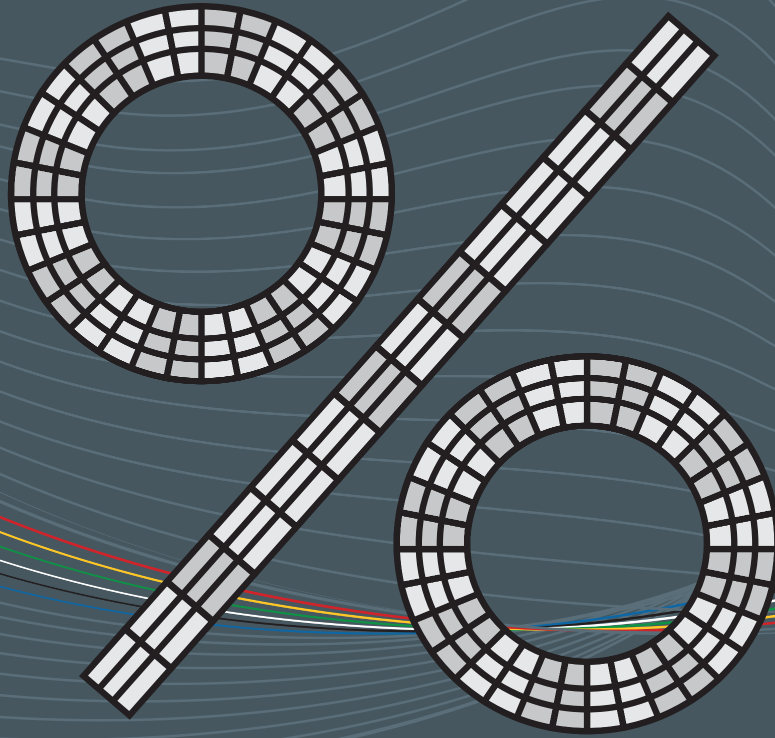

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TAXATION & DOUBLE TAXATION AGREEMENTS

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Introduction

Various forms of taxation are levied in South Africa and, as is the case in many other jurisdictions, the tax laws are complex. The extensive and constantly changing taxation legislation can also prove to be challenging for the unsuspecting foreign investor.

Individuals

Individuals are taxed on a progressive basis up to a maximum tax rate of 40% on taxable income exceeding ZAR 638 601 per year (tax year ending 28 February 2014).

One-third (33.3%) of capital gains are included in taxable income. The maximum effective Capital Gains Tax (CGT) rate for individuals is therefore 13.3% (40% x 33.3%). Certain rebates are also available for foreign taxes on income to certain taxpayers whose taxable income includes amounts from countries other than South Africa.

Individuals who are residents for South African tax purposes are taxed on their worldwide income (subject to certain exclusions) while non-residents are only subject to tax in South Africa on any income derived from a source in South Africa.

Companies

There is no group taxation in South Africa. Each company is, therefore, taxed as a separate taxpayer. Resident companies are taxed at a flat rate of 28%. Two-thirds (66.6%) of capital gains are included in taxable income, giving an effective CGT rate of 18.6% (28% x 66.6%).

A 15% withholding tax is imposed on dividends paid by resident companies, and by non-resident companies in respect of shares listed on the Johannesburg Stock Exchange (JSE), to resident or non-resident shareholders (Dividends Tax or DT). Certain dividends may be exempt from DT or subject to a reduced rate, based on specific exclusions or Double Taxation Agreements (DTA).

Non-resident companies, which trade in South Africa through a branch are also subject to taxation at a rate of 28%, but are not subject to DT on any remittances made to, or dividends declared by, the foreign head office. As soon as a foreign company carries out business or has an office in South Africa, it must at all times be represented by an individual (public officer) residing in South Africa.

Trusts

Trusts (other than special trusts) are taxed at a flat rate of 40% on income and 66.6% of capital gains (an effective tax rate of 26.6% on capital gains) that do not vest in a beneficiary of the trust during the tax year in question.

Income that vests in, or is distributed to, a trust beneficiary in the year of receipt or accrual in the hands of the trust is taxed in the beneficiary’s hands and does not lose its identity.

A “special trust” is defined as a trust created:

- solely for the benefit of one or more persons (being relatives) who is or are persons with a disability as defined in Section 18(3) of the Income Tax Act, No. 58 of 1962 (the Income Tax Act), where such disability incapacitates such person(s) from earning sufficient income for their maintenance or from managing their own financial affairs; or
- by, or in terms of, a will of a deceased person solely for the benefit of beneficiaries who are his or her relatives.

Special trusts are taxed on the same progressive basis as individuals.

Partnerships

Partnerships are not recognised as separate entities for income tax purposes and are fiscally transparent. Instead, the individual partners are taxed separately on their share of the partnership profits.

Income Tax

The principal source of direct taxation revenue in South Africa is income tax, the liability for which is determined and regulated by the Income Tax Act.

Basis of Taxation

South African residents are (subject to certain exemptions) taxed on their worldwide income, while non-residents are only taxed on South African-sourced income (subject to the provisions of any relevant DTA).

In relation to a natural person, a "resident" is defined in the Income Tax Act as a person:

- who is ordinarily resident in South Africa (ie generally speaking, a person whose permanent abode is in South Africa); or
- who was physically present in South Africa for more than 91 days during the tax year and was also present for more than 91 days in each of the five preceding tax years, and for more than 915 days in aggregate over those five preceding tax years.

A person, other than a natural person, is a "resident" if it is "incorporated, established, formed" or has "its place of effective management" in South Africa. This has far-reaching implications as it means, for instance, that a trust that is established or formed in South Africa will constitute a resident despite the fact that it may be managed offshore.

Similarly, a company that is incorporated under the Companies Act, No. 71 of 2008 (Companies Act), will qualify as a resident despite the fact that it is managed offshore, while a foreign-incorporated company will be a resident if its place of effective management is in South Africa.

Any person who is deemed to be exclusively a resident of another country for purposes of the application of any DTA is specifically excluded from the definition of resident (individual, as well as corporate).

Calculation of Taxable Income

The taxable income of all taxpayers, whether natural or juristic, is the basis for assessing their income tax liability. A taxpayer's gross income must initially be ascertained. Gross income (subject to certain specific inclusions) is defined, in the case of a South African resident, as the total amount, in cash or otherwise, received by, or accrued to, or in favour of, such resident during the relevant tax year, excluding receipts or accruals of a capital nature.

In the case of a non-resident, gross income is limited to receipts or accruals from a South African source or a source that is deemed to be South African.

Certain exemptions may be claimed from a taxpayer's gross income in respect of certain forms of receipts and accruals. In addition, certain entities are exempt from income tax on all their receipts and accruals.

The result of gross income less any exemptions is the taxpayer's income, as defined in the Income Tax Act. From this income, further amounts may be deducted or allowances claimed in terms of the Income Tax Act, giving rise to the taxpayer's taxable income.

