for which the company is liable, i.e. where these taxes have not been paid to SARS within the prescribed period.
- The transfer of ownership is easy.
- Fewer legal requirements than a private company.

Some disadvantages of a close corporation are:

- Number of members restricted to a maximum of ten.
- More legal requirements than a sole proprietorship or partnership.

- **Private Company**

A company is treated by law as a separate legal entity and must also register as a taxpayer in its own right. It has a life separate from its owners with rights and duties of its own. The owners of a private company are the shareholders. The managers of a private company may or may not be shareholders. A company may not have an interest in a close corporation. The maximum number of shareholders is restricted to fifty.

Some advantages of a private company are:

- The life of the business is perpetual (i.e. it continues uninterrupted as shareholders change).
- The shareholders have limited liability, i.e. they are generally not responsible for the liabilities of the company. However, it should be noted that certain tax liabilities do exist. One such instance is where an employer / vendor is a company, every shareholder and director who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the employees' tax, value-added tax, additional tax, penalty or interest for which the company is liable, i.e. where the taxes have not been paid to SARS within the prescribed period.
- The Companies Act, No 61 of 1973 imposes personal liability on directors where in common law such liability may not exist, or be difficult to prove. Any person, not only a director, who is knowingly a party to the carrying on of a business in a reckless (gross carelessness or gross negligence) or fraudulent manner can be personally liable for all or any of the debts of the company.
- The transfer of ownership is easy.
- It is easier to raise capital and to expand.
- Efficiency of management is maintained.
- It is adaptable to both small and medium to large business.

Some disadvantages of a private company are:

- It is subject to many legal requirements.
- It is more difficult and expensive to establish and operate than other forms of ownership.

- **Other types of business entities as described in the Act**

- Personal Service Company and Personal Service Trust

A personal service company or personal service trust is any company or trust (other than a labour broker) where services are rendered on behalf of that company or trust to a client of that company or trust personally by any person who is a connected person¹ in relation to that company or trust, and –

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

¹ A connected person generally means –

- in the case of a natural person, a relative of a natural person, any trust of which a natural person is a beneficiary;
- in the case of a trust, a beneficiary of a trust and any relative in relation to such beneficiary;
- in the case of a company, the holding company, subsidiaries, any other company where both such companies are subsidiaries of the same holding company and any person other than a company who individually or jointly with any other connected person in relation to him/herself holds directly or indirectly at least 20 per cent of the company's equity share capital or voting rights.

For the complete definition of a connected person, see section 1 of the Act.

- o that connected person or that company or trust is subject to the control or supervision of that client as to the manner in which or the hours during which the duties are performed in rendering that service; or
- o the amounts paid or payable in respect of that service consist of or include earnings which are payable at regular intervals, daily, weekly, monthly or other intervals; or
- o more than 80% on the income of that company or trust consists of amounts directly or indirectly received from one client.

Where the company or trust employs more than three full-time employees throughout the year of assessment who are engaged in the business of the company or trust, it will not be classified as a personal service company/personal service trust.

Furthermore, the employee may not be a connected person in relation to the company or trust for the year of assessment.

Payments made to personal service companies and personal service trusts are subject to the deduction of employees' tax.

For further information, refer to the *EMP 10 – volume 47 – Guidelines for Employers*, on the SARS website.

– Labour Broker

A labour broker is any person who carries on the business, for reward, of providing clients with persons to render a service to such clients for which such persons are remunerated.

Employers are required to deduct employees' tax from all payments made to a labour broker, unless the labour broker is in possession of a valid exemption certificate from SARS.

An exemption certificate will be issued by SARS under the following circumstances if -

- o the person carries on an independent trade and is registered as a provisional taxpayer;
- o the labour broker is registered as an employer; and
- o all returns required by the Commissioner, have been submitted.

The Commissioner will not issue an exemption certificate if -

- o more than 80% of the gross income of the labour broker during the year of assessment consists of amounts received from any one client of the labour broker. However, if the labour broker has employed more than three full-time employees throughout the year of assessment who are on a full time basis engaged in the business of the labour broker, a certificate may be issued. These employees may, however, not be connected persons in relation to the labour broker; or
- o the labour broker provides to any of its clients the services of another labour broker; or
- o the labour broker is contractually obliged to provide a specified employee of the labour broker to the client.

Persons who render services to or on behalf of a labour broker without an exemption certificate are also subject to the deduction of employees' tax.

A labour broker that is a company without an exemption certificate and a personal service company cannot be a small business corporation.

For further information, refer to the *EMP 10 – volume 47 – Guidelines for Employers*, on the SARS website.

Note: Limitation of Deductions

The deduction of expenses incurred by the personal service company, personal service trust or labour broker without an exemption certificate is limited to the amounts paid to the employees of such personal service company/trust or labour broker for services rendered that will comprise taxable income in the hands of those employees.

– Independent Contractor

The concept of an independent trader or independent contractor remains one of the more contentious features of the Fourth Schedule to the Act.

An amount paid or payable for services rendered or to be rendered by a person in the course of a trade carried on by him or her independently of the person by whom the amount is paid or payable is excluded from remuneration for employees' tax purposes.

However, a person is deemed not to be carrying on a trade independently if –

- o he or she is subject to control or supervision as to the manner in which his or her duties are performed or as to his or her hours of work; or
- o the amounts paid or payable for his or her services are payable at regular daily, weekly, monthly or other intervals.

An amount paid to a person who is deemed not to carry on a trade independently will constitute "remuneration" and will be liable to the deduction of employees' tax.

For a detailed and thorough explanation on Independent Contractors, refer to Interpretation Note No. 17, which is available on the SARS website. Also refer to the *EMP 10 – volume 47 – Guidelines for Employers*, on the SARS website.

- **Small, Medium and Micro Enterprises (SMMEs)**

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, type of business entities and requirements of registration of a business entity may be obtained from the Department of Trade and Industry or on their website www.dti.gov.za.

3. YOUR BUSINESS AND SARS

3.1 Introduction

Now that you are starting a business, it will be helpful if you have a general understanding of the various activities of SARS, as well as your duties and obligations in terms of the tax laws.

The tax laws are administered by the Commissioner, acting through SARS offices situated in various centres throughout the country.

SARS is obligated by law to determine and collect from each taxpayer only the correct amount of tax that is due to the Government. The SARS offices are the representatives of the Commissioner and in that capacity must ensure that the tax laws are administered correctly and fairly so that no one is favoured or prejudiced above the rest.

3.2 Income Tax

- **General**

Income tax is the State's main source of income and is levied on taxable income determined in terms of the Act.

- **Registration**

As soon as you commence business (whether as a sole proprietor, partner or any other form), you are required to register with your local SARS office in order to obtain an income tax reference number. You must register within 60 days after you have commenced business by completing an IT 77 form, which can be obtained from your local SARS office or from the SARS website.

If you start your business *via* a close corporation (CC) or private company you must register with the Registrar of Close Corporations or Companies to obtain a business reference number. Your CC or company will then be registered automatically as a taxpayer. If you do not hear from SARS after registering with the Registrar contact your SARS office.

Depending on other factors such as turnover, payroll amounts, whether you are involved in imports and exports, etc. you could also be liable to register for other taxes and duties such as VAT, PAYE, Customs, Excise, SDL and UIC.

- **Filing**

Income tax returns are issued annually to registered taxpayers after the end of each tax year. The tax year for individuals covers a period of 12 months and commences on 1 March of a specific year and ends on the last day of February of the following year. However, in some circumstances you may be allowed to draw up your financial statements for your business to dates other than the end of February. For more details take note of Interpretation Note 19: *Year of Assessment: Accounts Accepted to a Date Other than the Last Day of February*, which is available on the SARS website: www.sars.gov.za.

A company/close corporation on the other hand is permitted to have a tax year ending on a date that coincides with its financial year. If the financial year-end is 30 June, its tax year or year of assessment will run from 1 July to 30 June.

Income tax returns must be submitted by a specific date each year.

If you are unable to render the return within the prescribed period, you must apply for an extension at your local SARS office. Online applications for extensions can also be made on the SARS website, under e-Commerce / Extensions.

- **Change of address**

The Act requires that if a person's address which is normally used by the Commissioner for any correspondence with that person changes, the person must, within 60 days after the change, notify SARS of the new address for correspondence.

- **e-Filing**

The primary objective of e-Filing is to facilitate the electronic submission of tax returns and payments by taxpayers. Currently e-filing makes provision for VAT 201 returns, PAYE / SDL / UIC returns (EMP 201), and provisional tax returns (IRP 6).

With effect 1 June 2006 individual taxpayers who earn a basic salary and allowances such as travel and are in receipt of IT 12S or IT 12SS returns can also submit their annual tax returns through the electronic submission facility. The following should, however, be noted:

- SARS will under certain circumstances still require the submission of original documents for purposes of verification
- SARS will do extensive validation checks on the data submitted to ensure its accuracy, including validations against the electronic IRP5's submitted by employers to SARS
- Taxpayers must retain all supporting documents for a period of five years should they be required by SARS for audit purposes
- SARS will issue these assessments electronically

e-Filing also makes provision for the e-stamp initiative and the electronic transfer duty system. The e-filing service will in time be expanded to include the following:

- Tax on retirement funds
- Secondary tax on companies
- Air passenger departure tax
- Applications for tax clearance certificates for tenders.

In order to expedite the awarding of tenders and reduce the incidence of fraudulent certificates, the tax clearance system will allow government procurement officers access to the tax status of applicants that have given consent to such access.

e-Filing also makes provision for tax directives and secure internet payment facilities.

e-Filing is now being offered free-of-charge and if more details are required, visit the e-filing website at www.sarsefiling.gov.za.

- **Payments at Banks**

Payment of taxes can be made via the First National Bank, ABSA, Nedbank and Standard Bank internet facilities. Over the counter payment of taxes can also be done at First National Bank, ABSA and Nedbank. Standard Bank is currently in the process of finalising their over the counter payment facility.

Taxes that are covered by this medium are as follows: VAT, STC, Assessed Tax, PAYE, Provisional Tax, Tax on Retirement Funds, SDL, Customs, and Air Passenger Departure Tax. If more details are required, visit the SARS website at www.commerce.sars.gov.za.

This initiative is in line with SARS' continued efforts to improve its services to all taxpayers and traders.

- **Provisional Tax**

As soon as you commence business, you will also be required to register with your local SARS office as a provisional taxpayer. Close corporations and companies are automatically registered as provisional taxpayers. The payment of provisional tax is intended to assist taxpayers in meeting their tax liabilities. This occurs by the payment of two instalments in respect of income received or accrued during the relevant tax year and an optional third payment after the end of the tax year, thus obviating, as far as possible, the need to make provision for a single substantial tax payment on assessment after the end of the tax year. The first provisional tax payment must be made six months after the commencement of the tax year and the second payment not later than the last day of the tax year. The third or topping up payment is voluntary and may be made within six months after the end of the tax year if your accounts close on a date other than the last day of February. If your tax year ends on the last day of February, the third payment must be made within seven months after the end of the tax year. Further information regarding the payment of provisional tax, can be found in the *Guide for Provisional Taxpayers*, (IRP 12), obtainable from your local SARS office and which is also available on the SARS website, under PAYE/Guidelines/Income Tax Tables.

- **Employees' Tax (PAYE)**

Employees' tax is a system in terms of which an employer, as an agent of government, deducts tax from the earnings of employees and pays it over to SARS on a monthly basis. This tax serves as a tax credit that is set-off against the final tax liability of an employee, which is determined on an annual basis. A business that pays salaries, wages and other remuneration to any of its employees that is above the tax thresholds (where liability for tax arises, namely R40 000 for individuals under 65 years and R65 000 for individuals 65 years and older), must register with SARS for employees' tax purposes. This is done by completing an EMP 101 form and submitting it to SARS. The EMP 101 is available at all SARS offices and on the SARS website, www.sars.gov.za under "PAYE". Once registered, the employer will receive a monthly return (EMP 201) that must be completed and submitted together with the deducted employees' tax within seven days of the month following the month for which the tax was withheld.

Further information can be found in the *EMP 10 – volume 47 - Guidelines for Employers*, which is sent to all registered employers and is also available on the SARS website under "PAYE".

- **Directors' Remuneration**

The remuneration of directors of private companies (including individuals in close corporations performing similar functions) is subject to employees' tax.

The remuneration of private company directors is often only finally determined late in the year of assessment or in the following year. The directors in these circumstances finance their living expenditure out of their loan accounts until the remuneration is determined. To overcome the problem of no monthly remuneration being payable from which tax can be withheld, a formula is used to determine deemed monthly remuneration upon which the company must pay employees' tax on behalf of the director. More information on the application of the formula and relief from hardship is available in Interpretation Note 5: *Employees' Tax – Directors of Private Companies*.

A director is not entitled to receive an employees' tax certificate (IRP 5) in respect of the amount of employees' tax paid by the company on the deemed remuneration if the company has not recovered the employees' tax from the director.

- **How to determine net profit or loss**

In order to prepare your income tax return, you will need to understand the basic steps for determining your business's profit or loss. This procedure is fairly simple and is much the same for each type of business organisation. Basically, profit or loss is determined as follows:

Income – Expenses = Profit (Loss)

You will use this formula with some slight changes in determining your profit or loss. The diagram "Comparative Profit or Loss Statements" below explains the determination of profit or loss and the distribution of income for the different types of business organisations.

Gross sales

Gross sales are the income a business receives. For example, ABC Furniture Store sold R1 000 000 worth of furniture. Therefore, ABC Furniture Store had gross sales of R1 000 000.

Cost of sales

Cost of goods sold or cost of sales is the cost to the business to buy or make the product that is sold to the consumer. It would be simple to determine the cost of sales if you sold all your merchandise during the year. However, this seldom happens. Some of your sales during the year will probably be from stock that was bought in the previous year and some of the goods that were bought in the current year are not sold at the end of that year. To determine the cost of sales under these circumstances, you add the cost of goods bought during the current year to the cost of your stock on hand at the beginning of the year. From this total you subtract the cost of your stock on hand at the end of the year. For example, ABC Furniture Store had R120 000 worth of furniture in the store at the beginning of the year. During the current year R730 000 worth of furniture was bought from a manufacturer. At the end of the current year the store had R150 000 worth of furniture left. The cost of goods sold for the current year would therefore be:

Opening stock + Purchases – Closing stock = Cost of sales
R120 000 + R730 000 – R150 000 = R700 000

Gross profit

Gross profit equals gross sales less the cost of goods sold. ABC Furniture Store had gross sales of R1 000 000. The cost to the store for the furniture sold was R700 000. The gross profit is therefore R300 000 (R1 000 000 – R700 000).

Business expenses

Business expenses or operating expenses are the ordinary and necessary expenses incurred in the operation of the business. ABC Furniture Store incurred R200 000 expenses for wages, telephone, electricity, stationery, etc.