Any taxable capital gains realised by the taxpayer (and determined under Schedule 8 of the Income Tax Act) are included in the taxpayer's taxable income. Thus, while a taxpayer's taxable capital gains are determined in accordance with separate rules (provided for in Schedule 8), the capital gains are then subject to specific exclusions that apply depending on the nature of the taxpayer (individual, trust or company), included in and taxed as ordinary income.

Controlled Foreign Companies

The net income earned by a Controlled Foreign Company (CFC) is imputed to and included in the taxable income of any resident taxpayer to the extent that such resident taxpayer holds qualifying participation rights in the CFC.

A CFC is defined (subject to certain exclusions) as a foreign company in which South African residents (individually or collectively) hold more than 50% of participation rights, namely the right to:

- participate directly or indirectly in all or part of the benefits of the rights (other than voting rights) attaching to a share, or any interest of a similar nature in that company; or
- exercise any voting rights in that company.

In determining whether South African residents hold more than 50% of the participation rights or voting rights in a foreign company, a person is deemed a non-resident if:

- the holding is in a listed company or in a foreign company where the foreign company's participation rights are held indirectly through a listed company, and that person holds less than 5% of the participation rights of that listed company; or
- the holding is in a foreign collective investment scheme or a foreign company where the foreign company's participation rights are held indirectly through such a foreign collective investment scheme and less than 5% of the participation or voting rights are held.

The foreign company or foreign collective investment scheme will nevertheless be deemed to be a CFC if a South African resident (together with any connected persons in relation to the South African resident) holds more than 50% of the participation rights or voting rights in that foreign entity.

A proportional amount of the net income of the CFC, determined in the same ratio as the resident's participation rights in the CFC, is included in, and is taxable as part of, the resident's taxable income. Subject to certain exclusions and exceptions, the net income of a CFC is an amount equivalent to its taxable income, determined in accordance with the Income Tax Act as if the CFC had been a South African resident. The net income of a CFC will include the taxable portion of any capital gains made by that CFC.

There are a number of exclusions from the application of the CFC imputation. In particular, the proportionate share of the net income of a CFC will not be imputed to a South African resident holding participation rights in the CFC, among other things:

- if the resident (together with any connected person) holds less than 10% of the participation rights, and may not exercise at least 10% of the voting rights in the CFC; or
- to the extent that the participation rights are held by the resident indirectly through any company (other than a South African headquarter company) that is a resident.

Exemptions from the CFC rules apply inter alia to an amount which:

- is subject to South African withholding tax on interest and royalties;
- is attributable to interest, royalties, rental or income of a similar nature payable to that company by any other CFC, where that company and other CFC form part of the same group of companies;
- has already been subject to South African tax;
- is attributable to any foreign business establishment maintained outside South Africa (this exclusion is, however, subject to a number of provisos); or
- is attributable to the disposal of an asset (other than any financial instrument or intangible asset), where that asset was attributable to any foreign business establishment of any other CFC, where the company and other CFC form part of the same group of companies.

In addition, the net income of a CFC will be deemed nil where the tax paid by the CFC is at least 75% of the amount of normal tax that would have been payable by the CFC had it been a South African tax resident.

Foreign Dividends

Foreign dividends are taxable in the hands of South African tax residents at a rate of 15% (subject to certain exemptions) with effect from 1 March 2012 for individuals and trusts, and 1 April 2012 in respect of companies.

A foreign dividend is defined as any amount paid by a foreign company (essentially a non-resident company), which is treated as a dividend or similar payment by the foreign company for the purposes of the laws relating to tax on income in the foreign country, or, where the foreign country does not impose any tax on income for company law purposes.

A foreign dividend received by, or accrued to, any person will be exempt from income tax (among other things) where:

- the shareholder (together with all other companies forming part of the same group of companies) holds at least 10% of the total equity shares and voting rights in the foreign company (known as the "participation exemption");
- the foreign dividend has been included in the resident recipient's income in terms of the CFC rules;
- the shareholder is a foreign company and the foreign dividend is declared or paid by another foreign company that is resident in the same country as the shareholder company;
- the foreign dividend is received by or accrues to a person in respect of a listed share and does not consist of a distribution of an asset in specie; or
- the foreign dividend is received by or accrues to a resident company in respect of a listed share and consists of the distribution of an asset in specie.

The exemption will not apply where the amount of the foreign dividend is connected with a South African tax-deductible payment.

Exemptions

Local dividends

In terms of the Income Tax Act, dividends declared by domestic companies (other than headquarter companies) are exempt from income tax irrespective of the juristic nature of the taxpayer or the place of incorporation of the company paying the dividends.

As from 1 April 2013, this exemption does not apply, among other things, to:

- foreign dividends (in general);
- dividends distributed by a REIT*, or a controlled property company as defined in the Income Tax Act (unless such dividends accrue to a non-resident of South Africa);
- any dividend in respect of a restricted equity instrument as defined in Section 8C of the Income Tax Act (which deals with vesting of equity instruments obtained or acquired by virtue of employment), if the restricted equity instrument acquired does not constitute an equity share;
- any dividend accruing to a company in consequence of any cessation of a right to that dividend;
- dividends accruing to a company in respect of borrowed shares;
- any dividend accruing to a company in consequence of the exercise of a discretionary power by any trustee of a trust; and
- any dividend accruing to a company in respect of a share acquired by arrangement whereby the share (or a similar share) should be disposed of to the person from whom the share was acquired, or a person in the same group of companies as the aforementioned person.

Although local dividends are generally exempt from income tax, they may, in certain circumstances, be subject to a separate withholding tax.

** A REIT is defined in the Income Tax Act as a resident company, the shares of which are listed on an exchange (as defined in the Securities Services Act, No. 36 of 2004) and licenced thereunder, and are listed as shares in a REIT as defined in the JSE Limited Listing Requirements.*

Public benefit organisations

A non-profit organisation may qualify for exemption if it meets certain specified requirements. The receipts and accruals of any public benefit organisation that has been approved by the South African Revenue Service (SARS) is exempt from tax to the extent that such receipts and accruals were derived other than from any business undertaking or trading activity, unless the business undertakings or trading activities meet certain prescribed requirements.

A public benefit organisation is defined as an organisation, which is a non-profit company as defined in the Companies Act, a trust or association of persons that has been incorporated, formed or established in the Republic or a branch of a foreign company, association or trust that is exempt from tax on income in that foreign country, whose sole object is the carrying out in South Africa of a "public benefit activity" in a non-profit manner. A public benefit organisation may apply to SARS for exempt status.

SARS must approve the application if the public benefit organisation complies with the criteria set out in Section 30(3) of the Income Tax Act. Any local branch of any association, company or trust established outside South Africa which is exempt from tax in the foreign jurisdiction may also apply for exempt status.

Schedule 9 of the Income Tax Act lists the public benefit activities that a public benefit organisation may conduct to become entitled to exempt status. The activities are categorised under the following headings:

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

In addition to its exempt status, bona fide donations made to certain public benefit organisations approved by SARS may be claimed as deductions by the donor. The deduction is limited to an amount not exceeding 10% of the taxable income of the taxpayer (before the deduction).

Certified emission reductions

Any amount received or accrued in respect of the disposal of any certified emission reduction derived in the furtherance of a qualifying Clean Development Mechanism (CDM) project is exempt from tax. In order to stimulate the uptake of CDM projects in South Africa, the 2013/2014 Budget provided that income from primary certified emission reductions that had been exempt from income tax from 2009 to 2012 would be extended to 31 December 2020.

Furthermore, it was announced in the 2013/2014 Budget that the tax on motor vehicle carbon dioxide (CO_2) emissions would increase from 1 April 2013. For passenger cars the tax rose from ZAR 75 to ZAR 90 for every gram (g) of emissions per kilometer (km) above 120g of CO_2/km. In the case of double cabs, it increased from ZAR 100 to ZAR 125 for every gram of emissions per km above 175g of CO_2/ km.

In the 2013/2014 Budget, Government also proposed a carbon tax as part of South Africa's efforts to mitigate the effects of climate change. By pricing the external costs associated with CO_2 emissions, incentives will be created to change behaviour and encourage energy-efficiency measures.

Government proposes to phase in the tax over time. During the first phase of implementation (between 2015 and 2020), a basic tax-free threshold of 60% is proposed, as well as offset percentages of 5 to 10% to allow emission-intensive and trade-exposed industries to invest in projects outside their normal operations to help reduce their carbon tax liabilities. With effect from 1 January 2015, a carbon tax at a rate of ZAR 120 per ton of CO_2 equivalent is proposed, with the rate increasing at 10% a year during the first phase of implementation.

The incentive will help companies reduce their energy intensity and the country's level of CO_2 emissions. Some of the revenues generated through the carbon tax will be recycled to fund the energy-efficiency savings tax incentive. A gradual phasing out of the electricity levy is also being considered as the carbon tax is phased in.

Deductions and Allowances

Expenditure and losses actually incurred by a taxpayer in the production of the taxpayer's income are deductible, provided that they are not of a capital nature and only to the extent that they are laid out or expended in trade.

A number of specific deductions and capital allowances are provided for. Some of the capital allowances provided for in the Income Tax Act include:

- an annual allowance calculated at prescribed rates on the straight line basis on the cost of plant, machinery, equipment, articles, ships and aircraft used for the taxpayer's trade;
- an annual allowance, in the ratio of 40:20:20:20, in respect of new or unused machinery or plants which were brought into use by the taxpayer in the course of its business (other than banking, financial services, insurance or rental businesses) and is used by him or her directly in a process of manufacture (or any other similar process);
- an allowance equal to the full cost of any plant and machinery brought into use for the first time by a "small business corporation" for its trade (other than mining and farming) and used directly in a process of manufacture (or similar process);
- an annual allowance in the ratio of 50:30:20, in respect of certain plant and machinery used for farming, the production of bio-diesel or bio-ethanol, or the generation of electricity by certain means, such as, among other things, wind power or solar energy;
- an allowance in respect of the cost of the erection, extension, addition or improvement of any commercial or residential building or part of a building which is owned by the taxpayer and is to be used solely for that taxpayer's trade if, among other things, the building is situated in an "urban development zone";
- an annual allowance of 5% of the cost to the taxpayer of any new commercial, hotel or factory building owned by the taxpayer and used to produce income in the course of the taxpayer's trade;
- a deduction for research and development (R&D) expenditure actually incurred by a taxpayer in respect of scientific or technological R&D undertaken in South Africa if such expenditure is incurred in the production of income and in the carrying out of any trade. In addition to this deduction, a taxpayer that is a company (subject to certain other requirements such as R&D being approved by the Minister of Science and Technology) may deduct an amount equal to 50% of the expenditure incurred in the production of income and in the carrying out of any trade;
- a deduction for the cost of any new and unused manufacturing asset used in an industrial project, that is, a trade solely or mainly for the manufacture of products, goods, articles, or other things within South Africa classified under Major Division 3: Manufacturing of the most recent Standard Industrial Classification Code, as issued by Statistics South Africa. Deductions allowed on the cost of new and unused manufacturing assets used in industrial policy projects with preferred status are 55% and 100%, if the industrial project is within an industrial development zone. Deductions allowed on the cost of new and unused manufacturing assets for industrial projects without preferred status are 35% and 75%, if the industrial policy project is within an industrial development zone. This deduction is subject to limits. For example, the deduction in respect of a greenfields project with preferred status is limited to ZAR 900 million; and
- a deduction for expenditure actually incurred in acquiring shares issued by a "venture capital company" provided the investment in the venture capital company is a pure equity investment with no debt-like features and the investor is genuinely "at risk", ie invested funds which are derived from a loan or credit facility must be genuinely subject to the economic risks of the project. (A deduction is not available to investors who become "connected persons" as a result of the investment. A company must comply with certain conditions to constitute a venture capital company. Most notably, the book value of the assets of the companies, other than junior companies, in which the venture capital company invests must not exceed ZAR 20 million. This amount is increased to ZAR 300 million in respect of junior mining companies.)

Tax Losses

An "assessed loss" occurs where a taxpayer's total deductions exceed their total income. This assessed loss can be carried forward indefinitely or set-off against the taxpayer's taxable income in subsequent tax years provided, in the case of a company, that it does not cease trading activities and become dormant. There is no provision for the carry-back of an assessed loss to a previous year.

Since companies within a group are treated as separate entities for tax purposes, the losses suffered by one company within the group cannot be set off against the profits of another company within the group.

A taxpayer is prohibited from setting off any assessed loss (incurred by carrying out a trade outside South Africa) against any amount derived from the carrying out of a trade within South Africa. Thus, the losses of foreign branches of a resident company cannot be set off against the South African income of the company. A loss of a foreign branch may, however, be set off against the income of another foreign branch and South African losses may be set off against foreign income.

In certain circumstances, an assessed loss in the hands of a natural person arising from the carrying out of specified trades (eg sport, the performing of creative arts, farming, gambling or betting) may only be claimed against the income derived from that particular trade.

Mining Operations

Except for the introduction of the Mineral and Petroleum Resources Act, No. 28 of 2008 (MPRDA), the areas of mining-specific taxes have largely remained unchanged for the past two decades. However, Government has suggested a complete overhaul of the current mining tax regime with the potential for an altered royalties tax, a resource rent tax or some other specific tax on the mining sector in South Africa. This has been broached with a view of capturing greater returns for Government from this strategic sector. An independent commission has been appointed to make recommendations in this regard. For the moment, however, the mining tax regime remains largely unchanged since the early 1990s.

Income tax

Companies conducting mining operations (other than gold mining) are subject to income tax in the same way as other companies, except that they are entitled to a special mining capital expenditure deduction in respect of expenditure on mining operations, such as shaft sinking as well as mine equipment.

The capital expenditure deduction is 100% of the qualifying expenditure actually incurred during the tax year. This is limited in any one tax year to the taxable income from mining on the particular mine before allowing for this deduction. Any excess capital expenditure may be carried forward for deduction from mining taxable income in any future year.