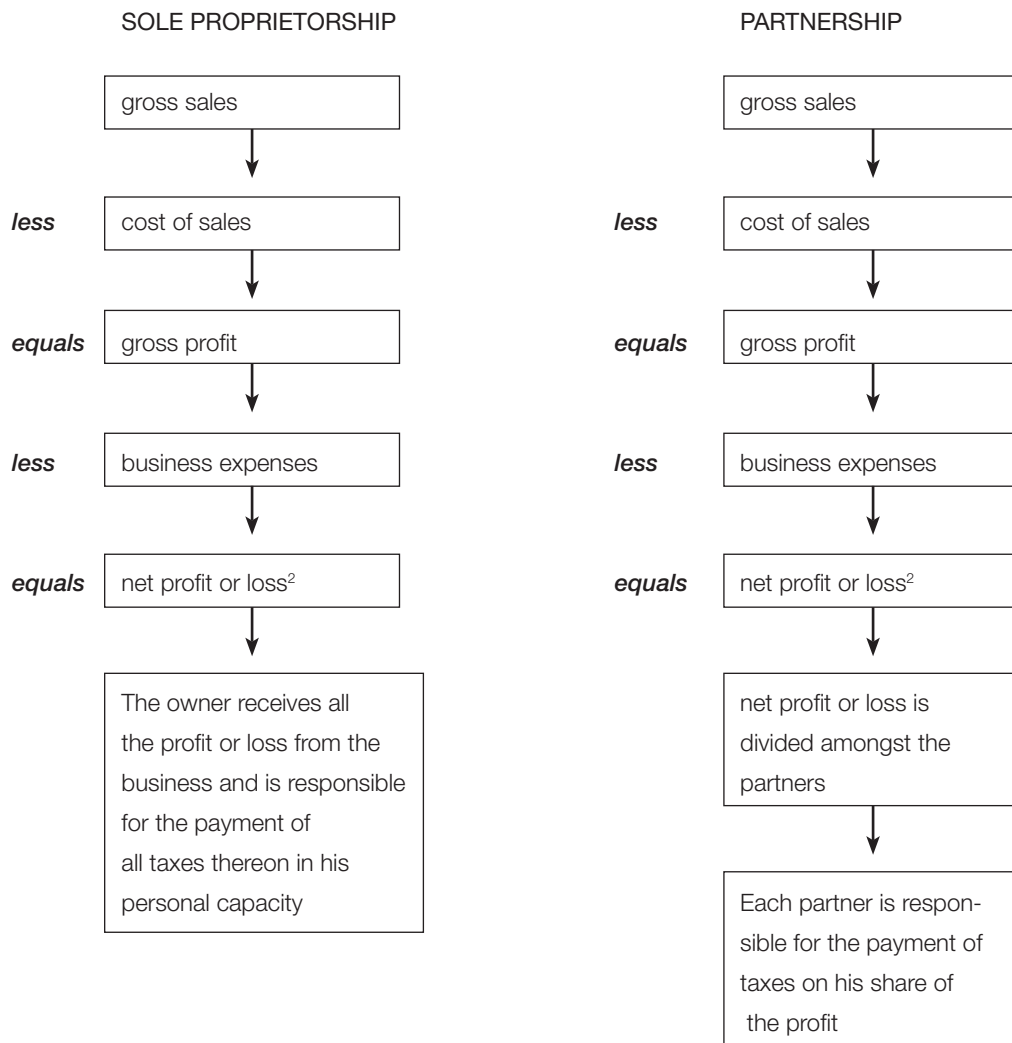
Net profit

Net profit is the amount by which the gross profit for a period exceeds the expenses for the same period. Net loss is the amount by which the expenses exceed the gross profit. ABC Furniture Store had a gross profit of R300 000, the business expenses were R200 000 leaving ABC Furniture Store with a net profit of R100 000.

Businesses that provide a service

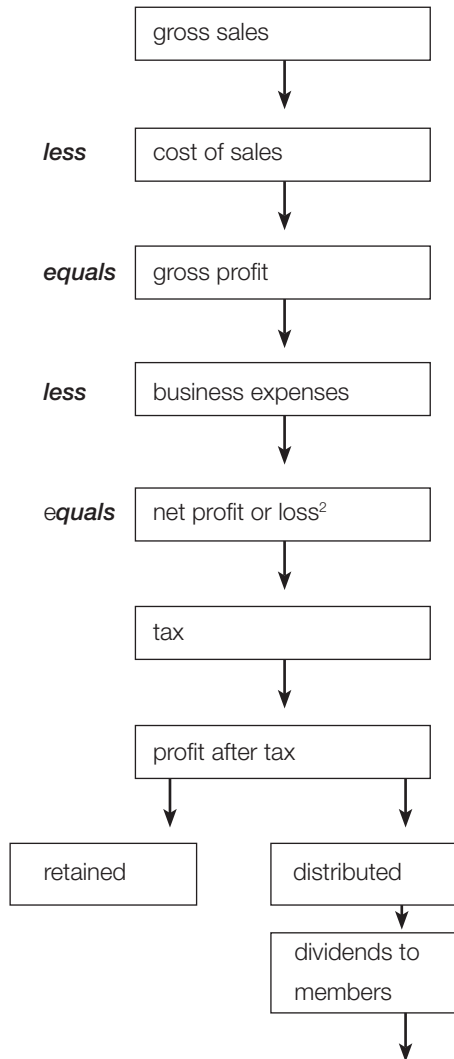
In the case of a business that provides a service, i.e. no physical goods are kept or sold, the procedure to determine your business profit or loss is the same as mentioned above with the exception of cost of goods sold. A business that provides only a service will not have to calculate cost of goods sold. Business or operating expenses will be deducted from gross sales (e.g. professional fees, taxi fares and services rendered) to determine a net profit or net loss.

- Comparative profit or loss statements



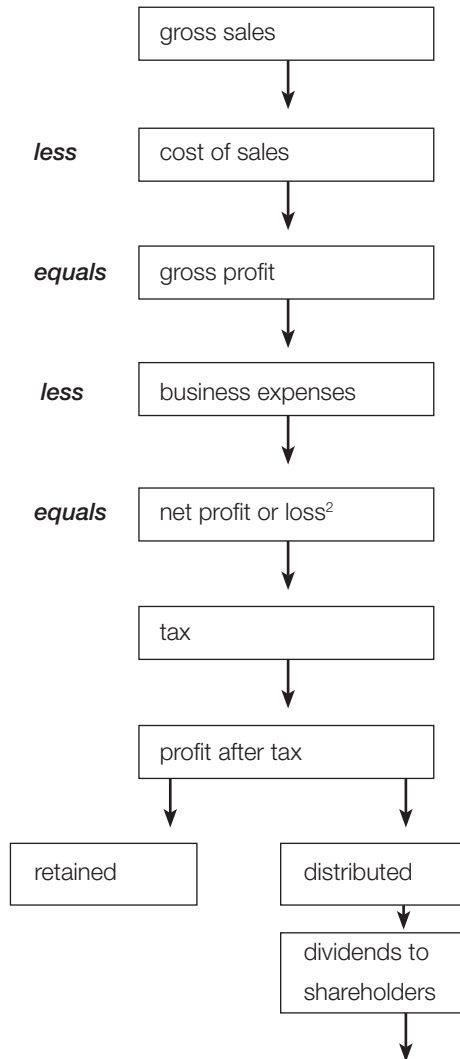
²See also "How to determine taxable income/assessed loss"

CLOSE CORPORATION



The close corporation is responsible for the payment of taxes. Taxes include normal (income) tax and secondary tax on companies (STC) on net dividends declared. Dividends received by members are tax free.³

PRIVATE COMPANY



The company is responsible for the payment of taxes. Taxes include normal (income) tax and secondary tax on companies (STC) on net dividends declared. Dividends received by members are tax free.⁴

³Certain foreign dividends are, however, taxable

⁴Same as 3

- **Link between “net profit” and “taxable income”**

Net profit is an accounting concept and is a term used to describe the calculation of the profit a business makes from an accounting point of view.

Taxable income on the other hand is a tax term that is used to describe the amount calculated on which a business's tax is calculated.

The amounts will often be different. The reason therefore is the basic differences in the income and deductions taken into account in determining the two amounts. For example, certain income of a capital nature may be fully included for accounting purposes, while only a portion thereof may be included for tax purposes. On the deduction side, there may be timing differences in respect of the depreciation of capital assets or special deductions/allowances for tax purposes which will cause differences in the deductions between accounting and taxation.

Nevertheless, the determination of net profit from an accounting point of view is an important building block in the determination of the business's taxable income. Every business must first prepare a set of financial statements (income statement and a statement of assets and liabilities). From the income statement which determines the business's net profit/ loss, certain adjustments can be made to compute (normally referred to as the tax computation) the business's taxable income or assessed loss as explained below.

- **How to determine taxable income/assessed loss**

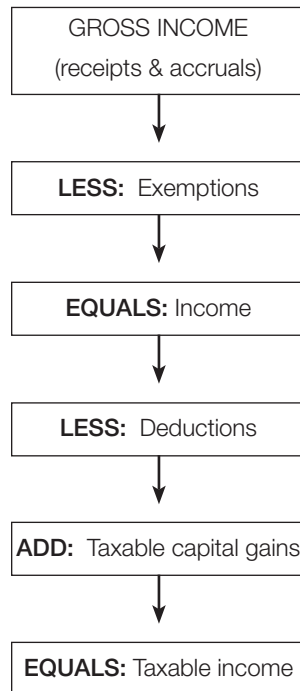
The Act provides for a series of steps to be followed in arriving at the taxpayer's “taxable income”. The starting point is to determine the taxpayer's “gross income”. In the case of:

- Any person who is a resident – the total amount of worldwide income, in cash or otherwise, received by or accrued to or in favour of such person during the tax year (subject to certain exclusions); or
- Any person who is not a resident – the total amount of income, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within South Africa during the tax year.

Receipts or accruals of a capital nature are generally excluded from gross income as the Eighth Schedule to the Act deals with capital gains and losses. However, “gross income” also includes certain other receipts and accruals specified within the definition of “gross income” regardless of their nature.

The next step is to determine “income” which is the result of deducting all receipts and accruals that are exempt from tax in terms of the Act from “gross income”.

Finally, “taxable income” is arrived at by deducting all the amounts allowed to be deducted or set off in terms of the Act from “income” and then adding any taxable capital gains. It can be illustrated as follows:



General deduction formula

The general deduction formula provides for the general rules with which an expense must comply in order to be deductible for normal income tax purposes. Other provisions of the Act allow for special deductions/allowances. If no special deduction/allowance applies, however, the expense in question will have to comply with the general deduction formula.

The general deduction formula provides that for expenditure and losses to be deductible they must be –

- Actually incurred
- During the year of assessment
- In the production of income
- Not of a capital nature
- Laid out or expended for the purposes of trade

- **Tax Rates**

A sole proprietor or each partner (individual) is subject to tax on his/her taxable income. The tax is levied at progressive rates ranging from 18% to 40%. For the 2007 tax year, the maximum marginal rate of 40% applies where the taxable income exceeds R400 000. Unlike individuals, a company or close corporation pays tax at a flat rate of 29% (except in the case of SBCs – see below) on its taxable income for the tax year and 12,5% secondary tax on companies (STC) on the net amount of dividends declared.

Below is a summary of the different tax rates

Individuals

Tax rates for individuals: 2006/07

| Taxable income (R) | Rates of tax (R) |
|--------------------|---|
| 1 - 100 000 | 18% of each R1 |
| 100 001 - 160000 | 18 000 + 25% of the amount above 100 000 |
| 160 001 - 220 000 | 33 000 + 30% of the amount above 160 000 |
| 220 001 - 300 000 | 51 000 + 35% of the amount above 220 000 |
| 300 001 - 400 000 | 79 000 + 38% of the amount above 300 000 |
| 400 001 and above | 117 000 + 40% of the amount above 400 000 |

| Rebates (Individuals only) | 2006/07 |
|----------------------------|---------|
| Under 65 years | R7 200 |
| 65 years and older | R4 500 |

| Tax thresholds | 2006/07 |
|--------------------|---------|
| Under 65 years | R40 000 |
| 65 years and older | R65 000 |

Standard Income Tax on Employees (SITE): Level: R60 000

Trusts

Tax rates – trusts (other than a special trust)

| From Tax year | Until Tax year | Normal Tax | From Taxable Income |
|---------------|----------------|------------|--------------------------------|
| 2001/02 | 2006/07 | 40% | On each rand of taxable income |

Tax rates – Personal service trusts

| From Tax Year | Until Tax Year | Normal Tax | From Taxable Income |
|---------------|----------------|------------|--------------------------------|
| 2001/02 | 2006/07 | 40% | On each rand of taxable income |

Corporates:

Companies (Standard)/Close Corporations

| Tax years ending between | Normal Tax from R1 taxable income and above |
|--------------------------|---|
| 01/04/06 to 31/03/07 | 29% |

Secondary Tax on Companies (STC)

STC is payable on dividends declared by resident companies after being reduced by dividends receivable during a dividend cycle. South African branches of non-resident companies are exempt from STC. For more information see the *Comprehensive Guide to STC* on the SARS website.

| From | Until | Rate |
|----------|---------|--------|
| 14/03/96 | To date | 12,50% |

Small Business Corporations(SBCs)

| Tax years ending between | Normal Tax | From Taxable Income | To Taxable Income |
|--------------------------|---|---------------------|-------------------|
| 01/04/06 to 31/03/07 | 0% | R1 | R40 000 |
| | 10% | R40 001 | R300 000 |
| | R26 000 plus 29% of the amount above R300 001 | | |

Mining Companies

Companies Mining for Gold (taxed according to one of the following formulae "gold mining tax formula")

| Tax years ending between | Not exempt from STC | Elected to be exempt from STC |
|--------------------------|--|--|
| 01/04/2006 to 31/03/07 | $Y=35-175/X$ (Other income taxed at 29%) | $Y=45-225/X$ (Other income taxed at 37%) |

Where X = Taxable income from gold mining _____
Total revenue (turnover) from gold mining
Y = Rate of tax to be levied

Companies Mining for Oil and Gas

Taxed at the same normal tax rate applicable to standard companies plus an additional normal tax equal to 40%, remaining after the deduction of the normal tax. The normal tax and the additional normal tax may, however, be reduced in terms of section 5(2A)(b) of the Act.

Other Mining Companies

The rates applicable to ordinary companies also apply to all mining companies, other than companies mining for gold.

Insurance Companies

- Long-Term Insurance Companies – Four Fund Basis

| Tax years ending between | 01/04/06 to 31/03/07 |
|------------------------------|----------------------|
| Corporate Fund | 29% |
| Individual Policyholder Fund | 30% |
| Company Policyholder Fund | 29% |
| Untaxed Policyholder Fund: | |
| • Retirement fund business | 9% |
| • Other | Nil |

- Short-Term Insurance Companies
Companies carrying on a short-term insurance business are taxed at the same rate as is applicable to standard companies

Retirement Funds

Gross interest, net rental and foreign dividend income of retirement funds (i.e. pension, provident, retirement annuity funds) and untaxed policyholder funds of long-term assurance companies in respect of their retirement business are taxed as follows:

| From | Rate |
|--------------------|------|
| 01/03/2006 to date | 9% |

Employment Companies

- Personal service company
- Labour broker that is a company without a labour broker exemption certificate

| Tax years ending between | Normal Tax, from R1 taxable income and above |
|--------------------------|--|
| 01/04/05 to 31/03/07 | 34% |

Non-resident Companies

Non-resident companies which trade in RSA *via* a branch or agency

| Tax years ending between | Normal Tax, from R1 taxable income and above |
|--------------------------|--|
| 01/04/05 to 31/03/07 | 34% |

- **Special allowances**

- (a) Industrial buildings (buildings used in process of manufacture)

Wear and tear is normally not allowed on buildings or other structures of a permanent nature. However, an annual allowance equal to 5% (20 year straight line) of the cost of industrial buildings or of improvements to existing industrial buildings is granted.

This allowance was increased to 10% for industrial buildings erected between 1 July 1996 and 30 September 1999 and brought into use before 31 March 2000.

- (b) Hotel keepers

- Buildings and improvements – 5% (20 year straight line)
 - Machinery / improvements / utensils / articles – 20% (5 year straight line). The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act.
 - Refurbishment of buildings within existing exterior framework – 20% (5 year straight-line)

- (c) Aircraft / ships

Where these are brought into use for the purpose of trade – 20% (5 year straight line). The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act.

- (d) Pipelines for transporting oil or gas and their derivative products

10% a year of the cost of the asset (10 year straight line)

- (e) Electricity transmission lines

5% a year of the cost of the asset (20 year straight line)

- (f) Telephone transmission lines

5% a year of the cost of the asset (20 year straight line)

- (g) Railway tracks

5% a year of the cost of the asset (20 year straight line)

Note: Assets referred to in paragraphs (d), (e), (f) and (g) above must be owned by the taxpayer.

(h) Certain aircraft hangars, aprons, runways and taxiways
5% a year of the cost of the asset (20 year straight line)

(i) Machinery, plant implements, utensils and articles

An allowance, equal to the amount which the Commissioner may think just and reasonable which the value of the asset used by the taxpayer for the purposes of his trade has been diminished by reason of wear and tear or depreciation. The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act. Small items costing less than R5 000 purchased on or after 1 March 2006 may be written off in full in the year of acquisition.

For more information, see Practice Note No. 19 available on the SARS website at www.sars.gov.za.

(j) Plant or machinery (manufacture)

An allowance for new or unused machinery or plant acquired on or after 1 March 2002 and brought into use and used directly by the taxpayer in a process of manufacture or similar process, is available. 40% of the cost of the asset will be deducted in the first year and 20% of the cost for the subsequent 3 years. The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act.

(k) Small business corporations (SBCs)

- Plant or machinery

100% of the cost of any plant or machinery brought into use in the tax year for the first time and used in a process of manufacture is deductible. The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act.

- Machinery, plant, implement, utensil, article, aircraft or ship

An accelerated allowance for the above assets (other than plant or machinery used in a manufacturing or similar process) acquired by the SBC on or after 1 April 2005 at 50% of the cost of that asset in the tax year during which that asset is or was brought into use for the first time, 30% in the second year and 20% in the third year.

For more information see under the heading Tax relief measures for / Small Business Corporations (SBCs), and Interpretation Note No. 9 on the SARS website.

(l) Patents, inventions, copyrights, designs, other property, etc

An allowance will be allowed as a deduction in respect of expenditure incurred during the year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating) and which are, the following property—

- (i) invention or patent as defined in the Patents Act, 1978 (Act No.57 of 1978);
- (ii) design as defined in the Designs Act, 1993 (Act No. 195 of 1993);
- (iii) copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);
- (iv) other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993); or
- (v) knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted.

The allowance is allowed in the year of assessment in which the abovementioned property is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade.

Where the expenditure exceeds R5 000, the allowance will not exceed in any year of assessment—

- (a) 5% of the expenditure in respect of any invention, patent, copyright or the property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or
- (b) 10% of the expenditure of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted.

(m) Urban Development Zones

Taxpayers investing in one of the 15 demarcated urban development areas receive special depreciation allowances for construction or refurbishment of commercial and residential buildings located in these areas that are used solely for trade purposes. These areas are located within the boundaries of the municipalities of Buffalo City, Cape Town, Ekurhuleni, Emalaheni, Emfuleni, eThekweni, Johannesburg, Mangaung, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje, Tshwane and Matjhaheng.

The allowances are:

- in respect of the cost (or "deemed cost" in respect of a building purchased from a developer) of the erection of any new building or part thereof or the extension of or addition to any building or part thereof, an amount equal to -
 - 20% of the cost thereof to the taxpayer in the year of assessment that building or part thereof is erected, extended or added to is brought into use by the taxpayer solely for the purpose of that taxpayer's trade; and
 - 5% of the cost in each of the 16 succeeding years of assessment; and

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

Where a building purchased from a developer, only a certain percentage of the purchase price will be deemed to be costs incurred by the purchaser in respect of the erection, extension, addition to or improvement of the building or part of the building, namely -

- 55% of the purchase price of the building or part thereof, in the case of a new building erected, extended or added to by the developer; and
- 30% of the purchase price of the building or part of the building, in the case of a building improved by the developer.

For more information see the *Guide to the UDZ Tax Incentive* on the SARS website.

(n) Agricultural co-operatives

Plant or machinery used for storing / packing farming products – 20% (5 year straight line). The assets must be owned by the taxpayer or acquired as purchaser in terms of an instalment credit agreement as defined in the VAT Act.

(o) Learnership Agreements

An allowance where-

- a) the employer during the year of assessment entered into a registered learnership agreement with a learner in the course of any trade carried on by that employer; or
- b) the learner completed during the year of assessment a registered learnership agreement entered into by the employer with that learner during the year or any previous year of assessment in the course of any trade carried on by that employer.

The allowance in respect of the entering into a learnership agreement is –

- (i) in the case of a learner who was at the time of entering into that agreement employed by the employer, the lesser of-
 - (aa) in the case of a learnership with a duration of—
 - (A) less than 12 months, 70% of the total remuneration of that learner for the period of that learnership as stipulated in the employment agreement; or
 - (B) 12 months or more, 70% of the annual equivalent of the remuneration of that learner stipulated in the employment agreement; or

- (bb) R17 500 or R20 000 in respect of learnership agreements entered into on or after 1 March 2006; or
- (ii) in the case of a learner who was at the time of entering into the agreement not employed by the employer, the lesser of-
 - (aa) in the case of a learnership with a duration of—
 - (A) less than 12 months, the total remuneration of that learner for the period of that learnership as stipulated in the agreement of employment; or
 - (B) 12 months or more, the annual equivalent of the remuneration of that learner stipulated in the agreement of employment; or
 - (bb) R25 000 or R30 000 in respect of learnership agreements entered into on or after 1 March 2006.

The allowance in respect of the completion of a learnership agreement is the lesser of -

- (i) in the case of a learnership with a duration of—
 - (aa) less than 12 months, the total remuneration of that learner for the period of that learnership as stipulated in the agreement of employment; or
 - (bb) 12 months or more, the annual equivalent of the remuneration of that learner stipulated in the agreement of employment; or
- (ii) R25 000 or R30 000 in respect of learnership agreements entered into on or after 1 March 2006.

Disabled persons

Given the additional expenses associated with employing disabled persons as learners, a more favourable allowance has been introduced in respect of contracts entered into on or after 1 July 2006. The allowances are set out below.

If the learner is a disabled person at the time of entering into the learnership agreement, the amount of the allowance in respect of—

- (a) a registered learnership agreement entered into by the employer with the learner who at the time of entering into that agreement—
 - (i) was employed by the employer, is the lesser of—
 - (aa) in the case of a learnership agreement with a duration of—
 - (A) less than 12 months, 150% of the total amount of the remuneration of the learner for the period of the learnership agreement as stipulated in the agreement of employment; or
 - (B) 12 months or more, 150% of the annual equivalent of the remuneration of that learner stipulated in the agreement of employment; or
 - (bb) R40 000; or

- (ii) was not employed by the employer, is the lesser of—
 - (aa) in the case of a learnership agreement with a duration of—
 - (A) less than 12 months, 175% of the total amount of the remuneration of the learner for the period of the learnership agreement stipulated in the agreement of employment; or
 - (B) 12 months or more, 175% of the annual equivalent of the remuneration of the learner stipulated in the agreement of employment; or
 - (bb) R50 000; and

- (b) the allowance at the completion of the registered learnership agreement, is the lesser of—
 - (i) in the case of a learnership agreement with a duration of—
 - (aa) less than 12 months, 175% of the total remuneration of the learner for the period of the learnership agreement stipulated in the agreement of employment; or
 - (bb) 12 months or more, 175% of the annual equivalent of the remuneration of the learner stipulated in the agreement of employment; or
 - (ii) R50 000.

A “disabled person” means a person who falls within the definition of “people with disabilities” as contained in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998).

(p) Research and development

Assets of a capital nature exclusively used for research and development are depreciated at 40% of the cost of the asset in the year of assessment in which such asset is brought into use for the first time by the taxpayer, and 20% of such cost in each of the three succeeding years of assessment.

(q) Machinery, plant, implements, utensils and articles used in farming or production of renewable energy

– Farming

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

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

– Production of bio-fuels

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

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

An allowance in respect of these assets, brought into use for the first time by the taxpayer for the purpose of the taxpayer's trade to be used in the generation of electricity from –

- wind;
 - sunlight;
 - gravitational water forces to produce electricity of not more than 30 megawatts; and
 - biomass comprising organic wastes, landfill gas or plants,
- is equal to -
- 50% of the cost of the asset to the taxpayer in the year of assessment in which the asset is so brought into use;
 - 30% of such cost in the 2nd year of assessment; and
 - 20% of such cost in the 3rd year of assessment.

Note: All the assets referred to in par (q) above must be owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of an “instalment credit agreement” as defined in section 1 of the VAT Act.

(r) Film Owners

Special deductions are allowed in the determination of taxable income derived from their trade as film owners. These special deductions are contained in section 24F of the IT Act. Further information is available in a guide entitled *Taxation of Film Owners* which is available on the SARS website, www.sars.gov.za.

- **Tax relief measures for:**

- Tax Amnesty Small for Businesses

Introduction

Small businesses play an important role in stimulating economic activity, job creation, poverty alleviation and the general improvement of living standards. Many small businesses operate informally, were historically marginalised and were excluded from the economic mainstream, thus remaining outside of the tax system. During the 2006 Budget, the Minister of Finance announced that Government will introduce a tax amnesty for small business.

Purpose of tax amnesty

The purpose/objective of the tax amnesty is to-

- broaden the tax base;
- facilitate the normalisation of the tax affairs of small businesses;
- increase and improve the tax compliance culture; and
- facilitate participation in the tax recapitalisation program.

Persons who may benefit

Small businesses which are unregistered for tax purposes at the end of the 2006 year of assessment or which are registered taxpayers but whose income from supplies (goods and/or services) made or employment taxes due in respect of small business activities have not been declared or has been understated during any year of assessment preceding the 2006 year of assessment, will benefit from the amnesty.

Persons who may apply for amnesty

Any individual (including the deceased or insolvent estate of the individual), unlisted company, close corporation, trust, co-operative, which meets certain requirements may apply for tax amnesty. These requirements are that –

- the individual or entity must have carried on a business;
- the gross income (turnover) of the business during the 2006 tax year was not more than R10 million;
- in the case of a company or close corporation all the shares or members interests were held directly by individuals throughout the 2006 year of assessment; and
- in the case of a trust all the beneficiaries of that trust throughout the 2006 year of assessment must have been natural persons.

Note: For purposes of the amnesty, the “2006 year of assessment” is defined as the year of assessment which ended during the period of 12 months from 1 April 2005 to 31 March 2006.

Method of application

An applicant must apply for amnesty at SARS on a form and at addresses prescribed by SARS. Application forms (available on the SARS website www.sars.gov.za or from any SARS office) should be submitted at any time during the period 1 August 2006 to 31 May 2007.

Information required in application

In the application for tax amnesty the applicant must:

- Disclose the taxable income from the carrying on of business during the 2006 year of assessment.
- Furnish an income tax return for the 2006 year of assessment and a statement of all assets (at cost) and liabilities as at the end of the 2006 year of assessment.

Where it is not possible to provide full particulars of any actual amounts in the application, reasonable estimates must be disclosed.

Payment of tax amnesty levy

In addition to the income tax payable for the 2006 year of assessment, the applicant must also pay an amnesty levy based on a sliding scale rate and is applied to the taxable income of the applicant for the 2006 year of assessment to the extent that the taxable income is attributable to any amount derived by the applicant from the carrying on of business (assessed losses brought forward must be excluded.)

The rates to be applied in the calculating of the tax amnesty levy are –

| From | To | Levy (R) |
|--------------------|--------------------|---|
| Taxable income (R) | Taxable income (R) | |
| - | 35 000 | No levy payable |
| 35 000 | 100 000 | 2% of the amount above 35 000 |
| 100 000 | 250 000 | 1 300 + 3% of the amount above 100 000 |
| 250 000 | 500 000 | 5 800 + 4% of the amount above 250 000 |
| 500 000 | and above | 15 800 + 5% of the amount above 500 000 |

Relief from payment of other taxes

Where an application for tax amnesty is successful, the applicant is not liable for the payment of –

- income tax in terms of the Act, in respect of any amounts received by or accrued to (or deemed to have been received by or accrued to) the applicant from the carrying on of a business in all years of assessment preceding the 2006 year of assessment;
- employees' tax in terms of the Fourth Schedule to the Act, in respect of remuneration as defined in that Schedule paid to employees for the tax periods or months ending on or before 28 February 2006;
- VAT in terms of the VAT Act, in respect of any supply or importation of goods or services for the tax periods or months ending on or before 28 February 2006;
- withholding tax on royalties in terms of the Act, in respect of any amount paid to a non-resident for the tax periods or months ending on or before 28 February 2006;
- STC in terms of the Act, in respect of any dividend declared or deemed to be declared in all years of assessment preceding the 2006 year of assessment;

- contributions payable in terms of the UIC Act, in respect of remuneration, as defined in that Act, for the tax periods or months ending on or before 28 February 2006; and
- levies payable in terms of the SDL Act, in respect of any leviable amounts as contemplated in that Act, for the tax periods or months ending on or before 28 February 2006.

The applicant will also not be liable for the payment of any additional taxes, interest and penalties which relate to the amounts for which relief has been granted.

Exclusion from the tax amnesty relief

The tax amnesty does not apply in respect of any tax, levy, contribution, interest, penalty or additional tax which—

- had already been paid by the applicant before the submission of the application;
- becomes payable as a result of any return, declaration or information submitted to SARS before the submission of the application;
- is payable by the applicant in terms of an assessment issued by SARS before the submission of the application; or
- relates to value-added tax not paid as a result of a false declaration of the acquisition, import or export of goods or services that did not actually occur.

Review of SARS's decision

An applicant whose application for tax amnesty is denied by SARS may object and appeal against that decision in terms of the normal dispute resolution procedures of the Act (see Dispute Resolution under General par 5 of this Guide).

Circumstances where approval of tax amnesty is void

The approval for tax amnesty granted is void if –

- the applicant fails to pay the full amount of the tax amnesty levy within 12 months from the date of approval or a longer period as SARS may allow;
- in the application for tax amnesty the applicant failed to make full disclosure of any information, including -
 - to disclose the taxable income from the carrying on of business during the 2006 year of assessment; and
 - to furnish an income tax return for the 2006 year of assessment and a statement of all assets (at cost) and liabilities as at the end of the 2006 year of assessment.
- Any estimates made by the applicant are materially incorrect.

Note: For more information, visit SARS website, www.sars.gov.za.

– Small Business Corporations (SBCs)

The small business corporation regime allows two major concessions to companies and close corporations which comply with all of the following requirements:

- The shareholders or members must be natural persons (individuals) and must hold the entire shareholding/member's interest of the company/close corporation.
- Shareholders or members may not hold any shares or interest in the equity of any other company [excluding shares in listed companies, a participatory interest in a collective investment scheme or an interest in a company as contemplated in section 10(1)(e)(i), (ii) or (iii) of the Act (body corporates)].
- The gross income of the corporation for the tax year may not exceed R14 million.
- Not more than 20% of the total of all receipts and accruals (other than those of a capital nature) and all capital gains of the company/close corporation may consist collectively of investment income and income from rendering a personal service. Investment income includes interest, dividends, royalties, rental and annuities. Personal services are services in the field of, for example, accounting, real estate and engineering which are performed personally by a person holding an interest in the company/close corporation. An SBC which is engaged in the provision of personal services will still qualify for the relief if it throughout the year of assessment employs at least four full-time employees who are on a full time basis engaged in the business of the SBC rendering that service.
- The company/close corporation may not be an employment company (i.e. a labour broker without an exemption certificate or a personal service company).