Gold mining companies are entitled to the same mining capital expenditure deduction. The net taxable income from gold mining operations is not taxed at 28% but rather on a formula which varies with reference to the taxable income earned from gold mining as a percentage of total income.

Royalty tax

A royalty tax is imposed on the extraction of minerals, although this is treated not as a tax, but as compensation for the loss of non-renewable resources by Government. The royalty tax begins at 0.5% and escalates on the basis of earnings before interest and tax with the total tax capped at 5% for refined minerals and 7% for unrefined minerals.

Oil and Gas Companies

Schedule 10 of the Income Tax Act provides a special dispensation for the tax treatment of oil or gas income of any oil and gas company. For these purposes, an oil and gas company is a company that holds any oil and gas right (as contemplated in the MPRDA) or engages in exploration or production in terms of any oil and gas right.

The rate of tax on taxable income derived from oil or gas income of any oil and gas company will not exceed 28%. Further, oil and gas companies are only subject to a 5% DT attributable to oil and gas income, unless the income is derived in terms of an OP26 right under the MPRDA in which case the relevant DT rate will be 0% of all attributable amounts.

In determining the taxable income of an oil and gas company during any year of assessment, a deduction is allowed on all expenditure and losses actually incurred (other than expenditure or loss incurred in respect of the acquisition of any oil and gas right) in exploration or production.

In addition to this deduction, other deductions from oil or gas income include:

- 100% of all capital expenditure incurred in the exploration of an oil and gas right in that year of assessment; and
- 50% of all capital expenditure incurred in the production of an oil and gas right (excluding expenditure or loss actually incurred in respect of the acquisition of any oil and gas right) in that year of assessment.

Any assessed losses arising during any year of assessment relating to exploration or production may only be set off against the oil and gas income of that company, and income from the refining of gas derived in respect of any oil and gas right held by that company.

If any assessed losses remain after the set-off as previously stated, an amount of 10% of the remaining assessed losses may be set off against any other income derived by the company. Any remaining assessed losses after the above set-offs will be carried forward to the succeeding year of assessment.

Farming Operations

Taxpayers conducting farming operations are taxed in the same way as other taxpayers, except that they are entitled to a special deduction in respect of qualifying farming capital expenditure. They are also subject to certain ring fencing provisions in relation to the cost and closing value of trading stock in the form of livestock.

The farming capital expenditure deduction is 100% of the qualifying expenditure (eg dipping tanks, roads, bridges, planting of trees, shrubs etc) actually incurred during the tax year. This is limited, in any one tax year, to the taxable income from farming before allowing for the deduction. Any excess capital expenditure may be carried forward for deduction from farming taxable income in any future tax year.

Special rules apply to plantation farmers, with particular reference to the acquisition and disposal of land and growing timber.

Capital Gains Tax

With effect from 1 October 2001, any net capital gain, which arises from the disposal or deemed disposal of assets of a resident and from the disposal or deemed disposal of certain assets of a non-resident, is subject to tax in South Africa.

Although this tax is referred to as Capital Gains Tax (CGT), the net capital gain is actually not taxed separately from normal income. Rather, it is multiplied by its relevant inclusion rate, added to taxable income and subject to normal tax at the person's applicable tax rate.

The assets of a resident that are subject to CGT are all forms of property (movable or immovable, corporeal or incorporeal) or rights in such property, other than currency or coins (unless made mainly from gold or platinum) and certain "personal use assets", irrespective of where such assets are situated.

In relation to non-residents, only disposals of immovable property situated in South Africa (or rights or interests in such property, which includes certain indirect interests in immovable property held through companies or other legal entities) and disposals of assets attributable to a permanent establishment of that non-resident in South Africa, are subject to CGT.

Disposal is broadly defined as "any event, act, forbearance or operation of law which results in the creation, variation, transfer or extinction of an asset" and includes, for example:

- the scrapping, loss or destruction of an asset;
- the forfeiture, release, waiver, renunciation, expiry or abandonment of an asset;
- distribution of assets by companies to their shareholders;
- the grant, renewal, extension or exercise of an option; and
- transactions that result in a shifting of value between holders of interests in companies, trusts or partnerships who are connected persons to one another (value-shifting arrangements).

Certain events are expressly excluded from constituting disposals. These include:

- transfers of assets as security;
- the issue or cancellation of shares by a company;
- the grant by a company of an option to acquire a share or certificate acknowledging or creating a debt owed by that company; and
- the issue of any debt by or to a person.

A number of events are further deemed to result in disposals of assets. These include where:

- a person commences to be a resident;
- a CFC ceases to be a CFC and becomes a resident;
- a foreign company that commences to be a CFC;
- an asset of a non-resident becomes part of its permanent establishment in South Africa, or ceases to be part thereof; and
- assets held as trading stock cease to be held as trading stock, and vice versa.

New legislation has been introduced to regulate the CGT consequences arising from a company ceasing to be resident. These include:

- where a person or resident company ceases to be a resident, where a resident company becomes a headquarter company, or where a CFC ceases to become a CFC (other than becoming a resident), a deemed disposal occurs and the person is treated as having disposed of its assets on the date immediately before the day it ceases to be a resident; and
- where a resident company ceases to be resident or becomes a headquarter company, the person is deemed to have distributed its assets as a dividend in specie in relation to the shareholders' respective shareholding.

These new provisions only apply in relation to certain types of assets. In broad terms (and subject to various exceptions and special rules), the capital gain that is subject to CGT within the relevant tax year, is the positive or negative difference between the "base cost" of the asset and the "proceeds" derived from its disposal.

Generally speaking, the base cost of an asset is the sum of expenditure actually incurred by the taxpayer in respect of that asset, which falls within specified categories of expenditure. Subject to certain exceptions, such allowable expenditures include:

- the actual costs of acquisition or creation of the asset (eg the purchase price);
- all costs directly related to the acquisition or disposal of the asset (eg transfer costs, relocation costs);
- valuation costs; and
- expenditure incurred to improve or enhance the value of the asset to the extent still reflected in its value.

With respect to assets used wholly and exclusively for business purposes, listed shares and interests in a unit portfolio, one-third of borrowing costs, expenditure on repairs, maintenance, insurance and rates and taxes may be included in an asset's base cost. The base cost of an asset is reduced by the amount of any expenditure that has already been accounted for as a deduction from gross income, or that is recovered or recouped.

The principles identified above are subject to a number of exceptions and qualifications. In particular, special rules apply in determining the base cost of:

- assets that were acquired prior to 1 October 2001;
- financial instruments;
- identical assets; and
- assets which are the subject of a value-shifting arrangement.

The proceeds of a disposal are all amounts received by or accrued to the person disposing of the asset. The proceeds are reduced to take into account any amounts that are included in the taxpayer's gross income, or that are repaid or become repayable. Proceeds equal to the market value of the asset are deemed to arise in the case of gratuitous disposals, disposals for a consideration not measurable in money and disposals between "connected persons" other than at an arm's-length price.