The first concession is to be taxed on the basis of a multiple rate system, viz SBCs pay tax at a rate of 0% on the first R40 000 of taxable income, 10% on taxable income in excess of R40 000 but not exceeding R300 000 and thereafter at a rate of 29% for every R1 in excess of R300 000.

The second concession is the immediate write-off of all plant or machinery used in a process of manufacture or similar process in the tax year it is brought into use for the first time. Furthermore, an accelerated write-off allowance for depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 is available at 50% of the cost of that asset in the tax year during which that asset is or was brought into use for the first time, 30% in the second year and 20% in the third year. [See also under Special Allowances, par (k)]

Note: For more information see Interpretation Note 9 on the SARS website www.sars.gov.za.

– Manufacturing

Special allowances are granted to persons engaged in a process of manufacture or a process of a similar nature.

SBCs as indicated above, may write off 100% of their manufacturing plant or machinery.

An allowance for new or unused machinery or plant acquired on or after 1 March 2002 and brought into use and used directly by the taxpayer in a process of manufacture or similar process, is available. 40% of the cash cost of the asset will be deducted in the first year and 20% of the cost for the subsequent 3 years.

– Farming

Farming operations include livestock farming, crop farming, milk production, plantation farming, sugar cane farming and game farming.

Persons carrying on farming operations are required to account for the value of livestock and produce on hand at the beginning and end of a tax year in their tax returns. The values to be placed on livestock at the beginning and end of the tax year are the standard values as prescribed by regulation. (These values also appear in the tax brochures accompanying the annual tax returns). Produce, on the other hand, must be accounted for at cost of production or market value, whichever is the lower.

Game is also regarded as livestock, but due to practical difficulties that can be encountered in establishing the actual numbers of game on hand at any given time, game is excluded from opening and closing stock.

Game farmers must prove that the game is purchased, bred and sold on a regular basis with a genuine intention to carry on farming operations profitably in order to qualify as farmers. Income relating to accommodation and catering facilities for visitors does not qualify as income from farming operations and separate financial statements must be drawn up for such income.

- Special concessions for farmers

The deduction of capital expenditure, such as the development of and improvements to farming property, is permitted in the determination of taxable income. This deduction may not exceed the farmer's taxable income from farming operations in respect of that year. If the amount of such expenditure exceeds the income in that year, the balance will be carried forward and deducted in the succeeding year, subject to the same limitation. For further information, refer to the Information Brochure on Income Tax, which accompanies the yearly return of income forms, which is also obtainable from SARS offices.

The cost of farming machinery, plant, implements, utensils or articles used by a farmer in farming operations or production of renewable energy is written off at the following rates:

- First year of use : 50%
- Second year : 30%
- Third year : 20%

- **Special measures in determining taxable income of farmers**

Since a farmer's income can fluctuate considerably from year to year, the Act contains provisions whereby the farmer may be taxed on the basis of his/her annual average taxable income from farming in the current and previous four tax years.

Relief is also given to farmers whose income for any year includes income derived from:

- The disposal of plantation and forest produce.
- The abnormal disposal of sugar cane as a consequence of damage to cane fields by fire.
- The disposal of livestock sold on account of drought.
- Excess profits as a result of farming land acquired by the State or certain juristic persons.

- **Mining**

Mining enterprises are allowed to deduct capital expenditure incurred in full in the year the expense was incurred. Capital expenditure, for example, includes expenditure on shaft sinking and mining equipment. It also includes expenditure on development and general administration prior to the commencement of production or during a period of non-production.

The capital expenditure incurred on a particular mine is restricted to the taxable income derived from that mine only. Any excess (unredeemed) capital expenditure is carried forward and is deemed to be capital expenditure incurred in the next year in respect of the mine to which the capital expenditure relates. Furthermore, the capital expenditure of a mine cannot be set-off against non-mining income such as interest, rental, other trading activities, etc.

As stated above the capital expenditure of one mine may not be set-off against the taxable income of another mine. However, where a new mine commences mining operations after 14 March 1990 its excess (unredeemed) capital expenditure may also be deducted from the total taxable income derived from mining in respect of other mines operated by the taxpayer, as does not exceed 25% of such total taxable income derived from its other mines.

Taxpayers conducting mining operations are required to rehabilitate areas where mining has taken place. These taxpayers are, therefore, required to make provision for rehabilitation expenses, during the life of the mine. Amounts paid in cash to approved rehabilitation funds are allowed as a deduction for tax purposes.

The taxable income of a company derived from mining for gold is taxed in accordance with a special formula. A company which derives taxable income from other mining operations is taxed at the same rate (29%) that is applicable to other companies and also pays STC.

- **Deduction of home office expenditure**

Expenses relating to your home office may be claimed as a deduction for tax purposes if-

- a part of your home is occupied for purposes of your trade and that part is regularly and exclusively used for purposes of your trade; and
- the part so used or occupied is specifically equipped for purposes of your trade.

If your trade is employment or the holding of an office no deduction is allowed unless-

- the income derived from that employment or office is mainly (i.e. more than 50% of your total income from employment or office) commission or other variable payments which are based on your work performance and your duties are not performed mainly in an office provided by your employer; or
- your duties are mainly performed in that part of your home.

If the above requirements are met you will be entitled to claim a portion of your total home expenses that relate to that part of your home used for business purposes, as a deduction against your income. Typical home expenses may include rent of the premises, interest on bond, rates and taxes, cost of repairs or maintenance to the property, etc. These expenses may be apportioned on the following basis:

$A/B \times \text{Total Costs}$

Where: A = The area in m² of the area specifically equipped and used regularly and exclusively for trade

B = The total area in m² (including any outbuildings and the area used for trade) of your home

Total Costs = Total home expenses referred to above

Example

The total area (square metres) of your home office is 20 sq. metres in relation to the total area of your home which is 200 sq. metres. The percentage area of the home office in relation to the total area of your home is, therefore, 10% (20/200). You will, therefore, be entitled to claim 10% of your total home expenses as a deduction for tax purposes.

- **Deductions in respect of expenditure and losses incurred prior to commencement of trade (start-up costs)**

Taxpayers are entitled to a deduction for start-up costs incurred before the commencement of trade.

Start-up costs are not defined but they would include costs such as advertising and marketing promotion, insurance, accounting and legal fees, rent, telephone, licenses and permits, market research and feasibility studies, but excludes capital costs such as the purchase of buildings and motor vehicles.

Start-up costs incurred prior to the commencement of trade can only be set off against income from that trade.

- **Ring fencing of assessed losses**

Section 11 of the Act provides for the general requirements for deducting expenditure and losses to the extent a person derives income from carrying on any trade. Not every activity is a trade, even if intended or labelled by a taxpayer as such. Whether or not an activity is a trade is a question of law depends on the “facts and circumstances” of each case. These “facts and circumstances” are deliberately left open to accommodate the wide range of trade activities existing in a modern world.

However, more often than not, private consumption (i.e. a hobby) can be disguised as a trade so that individuals can set off these expenditures and losses against other income such as salary or business income.

Due to the above, a new provision was added to the Act, namely section 20A, which aims to prevent expenditure and losses normally associated with suspect activities (i.e. disguised hobbies) to be deducted from income. This deduction limitation applies only to natural persons (i.e. an individual, including an individual as a partner). Section 20A is applicable in respect of years of assessment commencing on or after 1 March 2004. Further information is available in a guide entitled *Ring Fencing of Assessed Losses Arising from Certain Trades Conducted by Individuals*, which explains the ring fencing concept and is available on the SARS website, www.sars.gov.za.

- **Tax on foreign entertainers and sports persons**

With effect from 1 August 2006 South African residents who are liable to pay amounts to foreign entertainers and sportspersons for their performances in SA must withhold tax at a rate of 15% from the gross payments and pay it over to SARS on behalf the foreign entertainers and sportspersons before the end of the month following the month in which the tax was withheld. Failure to withhold and / or to pay it over to SARS will render the resident payer personally liable for the tax.

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

The 15% is a final tax, which means there will be no need to submit the usual return of income (income tax return).

Where a non-resident entertainer or sportsperson is employed by a South African employer and he or she is physically present in South Africa for more than 183 days in aggregate in a 12-month period that commences or ends in a year of assessment, these persons will have to pay tax on the same basis as South African residents, that is at the usual tax rates, which may require the submission of an income tax return.

Any person who is primarily responsible for founding, organising or facilitating a performance in SA and who will be rewarded therefor, must notify SARS of the performance within 14 days of concluding the agreement. (Visit the SARS website for more information.)

3.3 Residence Basis of Taxation (RBT)

All South African residents are subject to tax in South Africa on their worldwide income, i.e. income derived from sources within and outside South Africa. Relief is granted in respect of foreign taxes paid on income derived from foreign sources. Non-residents are taxable in South Africa on income they derive from South African sources.

Two tests apply to determine whether an individual is a resident or not. The **first test** is the ordinarily resident test (i.e. normally the place to which a person will naturally and as a matter of course return to from his/her wanderings). The **second test** is the physical presence test in South Africa (i.e. based on the number of days during which a natural person is physically present in the Republic).

A company or other entity which is incorporated, established, formed or has its place of effective management in South Africa is regarded as being resident in South Africa.

Income earned by certain foreign companies controlled by South African residents (controlled foreign companies – CFCs) can under certain circumstances be imputed and taxed in the hands of the controlling South African residents.

Further information is obtainable from SARS offices or on the SARS website under Tax Brochures and Interpretation Notes.

3.4 Capital Gains Tax (CGT)

CGT forms part of the income tax system. A taxpayer need not register separately for CGT if already registered for income tax.

Capital gains tax was introduced with effect from 1 October 2001. A capital gain arises when the proceeds from the disposal of an asset exceed the base cost of that asset. A capital loss occurs when an asset is disposed of and the base cost of that asset exceeds the proceeds from that disposal.

CGT only comes into effect when the taxpayer disposes of an asset. (The word “disposal” is described very widely – see paragraph 11 of the Eighth Schedule to the Act.) A capital gain forms part of a taxpayer’s taxable income and must be declared in the income tax return for the tax year in which the asset is disposed of.

For individuals, only 25% of the net capital gain, after deducting the annual exclusion described below, is included when calculating the tax payable. For companies, close corporations and trusts, only 50% of the net capital gain on the disposal of assets is included in taxable income. Relief in the form of a deferral of the capital gain is available where the asset is either disposed of involuntarily and is replaced, or is disposed of in order to acquire another business asset that qualifies for a capital allowance.

The base cost of an asset is the amount the taxpayer paid for the asset plus whatever other cost was incurred directly related to buying it, selling it, or improving it. The base cost does not include any amount otherwise allowed as a deduction for income tax purposes. Some of the main costs that may form part of the base cost of an asset are:

- The price the taxpayer originally paid to buy the asset
- Transfer costs, stamp duty, VAT paid and not claimed or refunded on the asset
- Cost of improvements to the asset
- Advertising costs to find a buyer or seller
- The cost of having the asset valued in order to determine a capital gain or loss
- Costs directly relating to the buying or selling of the asset, e.g. fees paid to a surveyor, broker, agent or consultant for services rendered
- Cost of establishing, maintaining or defending a legal title or right in the asset
- Cost of moving the asset from one place to another upon acquisition or disposal
- Cost of installing the asset, including the cost of foundations and supporting structures

The taxpayer does not have to pay tax on the full profit when an asset owned before 1 October 2001 is disposed of. The base cost of the asset as at 1 October 2001 must be determined, and only the difference between the proceeds and that base cost is subject to CGT.

The base cost of an asset acquired before 1 October 2001 may be determined according to one of the following three methods:

- (a) $20\% \times (\text{proceeds less any expenditure incurred on or after the valuation date})$.
- (b) The market value of the asset on 1 October 2001 (the valuation date) plus any expenditure incurred on or after the valuation date. The valuation must have been carried out before 30 September 2004.
- (c) The time-apportionment method which is based on the following formulae:

$$P = R \times [B / (A + B)]$$

$$TAB = B + [(P - B) \times N / (N + T)]$$

Note:

1. The symbols used in the above formulae are as follows:
 - R = Amount received or accrued from disposal of asset
 - P = Amount determined using the proceeds formula, or where the formula does not apply, the proceeds.
 - A = Expenditure incurred on or after 1 October 2001
 - B = Expenditure incurred before 1 October 2001
 - N = Number of years before valuation date
 - T = Number of years after valuation date
2. The proceeds formula ($P = R \times [B / (A + B)]$) must be applied where expenditure has been incurred before and after the valuation date.
3. Parts of a year are treated as a full year for the purpose of determining the periods before and after the valuation date ('N' and 'T' in the formula).
4. Where expenditure has been incurred in more than one year of assessment before the valuation date, N is limited to 20 years.

Example (where method (c) is used)

Zelda bought her holiday home on 1 June 1980 at a cost of R25 000. She sold it on 1 June 2004 for R850 000. The estate agent charged R50 000 in commission. The market value (MV) of the house on valuation date was R550 000.

Solution

Step 1 – Apply proceeds formula

The proceeds formula must be used because Zelda incurred R50 000 in respect of estate agent's commission after the valuation date.

$$P = R \times [B / (A + B)]$$

$$P = 850\,000 \times 25\,000 / (50\,000 + 250\,000)$$

$$P = 283\,333$$

Step 2 – Determine time-apportionment base cost (TAB)

$$TAB = B + [(P - B) \times N / (N + T)]$$

$$TAB = 25\,000 + [(283\,333 - 25\,000) \times 22 / 25]$$

$$TAB = 25\,000 + 227\,333 = 252\,333$$

Step 3 – Determine capital gain or loss

$$\text{Capital gain} = R850\,000 - R252\,333 - R50\,000 = R547\,667$$

Comment

Had Zelda done a valuation, her capital gain would be

| | | |
|-----------------|----------------|-----------------|
| Proceeds | | R850 000 |
| Less: Base cost | | |
| MV on 1.10.01 | R550 000 | |
| Commission | <u>R50 000</u> | (R600 000) |
| Capital gain | | <u>R250 000</u> |

Compare: TAB R547 667 v MV R250 000

Note: Where there is a loss, the formula will reduce the original cost by the portion of the loss relating to the period before the valuation date.

Where no records have been kept, methods (a) or (b) must be used.

Individuals are entitled to an annual exclusion. This is the amount of an individual's net annual capital gain or loss that is disregarded for CGT purposes. The annual exclusion is R12 500 but is increased to R60 000 where an individual dies during a year of assessment.

Persons who operate **small businesses**⁵ as sole proprietors, partners or owners of an interest (10% or more) in a company or close corporation are, subject to certain conditions, entitled to a concession which excludes

capital gains of up to R750 000 on the disposal of active business assets when these persons attain the age of 55 years or the disposal is in consequence of ill-health, other infirmity, superannuation or death. For further information, see paragraph 57 of the Eighth Schedule to the Act.

CGT on disposal of foreign assets by residents

Residents are subject to CGT on the disposal of their worldwide assets. The method for determining the capital gain or loss depends on the nature of the asset. The relevant legislation is contained in the Eighth Schedule to the Act. Set out below are some examples of foreign assets and their CGT treatment.

- Immovable property held outside SA

Where the property is acquired and disposed of in the same foreign currency, the capital gain or loss is determined in the foreign currency and translated to Rand at the spot rate applying at the time of disposal. With effect from 8 November 2005 individuals and non-trading trusts may alternatively elect to translate the gain or loss by using the average exchange rate applicable to the tax year in which the asset was disposed of. Special rules apply to immovable property bought in one foreign currency and disposed of in another, and where assets are attributable to a foreign permanent establishment.

- Foreign equity instruments (e.g. shares and interests in collective investment schemes) and deemed SA source assets (e.g. foreign endowment policies and other movable assets)

The capital gain or loss is determined by translating the cost of the asset at the spot rate when incurred, and the proceeds at the spot rate when received or accrued. In the case of assets acquired before 1 October 2001 where the market value method for determining the base cost is adopted, the spot rate on that date is used to translate the market value into Rands.

From 8 November 2005 individuals and non-trading trusts may elect to translate the cost of the asset and the proceeds upon disposal at the average exchange rate applicable in the year when the expenditure was incurred or when the proceeds were received or accrued as the case may be.

- Foreign currency assets and liabilities (foreign bank notes, traveller's cheques, bank accounts and foreign loans)

Foreign currency notes and coins and traveller's cheques used for the regular payment of personal expenses (e.g. during a holiday) are exempt from CGT. A person is also allowed one foreign bank account (a call or current account) free of CGT, provided that it is used for the regular (e.g. monthly) payment of personal expenses.

Foreign currency gains and losses on these assets became subject to CGT with effect from 1 March 2003. A foreign currency asset pool must be maintained for each foreign currency for the purpose of determining the base cost of a foreign currency asset. Additions to the pool are made at the average exchange rate in the year of acquisition. When an asset is disposed of its base cost will be the weighted average Rand cost of the pool. Proceeds are translated at the average exchange rate in the year of disposal.

⁵ For purposes of CGT, a small business means a business of which the market value of all its assets, as at the date of the disposal of the asset or interest, does not exceed R5 million

CGT on disposal of property in RSA by non-residents

Non-residents must account for capital gains and losses made from the disposal of the following assets:

- Immovable property situated in SA or any interest or right in immovable property situated in SA. The term “interest in immovable property situated in SA” includes a direct or indirect holding of 20% or more of the shares in a company, where 80% or more of the current market value of the shares of that company are directly or indirectly attributable to immovable property situated in SA. Also included as immovable property is a vested interest in a trust where 80% or more of the value of that interest is attributable directly or indirectly to immovable property in SA.
- Assets attributable to a permanent establishment in SA (e.g. a branch or agency of a foreign company in SA).

Relief from double taxation is granted in the agreement for the avoidance of double taxation between RSA and the country of residence of the non-resident taxpayer, where applicable.

CGT Rates

Individuals (and special trusts)

| Tax year | Annual exclusion | Inclusion rate |
|----------|------------------|-------------------------|
| 2006/07 | R12 500 | 25% of net capital gain |

Trusts

| Tax year | Inclusion rate |
|----------|-------------------------|
| 2006/07 | 50% of net capital gain |

Companies

| Tax year ending between | Inclusion rate |
|--------------------------|-------------------------|
| 01/04/2006 to 31/03/2007 | 50% of net capital gain |

Further information on CGT is available on the SARS website or from any SARS office.

3.5 Donations Tax

Donations tax is payable on the value of property disposed of by means of a donation by a resident. The rate applicable is 20%. Apart from other exemptions such as donations to public benefit organisations, donations made by a natural person (individual) up to the value of R50 000 per year of assessment are exempt from tax. For other persons such as private companies, the exemption is limited to R10 000 in respect of casual gifts.

3.6 Value-Added Tax (VAT)

Value-added tax (VAT) is an indirect tax levied in terms of the VAT Act. VAT must be included in the selling price of every taxable supply of goods and/or services made by a vendor in the course or furtherance of that vendor's enterprise. VAT is also levied on the importation of goods into RSA. In certain instances, VAT is payable on the importation of services into RSA.

- **Supplies**

There are two types of supplies, i.e. –

- taxable supplies; and
- exempt supplies.

- o **Taxable supplies**

A taxable supply is any supply of goods or services made by a vendor in the course or furtherance of an enterprise. A taxable supply is subject to VAT at either:

- the standard rate, (currently 14%); or
- the zero rate (0%)

Standard-rated supplies

Goods or services supplied by vendors in the RSA will generally be standard-rated unless a specific zero-rating or exemption applies. Imports of goods are also generally subject to VAT at the standard rate unless a specific exemption applies.

Zero-rated supplies

Section 11 of the VAT Act provides for certain supplies to be zero-rated. Examples of these supplies (goods and services) include:

- Goods exported from RSA
- Brown bread
- Brown wheaten meal
- Maize meal
- Samp
- Mealie rice
- Dried mealies
- Dried beans
- Rice
- Lentils
- Fruit and vegetables
- Pilchards and sardinella in tins or cans
- Milk, cultured milk and milk powder
- Vegetable cooking oil
- Eggs
- Edible legumes and pulse of leguminous plants
- Dairy powder blends
- Petrol, diesel and illuminating paraffin
- Certain supplies made to VAT registered farmers of certain agricultural inputs

- Certain gold coins issued by the SA Reserve Bank, including Kruger Rands
- International transport and related services
- Services physically supplied outside RSA.

Any vendor applying the zero rate must obtain and retain certain documentary proof of the vendor's entitlement to apply the zero rate. VAT incurred on any goods or services acquired in order to make zero-rated supplies may be claimed as input tax.

o Exempt supplies

Exempt supplies are supplies of goods or services on which VAT is not levied. Exempt supplies are not taxable supplies and do not form part of your taxable turnover for VAT purposes. VAT incurred on any goods or services acquired in order to make exempt supplies may not be claimed as input tax.

Examples of exempt supplies include:

- Certain educational services
- Public transport by road or rail
- The provision of medical aid
- Interest on loans
- Life insurance and retirement fund benefits

Section 12 of the VAT Act provides for those supplies that are exempt from VAT.

• Registration

o Compulsory registration

Any person who carries on an enterprise and whose total value of taxable supplies (taxable turnover) exceeds, or is likely to exceed, R300 000 in any 12 month period, must register for VAT.

o Voluntary registration

In certain instances, the VAT Act allows a person to register as a vendor, even though the turnover of potentially taxable supplies is below the R300 000 compulsory registration threshold. These are listed below:

- Any person who carries on an enterprise where the total value of taxable supplies (taxable turnover) exceeds R20 000 (but does not exceed R300 000) in the preceding 12 month period. (This rule does not apply in cases where other special rules are applicable. For example, welfare organisations and local authorities are not required to meet the minimum threshold of R20 000).
- Any person who intends to carry on an enterprise which is to be supplied to that person as a going concern and the total value of taxable supplies made by the supplier of the going concern has exceeded R20 000 in the previous 12 months;
- Any person who carries on an enterprise, where as a result of the nature of the activity, the person can only reasonably be expected to make taxable supplies exceeding R20 000 in a 12-month period after a period of time. For example plantation farmers.

It may be advantageous for a person to register voluntarily if supplies of goods or services are made mainly to other vendors so as to allow the purchasing vendor to claim the VAT incurred on the supply (i.e. input tax). However, where the person supplies mainly services to non-vendors, (i.e. people who are not registered for VAT), it will generally not be advantageous to voluntarily register for VAT.

Refusal of Registration

If you do not fall within the aforementioned categories, you will not qualify to register as a vendor. No registration will be allowed if the annual turnover is below R20 000.

In addition, where only exempt supplies are made, that person will not be conducting an enterprise for VAT purposes and will therefore not be able to register.

How to register?

Application for registration as a vendor must be made on form VAT101 (obtainable from your local SARS office or on the SARS website), within 21 days of becoming liable to register. The VAT402 guide will assist in completion of the VAT101 form.

- **Accounting Basis**

- o **Invoice Basis**

Generally, a vendor must account for VAT on the invoice basis. In other words, output tax must be accounted for at the earlier of an invoice being issued or payment being received for a specific supply.

Input tax may only be claimed when the vendor is in possession of a valid tax invoice, irrespective of whether payment has been made to the supplier or not. However, should payment not be made within 12 months after the expiry of the tax period within which the input tax was claimed, output tax must be accounted for on that portion of the payment that has not been made.

- o **Payments Basis**

The Commissioner may, on written application by the vendor, direct that the vendor account for VAT on the payments basis. When using this method, output tax and input tax must be accounted for at the time that payments are received and made. It should be noted that it is still required for input tax purposes, for the vendor to be in possession of a valid tax invoice. Certain requirements must be met for the vendor to account for VAT on the payments basis. These include:

- The vendor must be a public authority, local authority or an association not for gain; or
- The vendor must be a natural person (other than the trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons. In this case, it is also required that the total value of the vendor's taxable supplies in the past 12 months has not exceeded R2.5 million, nor be likely to exceed that amount in the next 12 month period.

Refer to section 15 of the VAT Act for further information.

- **Tax Periods**

It is the predetermined period in which a vendor is required to lodge a VAT return.

Generally speaking, there are five different types of tax periods.

- Monthly: known as Category C and applies to vendors whose turnover is more than R30 million a year.
- Two monthly: known as Category A or B which is applicable to vendors whose turnover is less than R30 million a year. The applicable category is determined by the Commissioner.
- Four monthly: known as Category F and applies to vendors whose turnover is less than R1 million a year (R1.2 million for tax periods commencing on or after 1 July 2006).
- Six monthly: known as Category D and applies to small farmers with a turnover of less than R1 million a year (R1.2 million for tax periods commencing on or after 1 July 2006).
- Twelve monthly: known as Category E and generally ends on the last day of the vendor's "year of assessment" as defined in section 1 of the Act. It only applies to vendors who are companies or trusts where the income consists solely of property rentals, management or administration fees charged to connected persons that are entitled to a full deduction of input tax on such fees.

The above-mentioned categories have various requirements which must be satisfied before a vendor will be allowed to fall within a certain category. These requirements are contained in section 27 of the VAT Act.

- **Calculation of VAT**

For ease of reference, the following terms are defined:

Input tax – VAT paid by the vendor on the purchase of goods or services. VAT may, in certain circumstances, be claimed as input tax provided the goods or services are acquired for making taxable supplies and the vendor is in possession of a valid tax invoice. The following are examples of purchases where input tax cannot be claimed:

- Purchase/lease/hire of a "motor car" as defined in the VAT Act.
- Most expenses relating to entertainment.
- Membership fees for sporting and recreational clubs (e.g. country clubs and golf clubs).

Output tax – The VAT charged by a vendor in respect of the taxable supply of goods or services. This will also include certain payments which give rise to deemed supplies. (E.g. short term insurance payments received for loss or damage to assets).

In determining the VAT liability, the vendor has to subtract the input tax claimed from the output tax charged. Where the output tax exceeds the input tax, the vendor has to pay the difference to SARS. Where the input tax exceeds the output tax charged, the vendor is entitled to a refund from SARS.

Where the vendor does not receive the refund within 21 business days after the date on which SARS received the VAT201 return and any defects on the VAT201 (if any) have been rectified and additional information requested by SARS has been supplied, interest will be paid by SARS at the prescribed rate, subject to various conditions being met.

- **Small Retailers VAT Package**

- o **What is the Small Retailers VAT Package?**

The Small Retailers VAT Package is a simpler VAT option for small retailers and forms part of SARS' drive to assist certain small businesses. If you qualify for this Package it means that you can satisfy the VAT Act without detailed recordkeeping or having to buy expensive cash registers to keep track of sales on the various types of products you sell.

This Package also includes a free set of pre-printed books in which you keep track of the stock you buy and your daily sales. In short, you get to spend more time and money growing your business. This is not only important for the success of your business, but also supports the continued growth of our economy.

- o **Why was the Small Retailers VAT Package introduced?**

- *To make it simpler for small retailers who are registered for VAT*
SARS recognises that small retailers find it difficult and time consuming to keep the detailed sales records required by the VAT Act. The Small Retailers VAT Package is designed to cut through these problems and make accounting for VAT simpler for small retailers.
- *To make it simpler for small retailers who are not registered for VAT to satisfy the law*
All retailers who have a turnover of R300 000 or more per year must register for VAT. There are many small retailers who should register for VAT but do not. However, SARS recognises that this is often due to a lack of knowledge or because small retailers feel that the process is too complicated and time consuming. While this is not a valid excuse for not registering, SARS has tried to resolve the problem by introducing the Small Retailers VAT Package. Unregistered retailers are thus encouraged to register for VAT and apply for the Small Retailers VAT Package.
- *To reduce VAT fraud*
SARS is aware that some retailers abuse VAT through dishonest reporting of sales information. There are also retailers who knowingly avoid registering for VAT when they are required to do so. These practices are regarded as serious criminal acts and SARS will increase its audit activity among retailers to identify such retailers.

- o **Who qualifies for the Small Retailers VAT Package?**

If you are not registered for VAT, you will first have to register for VAT before you can apply for the Small Retailers VAT Package. You can do so by visiting a SARS office or by calling the SARS Call Centre on 0860 121218. Alternatively, visit the SARS website at www.sars.gov.za for more information.

If you are already registered for VAT, you qualify for the Small Retailers VAT Package only if you satisfy the requirements to become an approved vendor.

To be an approved vendor you must -

- sell standard-rated goods (i.e. goods taxed at 14% VAT) as well as zero-rated goods (i.e. goods taxed at 0%) from the same place of business;
- make taxable supplies (excluding VAT) of less than
- R1 million in any 12 month period; and
- not have adequate point of sale equipment i.e. an electronic scanning system; or a touch screen register; or a product-specific cash register which is able to separately record zero-rated and standard-rated sales.

If you meet all these requirements, you may apply by completing a form (VAT SRVP1) and delivering it to the nearest SARS office or mail box. If your application is approved, you will receive written notification on a form SRVP2, a set of pre-printed record books and a detailed guide that explains all aspects of the Package.

o **Important points to take note of:**

- If you have been accepted into the Small Retailers VAT Package and then decide, at some time in the future, to return to the normal VAT scheme you may apply to do so. Your reasons and circumstances will be taken into account when SARS assesses your application.
- Retailers who are not currently registered for VAT are encouraged to come forward and register voluntarily. SARS' Voluntary Disclosure Dispensation allows for the conditional waiving of penalties or additional tax provided that the taxpayer approaches SARS voluntarily before an investigation of his or her affairs has commenced.
- The industry mark-up percentage of 40% used in the Small Retailers VAT Package is an average rate used to simplify the calculation of VAT. It should NOT be interpreted as the mark-up you should actually charge your customers on zero-rated goods.
- The full technical detail of the Package is contained in a guide: SRVP 416.

o **How does the Small Retailers VAT Package work?**

The Small Retailers VAT Package allows you to determine your output tax liability by applying the following method:

- Step 1** Calculate your daily gross takings inclusive of VAT over a period of 2 months.
- Step 2** Calculate the value of your zero-rated sales by adding the value of the Industry Mark-up Percentage to total zero-rated purchases that you used to make zero-rated supplies.
- Step 3** Calculate your standard-rated sales by deducting the zero-rated sales (from step 2) from your daily gross takings.
- Step 4** Apply the 14% tax fraction to the total standard-rated sales determined in step 3.
- Step 5** Account for the output tax in your VAT201 return.