A capital gain may in specific instances be attributed to a person other than the person who disposed of the asset, such as spouses, donors, parents of a minor child and residents in respect of gains vesting in non-residents. Generally speaking, however, these attribution rules are only triggered where the gain is directly or indirectly attributable to a donation, settlement or other gratuitous disposition by the person to whom the gain is attributed, or where the gain is derived from a tax avoidance scheme to which that person is a party.

In each tax year, the capital gains and capital losses of a taxpayer are aggregated and, in the case of natural persons, reduced by the annual exclusion (presently ZAR 30 000, or ZAR 300 000 in the year of the taxpayer's death). This determines the aggregate capital gain or aggregate capital loss for that year of assessment.

Certain capital gains and capital losses are excluded or limited in one manner or another. Excluded gains and losses include those derived from:

- the disposal of assets of a natural person, which are used mainly for non-trade purposes (personal use assets);
- the disposal by a natural person over the age of 55, of the active business assets of a business (or such person's interest therein) of which the market value of all of its assets is less than ZAR 10 million (limited to an exclusion amount of ZAR 1.8 million on disposal of small businesses);
- the disposal by a portfolio of a collective investment scheme in securities; and
- the disposal by a natural person of his or her primary residence (limited to ZAR 2 million per disposal or ZAR 2 million where the proceeds from disposal of the primary residence do not exceed ZAR 2 million).

Capital losses incurred on certain disposals between connected persons are excluded.

Any assessed capital loss carried forward from the previous tax year is deducted from the aggregate capital gain or added to the aggregate capital loss to derive the net capital gain or assessed capital loss, as the case may be, for that tax year. Assessed income tax losses may also be deducted from the aggregate capital gain.

If a net capital gain arises, it is multiplied by the relevant inclusion rate and the amount thus determined is then added directly to the taxpayer's taxable income and subject to normal tax at the applicable rate. The inclusion rates are presently as follows:

- 0% for unit trust funds and untaxed policy holder funds;
- 33.3% for natural persons, special trusts and individual policy holder funds; and
- 66.6% for all other taxable entities, including permanent establishments.

If an assessed capital loss arises in a tax year, it is carried forward to the next tax year and may not be deducted from the taxpayer's taxable income. Capital losses are, therefore, only deductible from capital gains.

Special rules exist in a number of instances that alter the amount, timing or incidence of CGT, among other things, rules relating to:

- disposals between spouses;
- disposals to and from deceased estates;
- short-term disposals and reacquisitions of identical financial instruments;
- certain involuntary disposals (roll-overs);
- certain reinvestments in replacement assets;
- distributions by companies;
- certain assets-for-shares transactions;
- intra-group transactions; and
- unbundling transactions and disposals to a resident holding company that arises from the liquidation, winding up or de-registration of its subsidiary.

Where a person disposes of equity shares in a foreign company, any capital gain or loss determined in respect of such a disposal must be disregarded if:

- that person, immediately before the disposal, held at least 10% of the equity share capital and voting rights in that foreign company and held that 10% interest for a period of at least 18 months prior to disposal; and
- that interest is disposed of to a person who is not a resident (other than a CFC) for an amount exceeding or equaling the market value of the interest.

Where a headquarter company disposes of equity shares in a foreign company, any capital gain or loss determined in respect of such a disposal must be disregarded if, immediately before that disposal, the headquarter company held at least 10% of the equity shares and voting rights in that foreign company.

The incidence of CGT is, of course, also subject to any conflicting provisions which may exist under any applicable DTA. In this regard, the Organisation for Economic Cooperation and Development (OECD) Model Double Taxation Treaty (on which many of South Africa's DTAs are modelled) provides that gains from the disposal:

- by a non-resident of immovable property situated in South Africa, may be taxed in South Africa;
- of movable property forming part of a permanent establishment of a non-resident, may be taxed in South Africa (disposals of ships and aircraft are dealt with somewhat differently); and
- of any other property of a non-resident are only taxable in the state in which the person is resident.

Secondary Tax on Companies and DT

Secondary Tax on Companies (STC) which was previously levied on resident companies distributing dividends to shareholders (resident and non-resident) at a flat rate of 10% of the net amount of the dividends declared, was replaced from 1 April 2012, by a 15% DT.

The DT is withheld by the company paying the dividend but the beneficial owner of the dividend, to the extent that it does not constitute an asset in specie, is ultimately liable for the tax. To the extent that the dividend constitutes an asset in specie, the company that pays the dividend will be required to withhold, pay and ultimately be liable for the tax.

Certain dividends are exempt from DT, most notably:

- local company-to-company dividends;
- dividends declared and paid to public benefit organisations; and
- dividends declared and paid to retirement funds.

As DT is a withholding tax, it is reduced by certain DTAs. Cash dividends declared and paid by dual-listed companies in respect of their locally listed shares to South African resident shareholders are also subject to DT.

South African resident companies which, at the date of transition from STC to DT (effective date), have any STC credits available can use the STC credits to reduce the amount of DT payable for a period of three years after the effective date.

Corporate Rules

Special rules relating to the tax consequences of corporate transactions qualifying as “asset-for-share transactions”, “substitutive share-for-share transactions”, “amalgamation transactions”, “intra-group transactions”, “unbundling” and “liquidation distributions” are provided for in the Income Tax Act.

A qualifying corporate transaction is given tax concessions in the form of “roll-over” relief from CGT and income tax. In addition, when applying the corporate rules, exemption from DT is given under either the amalgamation rules or the list of DT exemptions.

A number of further concessions in relation to qualifying corporate transactions are provided for in other parts of the Income Tax Act and in other taxing statutes. For instance, a transaction between companies within the same group, as defined, is exempt from donations tax. In addition, the acquisition of marketable securities by a company, in terms of a qualifying corporate transaction, is exempt from securities transfer tax. The acquisition of property by a company in terms of an intra-group transaction or any liquidation distribution is exempt from transfer duty.

The Value-Added Tax Act, No. 89 of 1991 (the VAT Act), also provides a special relief regime when the transaction qualifies under the corporate rules. In this instance, the seller and purchaser are deemed to be one and the same person for value-added tax (VAT) purposes. Accordingly no VAT is payable in respect of the transaction, provided the business being sold constitutes a going concern.

An asset-for-share transaction is defined as a transaction in terms of which a person disposes of an asset (other than an asset which constitutes a restraint of trade or personal goodwill) to a resident company in exchange for equity shares of that company. This is provided such person:

- after that transaction, holds a qualifying interest in the company concerned (ie equity shares that constitute at least 10% of the equity shares and voting rights of the company concerned which is a recent dilution of the previous requirement of 20%, or that are listed or will be listed within 12 months after the transaction, or that are in a company which forms part of the same group of companies as the acquiring company or that are equity shares in a portfolio of a collective investment scheme in securities); or
- is a natural person who will be engaged on a full-time basis in the business of that company in rendering any service.

In terms of an asset-for-share transaction special rules also apply to the disposal by a person of an equity share in a foreign company to another foreign company in exchange for equity shares in that company.