Example

Corner Café was registered under the Small Retailers VAT Package with effect from 1 April 2005. Corner Café recorded the following transactions for the period 1 April 2005 to 31 May 2005:

| | |
|----------------------------|---------|
| Cash in till at end of day | R60 000 |
| Cheques and cash banked | R25 000 |
| Cash taken for purchases | R5 000 |
| Daily float | R 250 |
| Zero-rated stock purchases | R30 000 |
| Standard-rated purchases | R34 200 |

The calculation of Corner Café's Daily Gross Takings (DGT) for the period 1 April 2005 to 31 May 2005:

| | |
|--------------------------------------|----------------|
| Cash in the till at end of day | R60 000 |
| Add: Cash/Cheques banked | R25 000 |
| Add: Cash taken for purchases | R5 000 |
| Less: Daily float | -R250 |
| TOTAL Daily Gross Takings | R89 750 |

The calculation of Corner Café's zero-rated sales for the period 1 April 2005 to 31 May 2005:

| | |
|--|----------------|
| Zero-rated purchases (from the purchases register) | R30 000 |
| Less: Zero-rated purchases used to make standard-rated supplies | NIL |
| Equals: Total zero-rated purchases used exclusively to make zero-rated supplies | R30 000 |
| Apply the 40% industry mark-up percentage to the zero-rated purchases to obtain the total rand mark-up on zero-rated sales | R12 000 |
| Add: Total rand mark-up on zero-rated sales to zero-rated purchases to determine the TOTAL ZERO-RATED SALES | R42 000 |

The calculation of Corner Café's standard-rated sales for 1 April 2005 to 31 May 2005:

| | |
|----------------------------|----------------|
| Daily Gross Takings | R89 750 |
| Less: Zero-rated sales | <u>R42 000</u> |
| Total standard-rated sales | <u>R47 750</u> |

The calculation of Corner Café's VAT liability for the period 1 April 2005 to 31 May 2005:

| | | |
|----------------------------------|---------|------------------|
| Standard-rated sales | R47 750 | |
| Output tax (R47 750 x 14/114) | | R5 864,04 |
| Zero-rated sales | R42 000 | |
| Less: | | |
| Input tax (R34 200 x 14/114) | | <u>R4 200,00</u> |
| Tax Payable (R5 864,04 – R4 200) | | <u>R1 664,04</u> |

- **Requirements of a valid tax invoice**

A vendor must be in possession of a valid tax invoice in order to claim input tax. The following information must be reflected on a tax invoice:

- The words “Tax Invoice” in a prominent place.
- The name, address and VAT registration number of the supplier.
- The name, address and VAT registration number of the recipient.
- An individual serialised number and the date upon which the tax invoice is issued.
- A full and proper description of the goods or services supplied (indicating, where applicable, that the goods are second-hand goods).
- The quantity or volume of the goods or services supplied.
- Either -
 - the value of the supply, the amount of tax charged and the consideration for the supply; or
 - where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax is charged.

Where the consideration for the supply does not exceed R3 000, an abridged tax invoice may be issued. An abridged tax invoice contains the same information as a tax invoice, except that the quantity or volume of the goods or services supplied and recipient’s particulars need not appear on the document.

- **Submission of VAT returns**

- o **Manual submission**

Where a vendor manually submits a VAT201 return to SARS, it must be received by the 25th of the month following the end of the vendor’s tax period. Where applicable, payment must accompany the VAT201 return.

Where the 25th of the month falls over a weekend or on a public holiday, the VAT201 return and the payment must be submitted to the SARS office no later than the last business day before the 25th of the month.

- o **Electronic submission**

Where a vendor has registered to submit the VAT201 return and payment electronically, the VAT201 return and the payment must be received by no later than the last business day of the month following the end of the vendor’s tax period.

- **Duties of a Vendor**

Once registered as a vendor, you have certain responsibilities including the following:

- Provide correct and accurate information to SARS
- Submit returns and payments on time
- Include VAT in your prices, advertisements and quotes
- Keep accurate accounting records
- Produce relevant documents when required by SARS
- Notify SARS about any changes in your business, namely its address, trading name, partners / members / shareholders, bank details and tax periods
- Issue tax invoices, debit and credit notes
- Notify SARS of any changes of the details of the representative person

Note: Failure to meet these responsibilities could result in penalties being payable and prosecution, additional fines and/or imprisonment.

- **Exports**

VAT is, usually, levied at the rate of 14% on the sale of goods supplied locally, but special concessions are made where goods are exported from South Africa. The basic rule is that if -

- **the seller controls the export**, (a direct export), the zero rate applies, (and the requirements as stipulated in Interpretation Note No. 30 must be met), and
- **the purchaser controls the export**, (an indirect export), the 14 percent standard rate applies. The purchaser may, however, claim a refund when the goods are exported in terms of Part One of the Export Incentive Scheme (the Scheme). Part Two of the Scheme offers the option to the South African vendor, at his own risk, to zero rate the supply of goods to be exported as an “indirect export” (by sea or air).

The reason for this distinction is quite simple – if the purchaser controls the export, the seller cannot be sure that the goods will actually be exported from South Africa.

3.7 Estate Duty

Where the deceased was ordinarily resident in RSA his/her estate will, for estate duty purposes, consist of all property wherever situated, including deemed property (e.g. life insurance policies, payments from pension funds, etc). However, property situated outside RSA will be excluded from his/her estate if such property was acquired by him/her before he/she became ordinarily resident in RSA for the first time, or after he/she became ordinarily resident in RSA and acquired such property by way of donation/inheritance from a person which was not ordinarily resident in RSA at the date of such donation/inheritance. The exclusion also applies to property situated outside RSA, acquired out of profits/proceeds of any such property acquired in the above circumstances.

The estate of a non-resident is only subject to estate duty to the extent that it consists of certain “property” and “deemed property” of the deceased as defined in the Estate Duty Act. The Estate Duty Act unlike the Income Tax Act does not have a definition of the word “resident” and only refers to persons who are “ordinarily resident” or not “ordinarily resident”. It therefore, follows that any natural person who is not ordinarily resident in South Africa, but who became a resident of South Africa, in terms of the physical presence test for income tax purposes, is still regarded as a non-resident for estate duty purposes, due to the fact that such person is not ordinarily resident in South Africa.

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate. One such deduction is the value of property in the estate that accrues to the surviving spouse of the deceased. The net value of the estate is reduced by a R2.5 million general deduction to arrive at the dutiable amount of the estate.

Estate Duty Rates

| From | Until | Deduction | Rate |
|------------|---------|------------|------|
| 01/03/2006 | To date | R2 500 000 | 20% |

Example of estate duty calculation

| | |
|---------------------------------|--------------------|
| Net value | R 2 600 000 |
| Less: Deduction | <u>R 2 500 000</u> |
| Dutiable amount | <u>R 100 000</u> |
| Duty payable on R100 000 at 20% | R 20 000 |

Interest at 6% per annum is charged on unpaid duty.

3.8 Stamp Duty

Stamp duty is levied on instruments such as leases of immovable property and unlisted marketable securities at different rates.

Leases of Immovable Property

| For every R100 or part thereof of aggregate rent and any other consideration — | |
|--|----------|
| Period not exceeding 5 years | 25 cents |
| Period exceeding 5 years but not 10 years | 40 cents |
| Period exceeding 10 years but not 20 years | 55 cents |
| Period exceeding 20 years | 70 cents |

From 1 January 2005 the duty is calculated at 0,5% of the quantifiable amount of a lease. Where the rental is not quantifiable (e.g. turnover rental), duty will be payable when then amount becomes quantifiable.

Note: An exemption applies if the duty calculated over the period of lease does not exceed R200, but the exemption will not apply if the total consideration payable for the lease is not quantifiable, at the time of execution of the lease.

This exemption applies where the lease is executed in the year of assessment of the lessor who is a taxpayer commencing on or after 1 February 2006, or in the case of any other lessor, on or after 1 March 2006. With effect from 1 March 2006 the above amount of R200 was increased to R500.

The duty payable in this regard will not exceed 10 per cent of the value applicable for transfer duty purposes.

Marketable securities

Original issue of shares/stock

| | |
|--|----------|
| For every R20, or part thereof, the nominal value and any premium payable thereon (if transferable only by registration) | 5 cents |
| If made out to bearer for every R20 or part thereof of the nominal value and any premiums payable thereon | 20 cents |

Note: Stamp Duty on the issue of shares was eliminated from 1 January 2006

The issue of a certificate or other like instrument representing an interest in shares/stock

| | |
|--|----------|
| If not transferable or only by registration for every R100 or part thereof of the price of issue | 5 cents |
| If made out to bearer for every R100 or part thereof of the price of issue | 20 cents |

Note: Stamp Duty on the issue of shares was eliminated from 1 January 2006

Registration of transfer (other than through a stockbroker)

| | |
|---|-----------|
| For every R10, or part thereof, of the amount or value of the consideration given, or less than the market value is given, the value of the marketable security transferred | 2.5 cents |
|---|-----------|

Note: With effect from 1 January 2006 no duty is payable if the duty is R100 or less during any six month period

Cancellation or redemption of company shares

| | |
|---|-----------|
| For every R10, or part thereof, of the value of the consideration | 2.5 cents |
|---|-----------|

Acquisition by transferee from transferor

| | |
|--|-----------|
| For every R10, or part thereof, of the amount or value of the consideration given , or where no consideration is given, the value of the marketable security transferred | 2.5 cents |
|--|-----------|

Notes: (1) With effect from 1 January 2006 no duty is payable if the duty is R100 or less during any six month period.

(2) Specific exemptions apply to each of the five items listed under Marketable securities.

3.9 Uncertificated Securities Tax (UST)

Uncertificated securities tax at the rate of 0.25% is payable in respect of every change in beneficial ownership in any securities which are listed on the JSE Securities Exchange. In the case of unlisted securities, stamp duty is levied at the same rate of 0.25%.

Note: UST on the issue of securities was eliminated from 1 January 2006

3.10 Transfer Duty

Transfer duty is levied on the consideration payable for the acquisition of fixed property. If, for some reason, no consideration is payable or consideration is not market related, the duty is levied on the fair market value of the property.

Amendments were introduced with effect from 13 December 2002 to counter the avoidance of transfer duty by placing residential property in companies, close corporations and discretionary trusts and selling the shares, members' interest and, arguably, contingent rights instead of the property. The definition of "property" was amended to include shares, members' interest and contingent rights in certain circumstances and to bring the transfer of these assets within the charging section.

All transactions relating to a taxable supply of goods and subject to VAT are exempt from transfer duty.

Transfer Duty Rates

From 01/03/2006 to date

Individuals

| Consideration | Rate |
|--|---|
| On the first R500 000 of the consideration | 0% |
| On the amount that exceeds R500 000 but not R1 million | 5% |
| On the amount that exceeds R1 million | R25 000 plus 8% on the value above R1 million |

A person other than a natural person (for example, a company, CC and trust), 8% of consideration.

3.11 Importation of Goods and payment of customs and excise duties and VAT

• Introduction

Goods arriving in South Africa may only enter through appointed places of entry. These goods must be declared to SARS within the prescribed time periods. The applicable customs duties, if any, must be paid when the goods are entered for home consumption, i.e. for use in the Southern African Customs Union comprising of the Republic, Botswana, Lesotho, Namibia and Swaziland. The rate of duty is dependant on the tariff classification (description) of the goods and duty is usually payable on the value (customs value) or the volume or quantity of the goods imported. The customs duty may however be –

- deferred if the importer is a participant in the SARS deferment scheme;
- or rebated if the goods meet certain conditions; or
- suspended if the goods are entered for storage in a licensed warehouse.

Imported goods may also qualify for a preferential rate of duty in terms of free or preferential trade agreements to which the Republic is a party. The goods may also be subject to import control, sanitary and photo-sanitary requirements.

In addition, VAT is also payable on goods imported and cleared for home consumption.

- **Registration as an Importer**

Any person who intends importing goods into South Africa must register with SARS as an importer. Importers who import non-commercial goods of which the value for each consignment is less than R20 000, provided that this is limited to three importations per calendar year, are excluded from the registration requirement.

- **Goods imported through appointed places of entry**

Imported goods can only enter South Africa through appointed places of entry, which include –

- Customs appointed airports;
- Customs appointed land border posts;
- Customs appointed harbours; and
- the postal service.

- **Import Declarations**

The importer is required to complete the prescribed bill of entry declaration within the stipulated time period in respect of imported goods. Goods not declared within this time period will be detained and removed to a state warehouse. It is the responsibility of the importer to ensure that the declaration is fully and accurately completed and all supporting documents are produced. Declarations may either be submitted manually or electronically to SARS. Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Where errors are detected by SARS or false declarations are made, whether duties were payable or not, the Customs and Excise Act, 1964 provides for penalties, in addition to the forfeiture of the goods. In instances of fraud, offenders may be prosecuted. Goods subject to import control will only be released on the production of the relevant permit at the time of clearance or seized if their importation is prohibited.

- **Tariff Classification**

Tariff classification is the process whereby imported goods are categorized by virtue of what it is, or how it is made or what it is used for. According to this classification, the applicable rate of duty is levied.

- **Customs Value**

Customs value is established in terms of Article VII of the General Agreement on Tariffs and Trade (GATT). Provision is made for six valuation methods. The majority of goods are valued using method 1, which is the actual price paid or payable by the buyer of the goods. The Free on Board (FOB) price forms the basis for the value, allowing for certain deductions (e.g. interest charged on extended payment terms) and additions (e.g. certain royalties) to be effected.

In determining the customs value, SARS pays particular attention to the relationship between the buyer and seller, payments outside of the normal transactions, e.g. royalties and licence fees and restrictions that have been placed on the buyer. These aspects can result in the price paid for the goods being increased for the purpose of determining a customs value and thus directly affecting the customs duty payable.

- **Duties and Levies**

Customs duty is protective in nature and the purpose of the duty is to protect local industries. Excise Duty, Fuel Levy and Environmental Levy are forms of indirect taxation used by government to primarily contribute to the fiscus, but also in certain instances to influence consumer behaviour. SARS also collects the Road Accident Fund levy.

- **Customs duty**

Customs duty is a consumption tax levied on imported goods and is usually calculated as a percentage on the value of the goods. However, goods such as certain meat and primary plastic products, certain textile products and certain firearms attract rates of duty that are calculated either as a percentage of the value of the goods, or as cents per unit, kilogram or metre, etc.

- **Excise duties**

Excise duty is a consumption tax levied on certain locally manufactured products. A counter-veiling Customs duty, equal to the rate of the Excise duty, is levied on imported goods of the same class and kind in addition to any customs duty payable. Excise duty or its counter-veiling Customs duty counterpart is fiscal in nature to raise revenue.

- **General Fuel Levy and Road Accident Fund Levy**

The general fuel levy and the Road Accident Fund levy are charged over and above the excise duty or counter-veiling Customs duty on certain fuel products.

- **Environmental levy (see also par 3.14)**

Environmental levy is currently levied on certain plastic carrier bags and flat bags.

- **Anti-dumping and countervailing duties on imported goods**

Anti-dumping, countervailing and safeguard duties are trade remedies to protect local industries against goods being dumped in South Africa or on subsidised imported goods or in the case of disruptive competition respectively. These goods are the subject of trade and industry investigations into pricing and export incentives in the country of origin and the rate imposed will depend on the result of the investigations.