As of 1 January 2013, a new corporate rule was introduced to provide tax-neutral relief for so-called substitutive share-for-share transactions. The new provision intends to provide a tax-neutral outcome for any holder of an equity interest that is exchanged for another equity share interest or, alternatively, a non-equity share interest that is exchanged for another non-equity share interest. However, it does not apply in the case of an equity interest that is exchanged for a non-equity interest or vice versa.

An amalgamation transaction is defined as any transaction in terms of which a company (amalgamated company) disposes of all of its assets to another company (resultant company) which is a resident, by means of an amalgamation, conversion or merger, and causes the amalgamated company’s existence to be terminated. In terms of an amalgamation transaction special rules also apply to the disposal by an amalgamated company which is a foreign company to a resultant company which is also a foreign company.

An intra-group transaction is defined as one in terms of which any asset is disposed of by a company to a resident company that is part of the same group of companies.

An unbundling transaction is a transaction that is carried out to enable the shareholder of any listed unbundling company or the holding company of any unlisted unbundling company to acquire all the equity shares (held by that unbundling company) in the company which is to be unbundled, in accordance with the effective interest of such shareholders.

A liquidation distribution is a transaction involving the distribution by a liquidating company of all its assets (which in this case would include shares in a company) to its resident holding company.

The transactions referred to above are subject to a number of specific restrictions, but they have also now been amended to allow for potential cross-border transactions whereas previously they were only applicable to domestic corporate transactions.

Another significant development with regard to corporate tax rules in South Africa, is the standardisation of the interest-deduction mechanisms available to taxpayers in the course of corporate restructuring. The legislation appears to be more intensely regulatory in nature with a strong emphasis on reporting and disclosures to the South African tax authorities.

The corporate rules are often used in buyout transactions in what has become known as “debt push-down structuring”. Current legislation prohibits the tax deductibility of interest incurred on debt introduced as part of such structuring. The prohibition can, however, be lifted by making a specific application to SARS. The current legislation is under review. It is anticipated that a prescribed formula for determining the level of gearing that may be applied on acquisition of a business will soon be introduced.

Anti-Avoidance Provisions

The Income Tax Act contains a general anti-avoidance rule that targets “impermissible avoidance arrangements”. The enquiry focuses on a consideration of whether the transaction:

- was entered into for the sole or main purpose of obtaining a tax benefit;
- was entered into or carried out in a manner not normally employed for bona fide business purposes, other than the obtaining of a tax benefit;
- lacks commercial substance, in that it results in a significant tax benefit for a party, but does not have a significant effect on either the business risks or net cash flows of that party taking into account indicators such as the presence of round-trip financing, accommodating or tax-indifferent parties and offsetting elements;
- has created rights or obligations that would not normally be created between persons dealing at arm’s length; or
- would result directly or indirectly in the misuse or abuse of the provisions of the Income Tax Act.

If the anti-avoidance provisions apply, SARS is entitled to determine the tax liability of the relevant party either as if the transaction had not been entered into “or in such manner as in the circumstances of the case he deems appropriate”.

There are a number of other anti-avoidance provisions in various sections of the Income Tax Act, dealing with particular transactions.

The Income Tax Act contains a provision that is specifically aimed at arrangements that have been entered into or affected by any person solely or mainly for the purpose of using any assessed loss, any balance of assessed loss, any capital loss or any assessed capital loss incurred by a company or trust, in order to avoid liability (on the part of that company or trust or any other person) for the payment of any tax, duty or levy on income, or to reduce the amount thereof. SARS may, if it is satisfied that the provision applies, disallow the offset of any such losses against income or capital gains, as appropriate.

In addition to the general anti-avoidance arrangements, the South African courts may also seek to apply the substance-over-form doctrine and impose tax on the true intention of a transaction if that differs from the actual agreements.

Transfer pricing

South African transfer pricing rules apply in relation to any transaction, operation, scheme, agreement or understanding which is entered into directly or indirectly, or affected between or for the benefit of either or both:

- a person that is a resident; and
  - any other person that is not a resident; or
  - any other person that is a resident that has a permanent establishment outside South Africa to which the transaction, operation, scheme, agreement or understanding relates; or

- a person that is not a resident; and
  - any other person that is a CFC in relation to a resident; or
  - any other person that is not a resident that has a permanent establishment in South Africa to which the transaction, operation, scheme, agreement or understanding relates.

The transfer pricing "arm's length" rule applies only to the extent that those persons are connected persons in relation to each other and any term or condition of that transaction, operation, scheme, agreement or understanding is different from any term or condition that would have existed between third parties dealing at arm's length.

Any transaction that satisfies the requirements above is referred to as an "affected transaction" for purposes of Section 31. Where any dealings between connected persons constitute an affected transaction, the taxable income or tax payable by any person who derives, or will derive, a tax benefit must be calculated as if the affected transaction had been entered into on an arm's-length basis. The taxpayer is, therefore, required to self-assess its tax liability and disclose an arm's-length amount in its income tax return and pay the arm's-length amount to SARS. This is often referred to as the "primary adjustment".

To the extent that there is a difference between an amount that is applied in the calculation of the taxable income of any resident that is a party to the affected transaction and any amount that would have been applied in the taxable income of the resident had the resident not engaged in the affected transaction, the difference will be deemed to be a loan that constitutes yet another affected transaction. However, to the extent that the non-resident repays the loan amount to the resident within the same year of assessment, in respect of which the primary adjustment is made, no deemed interest will accrue to the South African resident. In other words, the loan will not constitute an affected transaction.

However, SARS has acknowledged that, in practice, it is impossible for the foreign company to repay the loan and deemed interest as there are no contractual legal obligations supporting the settlement of the loan. It also creates difficulties in relation to exchange control and the accounting treatment of the deemed loan. A draft amendment to the transfer pricing legislation provides that the secondary adjustment will be deemed a dividend in specie paid by the South African taxpayer to the non-resident connected person, on which dividends tax will be imposed.

Transfer-pricing provisions will not apply to certain financial assistance and intellectual property transactions with CFCs that are highly taxed and have a foreign business establishment as defined.

Thin Capitalisation Restrictions

A company's interest payments are generally tax deductible while dividends are not. This means that a company funded with loan capital may derive a taxation advantage over a company provided with equity capital.

Previously, in order to limit this advantage, South Africa's tax authorities applied a safe-harbour debt to equity ratio of 3:1 when a non-resident granted interest-bearing financial assistance to a connected South African resident. Excessive disallowed interest was deemed to be a dividend, subject to STC.

With effect from years of assessment commencing on or after 1 April 2012, an arm's-length test has been adopted for thin capitalisation purposes, the 3:1 debt-to-equity ratio has fallen away and the capitalisation of South African companies will be determined on an arm's-length basis (ie in terms of the transfer-pricing rules).

SARS has released a draft interpretation note on thin capitalisation which, when finalised, will apply to years of assessment commencing on or after 1 April 2012. In terms of the draft interpretation note, taxpayers are required to determine the acceptable amount of debt on an arm's-length basis and there is no safe harbour with regards to the debt-to-equity ratio.