The above duties are either levied on an ad valorem basis (percentage of the value of the goods) or as a specific duty (percentage per unit, kilogram, litre, etc).

- **VAT – Importation of goods**

VAT is, in terms of section 7(1)(b) of the VAT Act, 1991, levied at the rate of 14% on the importation of goods into South Africa from export countries, including Botswana, Lesotho, Namibia and Swaziland. However, the importation of certain goods into South Africa is, in terms of section 13(3) read with Schedule 1 to the VAT Act, exempt from VAT on importation.

The value to be placed on the importation of goods into South Africa is, in terms of section 13(2)(a) of the VAT Act, 1991, deemed to be the value of goods for customs duty purposes, plus any duty levied in terms of the Customs and Excise Act, 1964 in respect of the importation of such goods, plus 10% of the said value. Section 13(2)(b) provides that the value is not increased by the factor of 10 percent where the goods have their origin in Botswana, Lesotho, Namibia or Swaziland.

- **Deferment, suspension and rebate of duties**

Participation in the SARS deferment scheme allows an importer to defer duty and VAT for a period up to 30 days after clearance of imported goods for home consumption. At the conclusion of the period of deferment the client is allowed a further seven days in order to settle the account. A requirement for participation in the deferment scheme is the furnishing of adequate security to cover the amount deferred.

The payment of duty and VAT is suspended for a period of up to two years when goods are entered into a licensed customs and excise storage warehouse for storage. Duty and VAT must be brought to account when the goods are cleared for home consumption.

Rebate provisions are provided for the suspension of customs duties on goods imported for inward processing (Industrial rebates) and outward processing (temporary admission for purposes of manufacture for export) subject to certain conditions. Value-added tax is suspended as well for goods temporary admitted for outward processing.

Relief (in the form of full or partial rebates) is also granted in respect of the use of excisable products in the manufacture of other non-excisable products and for the industrial use of these excisable products, e.g. spirits used in the manufacture of medicines, paints, adhesives, etc. and petroleum products used for farming, fishing and forestry purposes.

3.12 Exportation of goods and payment of export duty

- **Introduction**

Goods exported from South Africa may only be exported through places appointed for this purpose. Every exporter of any goods must within the prescribed period declare such goods for export. The goods may also be subject to export control being either totally prohibited from export or subject to the production of a permit from the issuing authority at the time of clearance. Although the Customs and Excise Act, 1964 makes provision for the imposition of export duty, no exports duties have been imposed.

- **Registration as an Exporter**

Any person who intends exporting goods from South Africa must register with SARS as an exporter. Exporters who export non-commercial goods of which the value for each consignment is less than R20 000, provided that this is limited to three exportations per calendar year, are excluded from registration.

- **Export Declarations**

Every exporter of any goods must, before such goods are exported from South Africa deliver to the Controller a bill of entry in the prescribed form. Declarations may either be manually or electronically to SARS. Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Where errors are detected by SARS or false declarations are made, the Act provides for penalties in addition to forfeiture of the goods. In instances of fraud, offenders may be prosecuted.

3.13 Free Trade Agreements and preferential arrangements with other countries

A number of agreements have been concluded or are in the process of being negotiated with other countries and trading blocs, which provides for preferential market access into South African (imports) as well as for South African products into other markets (exports). These are:

- Bi-lateral Agreements (Non-reciprocal)
 - Trade Agreement between the Governments of the Republic of South Africa and Southern Rhodesia (Zimbabwe); and
 - Trade Agreement between the Government of the Republic of South Africa and the Government of the Republic of Malawi,providing for preferential access of specific products into South Africa subject to specific origin requirements and quota permits.
- Preferential dispensation for goods entering South Africa (Non-reciprocal)

Goods produced or manufactured in the Republic of Mozambique (Rebate Item 412.25), providing for free or reduced duties subject specific origin requirements
- Free or Preferential Trade Agreements (FTAs and PTAs) (Reciprocal)
 - SACU – The Southern African Customs Union consists of South Africa, Botswana, Lesotho, Namibia and Swaziland. Its aim is to maintain the free interchange of goods between member countries. It provides for a common external tariff and a common excise tariff to this common customs area.
 - TDCA - Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, on the other part, which was implemented 1 January 2000.
 - SADC-Treaty of the Southern African Development Community, which was implemented on 1 September 2000.
 - A number of such agreements are in the process of being negotiated or being finalised which will come into operation during 2006. Notably will be the agreement with the European Free Trade Association (EFTA). Other agreements being negotiated are those with the United States of America, India, China and the Common Market of the Southern Cone (MERCOSUR).

- Generalised System of Preferences (GSPs) (Non- reciprocal)
 - AGOA

Preferential tariff treatment of textile and apparel articles imported directly into the territory of the United States of America from the Republic as contemplated in the African Growth and Opportunity Act
 - EU

Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the European Community
 - Norway

Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Kingdom of Norway
 - Switzerland

Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Swiss Confederation
 - Russia

Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Russian Federation
 - Turkey

Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Republic of Turkey

3.14 Environmental Levy

Since 1 June 2004 an environmental levy is charged on certain plastic carrier bags and flat bags (bags generally regarded as “grocery bags”) at a rate of 3 cents per bag. Plastic bags used for immediate wrapping / packaging, refuse bags and refuse bin liners are excluded from paying this levy.

Apart from the payment of this specific Environmental Levy per quarterly excise account, VAT is also levied on these bags, calculated on a value which includes the amount of the levy.

Manufacturers of such bags must licence their premises as manufacturing warehouses with the local Controller of Customs and Excise and submit quarterly excise accounts to such Controller.

3.15 Skills Development Levy (SDL)

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

This levy (currently 1%) is used for the funding of education and training of employees. It is calculated as a percentage of a leviable amount, which is more or less equal to the earnings of the employees. The application form to register for SDL is the same form that is used to register for employees' tax (EMP101). The monthly return for SDL is combined with the monthly return for employees' tax (EMP201) which means that the same terms and conditions apply for submission and payment. Further information in this regard is available in the SDL10 – "Guidelines to Employers" which is available at SARS offices and on the SARS website under SDL.

3.16 Unemployment Insurance Contributions

The Unemployment Insurance Fund insures employees against the loss of earnings due to termination of employment, illness and maternity leave. A monthly contribution has to be made by the employer (1%) and the employee (1%) based on the earnings of the employee. The contributions are calculated as a percentage of the remuneration paid to the employee for services rendered. An employer who is registered for employees' tax or the Skills Development Levy is automatically registered for U.I. contributions. (The forms used are the same forms that are used for SDL and PAYE purposes). An employer that is not liable for the payment of employees' tax or SDL must register for U.I. purposes with the Unemployment Insurance Commissioner at the Department of Labour.

UIF contributions are only paid or payable up to an amount of R11 662 remuneration per month. Any remuneration received by an employee which is in excess of R11 662 will not be taken into account for the calculation of UIF contributions. The threshold of R11 662 was effective from 1 July 2006.

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

Further information in this regard is available in the Unemployment Insurance Contributions Guidelines to Employers which is available on the SARS website under "UIF". The Department of Labour's website, www.uif.gov.za also has useful information in this regard.

4. YOUR BUSINESS AND OTHER AUTHORITIES

4.1 Introduction

Before you commence with your business activities, it may be necessary for you to register with certain other authorities in order to comply with laws or regulations of a general nature or pertaining to your area of operation specifically. It will be in your own interest to make enquiries in this regard and to comply with all the requirements that might be set. Some of the requirements that might be applicable to you are mentioned below. The purpose of this section is merely to bring to your attention some of the authorities that might require your registration. The list below is not exhaustive.

- **Municipalities**

- Regional Establishment Levy and Regional Services Levy

These levies are levied (at fairly low rates) on turnover (viz, establishment levy) and payroll (viz, services levy). Any enterprise within the region of the municipality who has other persons in his/her employment or who carries on a business in the region must register with such municipality. Inquiries in this regard must be directed to the relevant municipality.

It was proposed in the 2005 Budget that Regional Service Council levies would be abolished on 30 June 2006. Legislation has now been passed to repeal these levies with effect from 1 July 2006 (see section 59 of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, No 9 of 2006).

- Other

Your local municipality will provide information with regard to the rules/regulations laid down in respect of businesses in their respective areas.

- **Unemployment Insurance Commissioner**

Those employers who are not liable to register with SARS for PAYE and/or SDL purposes, but are liable for the payment of U.I. contributions must pay such contributions in respect of all its employees to the U.I. Commissioner at the Department of Labour. (See also under Unemployment Insurance Contributions.)

- **South African Reserve Bank – Exchange Control Regulations**

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

Residents of South Africa wishing to remit/invest/lend amounts abroad are as a general rule subject to exchange control restrictions and will need to approach their local commercial banks in this regard.

Individuals who are over 18 years and in good standing with their tax affairs may invest a total of R2 000 000 outside South Africa. However, individuals are also able to invest, without restriction, in foreign companies listed on South African bond and security exchanges.

Companies may use unlimited South African funds for new approved foreign direct investments (strictly true investments in factories or businesses and not for portfolio investments). Companies will also be allowed to retain foreign dividends offshore, and dividends repatriated to South Africa after 26 October 2004 may be transferred offshore again at any time for any purpose.

Application to the South African Reserve Bank's Exchange Control Department is still required for monitoring purposes and for approval in terms of existing foreign direct investment criteria, including demonstrated benefit to South Africa. The South African Reserve Bank, however, reserves the right to stagger capital outflows relating to very large foreign investments so as to manage any potential impact on the foreign exchange market.

Further information is available on the Reserve Bank website, namely: <http://www.reservebank.co.za>.

- **Department of Trade and Industry**

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, type of business entities and requirements of registration of a business entity may be obtained from the Department of Trade and Industry or on their website www.dti.gov.za.

- **Broad-Based Black Economic Empowerment Act, No. 53 of 2003**

The above Act provides a legislative framework for the promotion of black economic empowerment and for the issuing of the codes of good practice. For more information contact the Department of Trade and Industry or visit their website at www.dti.gov.za.

- **Environmental**

Various Acts exist with regard to the control and management of pollution which are administered by different State Departments. Companies and individuals conducting businesses which may cause harm to the environment should approach the relevant Department to ensure that they comply with the relevant environmental standards. Acts in this regard may include the following:

- National Environmental Management Act, 1998 (management of pollution in general)
- Atmospheric Pollution Prevention Act, 1965 (management of air pollution)
- National Water Act, 1998 (management of water resources)
- Mineral and Petroleum Resources Development Act, 2002 (rehabilitation of mining areas)
- Hazardous Substances Act, 1973

- **Safety and Security**

Below is a list of some legislation relating to safety, security and health issues, which will enable businesses to ensure that their work places are safe and secure environments to work in.

- Explosives Act, No 15 of 2003
- National Nuclear Regulator Act, No 47 of 1999
- Nuclear Energy Act, No 46 of 1999
- Occupational Health and Safety Act, No 85 of 1993
- Tobacco Products Control Act, No 83 of 1993

- **Labour**

Various Acts, administered by the Department of Labour, govern the relationship between employers and employees. These Acts include the following:

- Basic Conditions of Employment Act, 1997

- Labour Relations Act, 1995
 - Employment Equity Act, 1998
 - Skills Development Act, 1998
 - Compensation for Occupational Injuries and Diseases Act, 1993
 - Employers are required to make contributions calculated on a certain percentage of their employees' earnings to the Compensation Fund, from which compensation is paid for injuries/diseases sustained or contracted by employees in the course of their employment or for death resulting from such injuries/diseases (for more information visit the Department of Labour's website, www.labour.gov.za).
- **Promotion of Access to Information Act, No 2 of 2000**

In terms of this Act, government departments, public and private companies, including registered close corporations and businesses are required to compile and publish manuals of their records. The initial deadline for publication of said manuals was 31 August 2003; however, the Minister of Justice has exempted small businesses and private bodies from submitting the manuals until 31 August 2005. The Department of Justice and Constitutional Development website www.doj.gov.za has more information in this regard. The SARS manual on the Promotion of Access to Information Act, 2000 is available on the SARS website under Brochures and Guides in three languages, namely English, Afrikaans and Xhosa.
 - **Regulation of Interception of Communications and Provision of Communication-related Information Act, No 70 of 2002 (RICA)**

The purpose of the RICA in broad terms is to regulate/control the interception of electronic and other communications. Senior persons in businesses using some form of electronic communications should take note of the provisions of RIC.
 - **Electronic Communications and Transactions Act, No 25 of 2002 (ECTA)**

The ECTA regulates the electronic communications, including digital signatures, electronic agreements and storage requirements. All persons making use of electronic communications are affected by this legislation.
 - **Prevention of Organised Crime Act, No 121 of 1998 (POCA)**

The purpose of the POCA is mainly to combat organised crime activities such as racketeering and money laundering. In terms of section 7 of POCA, businesses must report any unlawful activities and the failure to do so is an offence.
 - **Financial Intelligence Centre Act, No 38 of 2001 (FICA)**

The FICA sets up a regulatory anti-money laundering regime which is intended to break the cycle used by organised criminal groups to benefit from illegitimate profits. This Act aims to maintain the integrity of the financial system. Apart from the regulatory regime the Act also creates the Financial Intelligence Centre.

The regulatory regime of the FICA imposes 'know your client', record-keeping and reporting obligations on accountable institutions. It also requires accountable institutions to develop and implement internal rules to facilitate compliance with these obligations.

FICA imposes a duty on accountable institutions to establish and verify the identity of clients. Detailed records of clients and the transactions entered into by clients must be kept. Records obtained by an accountable institution must be kept for at least 5 years after a transaction was concluded and for a minimum of 5 years after the date which a business relationship was terminated and must be kept in electronic form.

Financial Intelligence Centre – contacts:

Pretoria

Private Bag X115
PRETORIA
0001
Tel: +27 12 309 9200
Fax: +27 12 315 0440

Cape Town

P O Box 6850
ROGGE BAY
8012
Tel: +27 21 443 4500

Further information on the FICA and what is meant by accountable institutions can be found on the National Treasury website, namely, www.finance.gov.za.

- **Financial Advisory and Intermediary Services Act, No 37 of 2002 (FAIS Act)**

The FIAS Act has been enacted to regulate the provision of a wide range of financial and intermediary services to clients. This Act seeks to protect the public from unscrupulous and unprofessional investment advisors, intermediaries and representatives. It outlines areas such as codes of conduct, licensing requirements, the appointment of external auditors, reporting and retention obligations of financial advisors, and the declaration of 'undesirable practices'.

The Act became operational from 1 October 2004.

- **Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PCCA Act)**

The PCCA Act aims to combat corruption and corrupt activities and lays out the offences relating to those activities. This Act requires that a person who holds a position of authority, who knows or ought to reasonably have known or suspected that any other person has committed a specified act of corruption or the offence of fraud, theft, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion to a police official.

- **Companies Act, No 61 of 1973**

Section 173 of the Companies Act requires that private companies must submit annual returns with effect 1 May 2005 to CIPRO (Companies and Intellectual Property Registration Office). Annual returns refer to the information that companies must submit to CIPRO as confirmation that the company is still in business and that the information provided is still valid. For more information, visit www.cipro.gov.za.

- **Close Corporations Act, No 69 of 84 (CCA)**

Close corporations (CCs) are governed by the CCA. CCs are simpler, less expensive corporate entities for single business persons or small groups of entrepreneurs. For income tax purposes a close corporation is classified as a company.

A CC does not have to appoint an auditor, but only an “accounting officer” to draw up its financial statements. An accounting officer is a person who is a member of a recognised profession which as a condition for membership requires its members to have passed in accounting and related fields of study which would qualify such member to perform the duties of an accounting officer.

The CCA also requires that a CC must keep accounting records to fairly represent the state of its affairs and business and must prepare annual financial statements. Furthermore, the CCA provides for penalties if certain requirements such as mentioned above are not carried out.

- **National Small Business Act, No. 102 of 1996**

This Act provides for the establishment of an Advisory Body and the Ntsika Enterprise Promotion Agency; to provide guidelines for organs of state in order to promote small business in South Africa. The Ntsika Enterprise Promotion Agency is an agency of the Department of Trade and Industry and facilitates non-financial support and business development services to SMMEs through a broad range of intermediary organisations. For more information, refer to the Ntsika website, namely www.ntsika.org.za

- **Business Names Act, No 27 of 1960**

This Act provides for the control of business names and related matters such as particulars to be disclosed regarding persons carrying on business, restrictions in respect of business names and prohibiting use of certain business names.

- **Lotteries Act, No 57 of 1997**

Regulations under Lotteries Act provide the extent to which one may lawfully hold a lottery or other competition to promote the sale or use of any goods or services.

- **Mineral and Petroleum Resources Development Act, No 28 of 2002 (MPRD Act)**

The MPRD Act affects the holders of “old order rights” (previous mining, prospecting or unused rights) held under the Minerals Act, 1991 (repealed by the MPRD Act) in the mining industry. In terms of the MPRDA the right to prospect, mine, explore, produce, etc for minerals vests in the State. Applications for the new forms of prospecting, mining, exploration, production rights, etc (“new order rights”) must be made directly to the Department of Minerals and Energy. Holders of old order rights have until 30 April 2009 to convert their rights to the new order rights.

The MPRD Act also facilitates the conversion of prospecting and mining rights currently held to the new forms of prospecting and mining rights contemplated by the MPRD Act.

- **Promotion of Administrative Justice Act, No 3 of 2000 (PAJA)**

In terms of the Constitution of RSA, 1996 everyone has the right to administrative action that is lawful,

reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. The PAJA gives effect to this right.

- **Protected Disclosures Act, No 26 of 2000**

This Act provides for procedures in terms of which employees in both the private and public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees and for the protection of employees making that disclosure.

- **National Credit Act, No 34 of 2005**

The purposes of the Act are, amongst others, to promote a fair, transparent, competitive, sustainable, responsible and accessible credit market and industry and to protect consumers. It also discourages reckless credit granting of credit, assists people who are heavily in debt and regulates credit information. For more information refer to the Department of Trade and Industry website, namely, www.dti.gov.za.

- **Draft Consumer Protection Bill**

This draft Bill was published in Government Gazette No 28629 on 15 March 2006 for general information and comment. The aim of this Bill is to consolidate and integrate various existing consumer protection provisions that are currently contained in various other laws, for example, the Consumer Affairs Act and the Trade Practices Act, to name a few, and to protect consumers against unfair market practices and unsafe products.

5. GENERAL

- **Record-keeping**

If you are involved in a business you must keep records that will enable you to prepare complete and accurate tax returns.

You may choose a system of record keeping that is suited to the purpose and nature of your business. These records must clearly reflect your income and expenditure. This means that, in addition to your permanent books of account or records, you must maintain all other information that may be required to support the entries in your records and tax returns.

Paid accounts, cancelled cheques and other source documents that support entries in your records should be filed in an orderly manner and stored in a safe place. For most small businesses, the business chequebook is the prime source for entries in the business records. It is advisable to open a separate bank account for your business so that you do not mix your private and business expenses.

The records should include –

- o records showing the assets, liabilities, undrawn profits, revaluation of fixed assets and various loans;
- o a register of fixed assets;
- o detailed daily records of cash receipts and payments reflecting the nature of the transactions and the names of the parties to the transactions (except for cash sales);
- o detailed records of credit purchases (goods and services) and sales reflecting the nature of the transactions and the names of the parties to the transactions;

- o statements of annual stocktaking; and
- o supporting vouchers.

- **Importance of accurate records**

Accurate records are essential for efficient management. The following demonstrates the need to keep accurate records:

- Identify nature of receipt
The records will show whether the receipts are of a revenue nature or capital nature.
- Prevent omission of deductible expenses
Expenses may be overlooked or forgotten when you prepare your tax return, unless you record them at the time they are incurred or paid.
- Establish amounts paid out as salaries or wages
Under normal circumstances amounts paid to employees for services rendered are taxable in the hands of the employees. In these cases employees' tax must be deducted from salaries or wages by the person paying such salaries or wages.
- Explain items reported on your income tax return
If your income tax return is examined by SARS, you may be asked to explain the items reported. Adequate and complete records are always supported by sales slips, invoices, receipts, bank deposit slips, cancelled cheques and other documents.

Availability and retention of records

You are required to keep the books and records of your business in order to make them available at any time for examination by SARS. The retention period commences from the date of the last entry in the particular document, record or book. In terms of Regulations issued under the Companies Act and the Close Corporation Act, records must be kept for 15 years. A list of the retention periods in terms of the Regulations is given below.

| RETENTION PERIODS OF CLOSE CORPORATION RECORDS | | |
|---|---|-------------------------|
| ITEM NO. | RECORDS | RETENTION PERIOD |
| 1. | Founding statement (form CK1) | Indefinite |
| 2. | Amended founding statement (forms CK2 and CK2A) | Indefinite |
| 3. | Minute book as well as resolutions passed at meetings | Indefinite |
| 4. | Annual financial statements including: <ul style="list-style-type: none"> • Annual accounts; and • The report of the accounting officer | 15 years |
| 5. | Accounting records, including supporting schedules to accounting records and ancillary accounting records | 15 years |
| 6. | The microfilm image of any original record reproduced directly by the camera - the "camera master" | Indefinite |

| RETENTION PERIODS OF COMPANY RECORDS | | |
|--------------------------------------|---|------------------|
| ITEM NO. | RECORDS | RETENTION PERIOD |
| 1. | Certificate of incorporation | Indefinite |
| 2. | Certificate of change of name (if any) | Indefinite |
| 3. | Memorandum and articles of association | Indefinite |
| 4. | Certificate to commence business (if any) | Indefinite |
| 5. | Minute book, CM25 and CM26, as well as resolutions passed at general/class meetings | Indefinite |
| 6. | Proxy forms | 3 years |
| 7. | Proxy forms used at Court convened meetings | 3 years |
| 8. | Register of allotments – after a person ceased to be a member (section 111) | 15 years |
| 9. | Registration of members | 15 years |
| 10. | Index of members | 15 years |
| 11. | Registers of mortgages and debentures and fixed assets | 15 years |
| 12. | Register of directors' shareholdings | 15 years |
| 13. | Register of directors and certain officers | 15 years |
| 14. | Directors attendance register | 15 years |
| 15. | Branch register | 15 years |
| 16. | Annual financial statements including: <ul style="list-style-type: none"> • Annual accounts • Directors' report • Auditors' report | 15 years |
| 17. | Books of account recording information required by the Act | 15 years |
| 18. | Supporting schedules to books of account and ancillary books of account | 15 years |

Record keeping as required in terms of sections 73A (Income Tax purposes) and 73B (Capital Gains Tax purposes) of the Income Tax Act and section 55 of the Value-Added Tax Act

In terms of the above mentioned sections, a taxpayer is required to keep records such as ledgers, cash books, journals, cheque books, paid cheques, bank statements, deposit slips, invoices, stock lists, registers, books of accounts, data in electronic form and records relating to the determination of capital gains or capital losses for a period of five years from the date on which the return for that year of assessment was received by SARS. However, in cases where objections and appeals have been lodged against assessments, it would be advisable to keep all records and data relating to the assessments under objection/appeal until such time that the objection/appeal has been finalised, even if the timeframe for finalisation exceeds five years.

- **Appointment of Auditor/Accounting Officer**

A company is required by law to appoint an auditor who will audit and sign an audit report in respect of its financial statements. Similarly a close corporation is required to appoint an accounting officer. Normally, the auditor or accounting officer will provide assistance in determining the taxable income and the amount of tax to be paid.

- **Representative Taxpayer**

Every Company/Close Corporation which conducts business or has an office in South Africa must, within one month from the commencement of business operations or acquisition of an office, for the purposes of section 101 of the Income Tax Act, appoint a representative as the Public Officer of the Company/Close Corporation. The name of the representative and his/her position in the Company/Close Corporation must be furnished to the SARS office for the district in which the Company/Close Corporation has its registered office, for approval. The representative must be a responsible officer of the Company/Close Corporation (for example, director, manager, senior member, secretary, etc.) and such position must constantly be kept filled by the Company/Close Corporation.

It is also advisable (although not a requirement of the Act) that a sole proprietor or partner of a business appoints a representative taxpayer such as an accountant to deal with his/her tax affairs.

- **Tax Clearance Certificates**

Exchange controls have been relaxed since 1 July 1997, allowing South African residents to invest funds abroad, or to hold funds in foreign currencies at local banks. The current permissible amount is R2 million over one's lifetime.

In terms of existing policy, South African individuals who are over 18 years and in good standing with their tax affairs may invest outside RSA. Such investors are required to apply for a Tax Clearance Certificate (TCC) from their local SARS office where they are registered for income tax purposes prior to any foreign investment being made.

A TCC may only be issued if all tax returns have been submitted (unless extension was granted) and no taxes (i.e. income tax, value-added tax and employees' tax) are outstanding and a statement of assets and liabilities has been provided. A person who is not registered for income tax purposes will also be required to apply for such a certificate.

Prospective tenderers will also be required to obtain a TCC from the SARS office where they are registered for tax purposes prior to submitting a tender for providing goods or services to Government.

The procedure to be followed when applying for TCC in respect of tenders and good standing can be accessed on the SARS Internet / Taxes / Operating Procedures.

The application forms used are:

- **FIA 001:** Application for tax clearance certificate (in respect of foreign investments)
- **FIA 002:** Application for tax clearance certificate (only for recurring foreign investments not exceeding R30 000 p.a.)
- **TCC 001:** Application for tax clearance certificate (in respect of tenders / good standing)

The above forms are obtainable from any SARS office and are also available on the SARS website.

- **Non-Compliance with legislation**

Taxes are collected to enable the Government to provide essential services like education, health, security and welfare to the residents of South Africa. Therefore, if everyone pays their fair share, better services can be provided and tax rates can be reduced. Taxpayers who ignore their tax obligations such as not to register or failure to submit tax returns are actually defrauding their country and fellow residents/citizens.

- **Interest, Penalties and Additional Tax**

The various tax/revenue laws also provide for the imposition of interest, penalties and additional tax up to 200% for non-payment or non-compliance of these laws. A person may also be liable for a fine or imprisonment on matters such as non-payment of taxes, failure to complete tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which he/she is not entitled to.

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

- **Dispute Resolution**

- **Objections**

The procedure for taxpayers who are not satisfied with their assessments is to lodge an objection in writing stating fully and in detail the grounds on which the objection is lodged.

The objection must be in the prescribed form, namely ADR 1 and must be submitted within 30 days after the date of assessment to the SARS office where the taxpayer is registered. This form must be completed as comprehensively as possible, and must include detailed grounds on which the objection is founded with supporting documentation where necessary.

It must be signed by the taxpayer. Where the taxpayer is unable to personally sign the objection, the person signing on behalf of the taxpayer must state in an annexure to the objection:-

- the reason why the taxpayer is unable to sign the objection;
- that he or she has the necessary power of attorney to sign on behalf of the taxpayer; and
- that the taxpayer is aware of the objection and agrees with the grounds thereof.

- **Appeals**

If the objection is disallowed wholly or in part, the taxpayer may appeal to a specially constituted Tax Board or to the Tax Court for hearing appeals. The notice of appeal must be in writing and must be made within 30 days of the notice of the disallowance of the objection.

- **Rules regarding objections and appeals**

Rules regarding objections and appeals have been formulated in terms of section 107A of the Act for assessments issued, objections lodged or appeals noted. These rules are available on the SARS website at www.sars.gov.za/dr and are also set out in the guide on Tax Dispute Resolution. Essentially, the rules set timeframes for both SARS and taxpayers' adherence in order that objections and appeals may be dealt with in an expeditious manner. It is important to note that objections need to be lodged at the address specified in the assessment in terms of these new rules. Additionally, these rules make provision for alternative dispute resolution.

– ADR

Alternative Dispute resolution (ADR) is a form of dispute resolution other than litigation, or adjudication through the courts. It is less formal, less cumbersome and less adversarial and is a more cost effective and speedier process of resolving a dispute with SARS.

If a dispute is resolved between SARS and the taxpayer, it must be recorded and be signed by the taxpayer and the SARS representative. SARS will issue, where necessary, a revised assessment to give effect to the agreement reached.

Where the dispute is not resolved, the taxpayer may continue on appeal to the Tax Board or the Tax Court. In essence, a taxpayer has three options available when disputing an assessment:

- o Where the tax in question is less than R200 000, the Tax Board is to be utilised.
- o Where the tax in question is R200 000 or more, the Tax Court is to be utilised.
- o However, instead of going to the Tax Board or Tax Court, the ADR process can be used where the Commissioner decides it is appropriate.

ADR applies to taxes such as –

- o Income Tax (including PAYE and CGT)
- o VAT
- o Transfer Duty
- o Stamp Duty
- o Skills Development Levies
- o Unemployment Insurance Contributions
- o Estate Duty
- o Donations Tax

• **SARS Service Monitoring Office (SSMO)**

The SSMO is a special office operating independently of SARS offices. The SSMO facilitates the resolution of problems of a procedural nature that have not been resolved by SARS offices through the normal channels. The SSMO reports directly to the Commissioner and provided regular reports to the Minister of Finance.

What is considered to be procedural problems?

- Delays in processing returns, decision making and the correction of administrative mistakes
- Failure to provide reasons for making an adjustment to a return
- Failure to respond to queries, objections and appeals
- The conduct and attitude of SARS staff

What is considered not to be procedural problems?

- Merits of disputes as to the amount of an assessment or schedules
- Complaints that have been referred to the Public Protector
- Matters that have been, or are, before the Courts
- Complaints about Government or SARS policy
- Changes to legislation

If you believe you have an issue that you want to bring to the attention of the SSMO, three steps must be followed:

STEP ONE

When you wish to raise an issue, it is usually best to do it in writing, by phone or fax, or by visiting your local SARS office. The relevant officer will try to resolve the issue as quickly as possible.

STEP TWO

If all avenues of communication have failed to solve your issue at Step One, contact your local Call Centre and request the Call Centre Agent to assist. If the problem can not be solved, the Call Centre Agent will register your complaint and provide you with a service request number. Your complaint will then be escalated to a Consultant/Manager to assist you.

STEP THREE

If you have received no resolution within a reasonable time at Step Two, you can ask the SSMO to look into the issue.

The SSMO can be reached on

Tel: 0860 12 12 16

Fax: 012 431 9695

Email: ssmo@sars.gov.za

For more information visit the website at www.sars.gov.za/ssmo

• Conclusion

Further information about the different taxes administered by SARS is available on the SARS website, www.sars.gov.za or from any SARS office.

Details on how to start a business, business opportunities, managing / financing your business, etc. is available on the SARS website under links (at bottom of the homepage) / Brain – Business Referral and Information Network". Information may also be obtained from the Department of Trade and Industry on their website www.dti.gov.za.



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