In determining an arm's-length amount of debt, the taxpayer should consider the transaction from both the lender's and borrower's perspectives. From the lender's perspective, the question is whether the amount borrowed could have been borrowed at arm's length. From the borrower's perspective, the question is whether the amount would (if the borrower was acting in the best interests of the business) have been borrowed.

Having determined the arm's-length amount of debt, any excessive amount of interest must be disallowed as a deduction and will be deemed a loan (which constitutes an affected transaction) by the taxpayer. The taxpayer will then have to calculate the arm's-length interest on the loan.

SARS intends to adopt a risk-based approach to selecting potential thin capitalisation cases for audit. This is based on risk-identifying debt-to-earnings before interest, taxation, depreciation, amortisation and any exceptional items (abbreviated as EBITDA) ratio of 3:1. This is, however, not a safe harbour and there is nothing preventing SARS from selecting taxpayers with lesser debt-to-EBITDA ratios for audit.

Foreign Tax Credits

The Income Tax Act grants rebates in respect of foreign taxes on income. A South African resident is entitled to a rebate equal to the sum of any taxes on income payable to the Government of another country, in respect of, among other things, income received by such individual from a source outside South Africa which has been included in that individual's taxable income in South Africa. The foreign tax credit is limited to the attributable South African income tax on the foreign income.

Mixing of foreign tax credits is allowed. In other words, the foreign tax credit against tax on income of one country may be used as a credit against tax on income from another country. Unused credits may be carried forward for seven years, but may not be carried back to previous years.

A resident who is a beneficiary of a non-resident trust or a partner in a non-resident partnership may claim a credit for a proportionate amount of any foreign tax paid by the partnership or trust. A foreign tax credit is also available in respect of foreign withholding tax imposed in respect of services rendered in South Africa.

Taxation of a foreign company

The South African tax liability of a foreign company is contingent upon the nature of the income derived, as well as the existence of a DTA. Foreign companies are taxable on South African-sourced income at a rate of 28%. They are also subject to South African CGT at an effective rate of 18.6% on gains realised on the disposal of South African immovable property (as defined) and assets which are attributable to a permanent establishment of the foreign company in South Africa.

Where it is established that the income derived by the foreign company is from a South African source, the enquiry then focuses on the existence or non-existence of a DTA with that other country. The number of DTAs entered into by South Africa in recent years has increased rapidly, encompassing most of Europe (including an increasing number of Eastern European countries), in addition to a number of African, American and Asian countries. Those countries with which South Africa has concluded a DTA are listed at the end of this chapter.

The relevant DTA will usually provide that the foreign company will be subject to South African tax on its business profits only where it has a "permanent establishment" or a "fixed place of business" as defined in that DTA. Generally, these two phrases are defined according to the model definition proposed by the OECD, and usually include a branch, office, place of management, factory, workshop, mine or construction site.

Payments to non-residents

Interest payments to non-residents

With effect from 1 January 2015, the exemption for interest received by non-residents from South African borrowers will be replaced by a new withholding tax on interest which is imposed at a rate of 15%.

Many of South Africa's tax treaties limit the country's right to tax interest paid to the foreign lender to 0%. Certain of these treaties are with low-tax countries. The South African Government has therefore proposed that these treaties be renegotiated.

The withholding tax is subject to certain exclusions. However, interest arising on cross-border shareholder loans to South African companies will generally be fully taxable (even in a group context), unless the interest arises on financial assistance provided to a headquarter company under certain circumstances. Interest arising on loans in a more private capacity such as cross-border loans to trusts and cross-border loans between family members, will also be fully taxable. Such interest would, however, still be subject to applicable tax-treaty relief.

Royalty payments to non-residents

Any person who becomes liable for paying a non-resident an amount for using intellectual property rights in South Africa, is liable to pay a final withholding tax of 12% on behalf of the non-resident. The rate increased to 15% on 1 January 2015.

If the recipient of the payment is resident in a territory which is a party to a DTA with South Africa, the withholding tax may be reduced if so provided for in the DTA. The DTA may provide that taxation of the payment in the receiving state is a condition precedent to a reduction of the withholding tax rate.

Payments to non-resident entertainers and sportspersons

Any non-resident entertainer or sportsperson is subject to a final tax of 15% on all amounts received or accrued in respect of any personal activity exercised in South Africa as an entertainer or sportsperson. This also applies to non-resident companies that provide the services of such entertainers and sportspersons in South Africa.

Any resident who incurs a liability to make a payment referred to above is obliged to withhold it from the payment to the non-resident. If that resident fails to withhold or pay over to SARS the tax withheld, he or she becomes personally liable for that amount of tax.

Service fee payments to non-residents

With effect from 1 January 2016, South Africa will impose a 15% withholding tax on service fees paid to non-residents.

VAT

The principal source of indirect taxation revenue in South Africa is VAT. VAT liability is assessed and regulated in terms of the VAT Act. At present, the standard rate of VAT is 14%, although certain goods and services are zero-rated (eg exported goods and services and specified basic foods) or exempt (eg financial services, education and residential accommodation).

A person who carries on an enterprise and provides "taxable supplies" in excess of ZAR 1 million per year is required, in terms of the VAT Act, to register as a vendor. A person may register voluntarily as a vendor if he, she or it can show that they are in the process of acquiring an enterprise or part of an enterprise as a going concern, and the total value of the enterprise's taxable supplies in the preceding 12 months exceeded ZAR 50 000. Alternatively, SARS must be satisfied that the applicant is already carrying on an enterprise and that the total value of taxable supplies made by it/them in the preceding 12 months exceeded ZAR 50 000.

SARS may in future require an applicant to submit biometric information, in such form and manner as the Commissioner may determine, so as to confirm the identity of the applicant or to counteract identity theft or fraud. The effective date of this requirement has not yet been promulgated.

It is also proposed that in the future, businesses with a historical turnover of ZAR 1 million in the preceding 12 months, and businesses that have made a written contractual undertaking to make taxable supplies exceeding ZAR 1 million in the next 12 months, must register for VAT.

Businesses that have to incur at least ZAR 5 million of expenses will also be entitled to register voluntarily and claim full input tax refunds from SARS. Other businesses can also register on a voluntary basis, but they will not be entitled to claim any input tax refunds until such time as they make taxable supplies of ZAR 100 000 in a 12-month period.

The application of VAT extends over a substantial part of economic activity and VAT is imposed on the supply by any vendor of goods or services in the course or furtherance of any "enterprise".

An enterprise can be defined as any activity carried on continuously or regularly in South Africa or partly in South Africa in the course or furtherance of which goods or services are supplied for a consideration. Unlike most foreign VAT jurisdictions, the South African VAT regime does not provide for place of supply rules and all supplies made by a vendor fall under the SA tax regime.

Supplies made by a vendor outside South Africa may fall outside the scope of the South African VAT regime in certain circumstances (see below). The majority of business transactions will fall within the scope of the VAT regime, and will be subject to VAT.
A number of supplies are exempt from VAT, including those supplying financial services, which include the exchange of currency, the issue and transfer of debt and equity securities, the provision or transfer of long-term insurance policies and the buying or selling of any derivative.

The VAT Act does not provide a clear definition of the term "supply", which means that, theoretically at least, supplies of goods or services made outside South Africa could nevertheless attract South African VAT, provided that the person making the supply is registered as a vendor under the VAT Act and the supply is made in the course of an enterprise (as defined) conducted by that vendor.

Such an enterprise would, however, have to be at least partly based in South Africa. The effect of this unusual feature is largely nullified in practice as supplies made outside South Africa are generally not subject to VAT, either because they are specifically classified as exempt transactions or because they are zero-rated.

In practice, the VAT system operates as follows:

- a vendor incurs VAT on taxable supplies made for the furtherance of its enterprise (input tax); and
- the vendor charges VAT on the taxable supplies made in the course of or furtherance of its enterprise (output tax).

The input tax incurred is claimable by the vendor as a deduction from the output tax. The vendor is required to pay the net amount to SARS periodically. If a vendor's input tax exceeds its output tax, SARS is required to refund the vendor.

Any business registered as a VAT vendor in South Africa, and which acquires any taxable goods or services, will effectively incur no VAT cost, since any VAT payable is fully reclaimable. The ultimate tax burden rests on the consumer or final recipient of the taxable supplies.

Potential liability for VAT is a relevant tax issue for foreign investors, as the obligation to charge VAT are imposed on any person who qualifies as a vendor.

A vendor who acquires services from a non-resident is required to account for output tax on the consideration paid for the services. This is if the services are used by it/them in South Africa and if the vendor will not use the services wholly for the purpose of making taxable supplies (so-called "imported services" – similar to a reverse charging mechanism in other VAT jurisdictions).

The 2013/2014 Budget proposed that all foreign businesses supplying e-books, music and other digital goods and services in South Africa will be required to register as VAT vendors in South Africa. This proposal is in line with international trends such as the European Union regulations which require such suppliers to register for VAT in the country where the consumer resides.

Donations Tax

In terms of the Income Tax Act, donations tax is levied at a flat rate of 20% on the value of property donated by South African individuals and companies. Certain donations are exempt from donations tax (eg donations made by a public company, donations made between spouses, charitable donations and annual donations not exceeding ZAR 100 000). Donations tax is payable by the donor. Donations to an offshore trust will be subject to donations tax, although non-residents are not liable for donations tax.

Estate Duty

Estate duty liability is assessed and regulated by the Estate Duty Act, No. 45 of 1955. The duty is levied at a flat rate of 20% on the "dutiable amount" of the deceased's estate, after deducting an abatement of ZAR 3.5 million.

The determination of what constitutes dutiable property will depend to an extent on the place where the individual was "ordinarily resident" at the date of his or her death. If the taxpayer was ordinarily resident in South Africa at the date of his or her death, all his or her assets, wherever situated in the world, form part of the total value of the estate for the purposes of determining liability for estate duty in South Africa.

If the taxpayer was ordinarily resident beyond the borders of South Africa, only those assets situated in South Africa will form part of the total value of the estate for the purposes of determining his or her estate duty liability.

Transfer Duty

Transfer duty is levied in terms of the Transfer Duty Act, No. 40 of 1949. The transfer of immovable property by an individual is subject to tax at a rate of:

- 0% of the value of property up to ZAR 600 000;
- 3% of the value of property exceeding ZAR 600 000 and less than ZAR 1 million;
- ZAR 12 000 plus 5% of the value of property above ZAR 1 million but not exceeding ZAR 1.5 million; and
- ZAR 37 000 plus 8% of the said value which exceeds ZAR 1.5 million.

The transfer of immovable property by a company or a trust is subject to tax at a rate of 8% of the value of the property.

Securities Transfer Tax

The Securities Transfer Tax Act, No. 25 of 2007, provides for the payment of securities transfer tax on the change in beneficial ownership of securities. Securities include shares in a company, members' interests in a close corporation and any right or entitlement to receive any distribution from a company or close corporation.

Securities transfer tax is payable at a rate of 0.25% higher than the market value/closing price of or the consideration paid for the security. The tax is payable on transfer of a security by the company that issued the security.

There is no securities transfer tax in respect of, amongst other exclusions, the:

- issue of a security;
- transfer of a security to a public benefit organisation or Government;
- transfer of a security in terms of a lending arrangement; and
- transfer of a participatory interest in a collective investment scheme.

Securities transfer tax is not payable on the transfer of securities under a corporate transaction qualifying under Part 3 of the Income Tax Act.

Skills Development Levies

In terms of the Skills Development Levies Act, No. 9 of 1999, a skills development levy is imposed on employers at a rate of 1% of the remuneration paid or payable, or deemed to be paid or payable, to the employees.

Employers paying annual remuneration of less than ZAR 500 000 as at 1 October 2012 are exempt from the payment of the skills development levy.

Unemployment Insurance Fund Contributions

In terms of the Unemployment Insurance Contributions Act, No. 4 of 2002, each employer and employee are required to contribute 1% of the employee's remuneration to the Unemployment Insurance Fund. The employer is liable for the payment of both contributions, but may recover the employee's contribution from the employee.

For this purpose, the remuneration on which the contribution is based is limited to a maximum of ZAR 14 872 per month as at 1 October 2012. Any remuneration paid to an employee in excess of this limit is not subject to any contributions.

Double Taxation Agreements

Country	Commencement date
Algeria	12 June 2000
Australia	21 December 1999 (Protocol 12 November 2008)
Austria	6 February 1997 (Protocol 1 March 2012)
Belarus	29 December 2003
Belgium	9 October 1998
Botswana	20 April 2004
Brazil	24 July 2006
Bulgaria	27 October 2004
Canada	30 April 1997
China (PRC)	7 January 2001
Congo (DRC)	18 July 2012
Croatia	7 November 1997
Cyprus	8 December 1998
Czech Republic	3 December 1997
Denmark	21 December 1995
Egypt	16 December 1998
Ethiopia	4 January 2006
Finland	12 December 1995
France	1 November 1995
Germany	28 February 1975
Ghana	23 April 2007
Greece	14 February 2003
Hungary	5 May 1996
India	28 November 1997
Indonesia	23 November 1998
Iran	23 November 1998
Ireland	5 December 1997 (Protocol 10 February 2012)
Israel	27 May 1980
Italy	2 March 1999
Japan	5 November 1997
Korea	7 January 1996
Kuwait	25 April 2006
Lesotho	9 January 1997
Luxembourg	8 September 2000
Malawi	2 September 1971
Malaysia	17 March 2006 (Protocol 6 March 2012)
Malta	12 November 1997 (Protocol 17 December 2013)

Country	Commencement date
Mauritius	20 June 1997
Mexico	22 July 2010
Mozambique	19 February 2009
Namibia	11 April 1999
Netherlands	28 December 2008
New Zealand	23 July 2004
Nigeria	5 July 2008
Norway	12 September 1996
Oman	29 December 2003 (Protocol 5 November 2013)
Pakistan	9 March 1999
Poland	5 December 1995
Portugal	22 October 2008
Romania	21 October 1995
Russian Federation	26 June 2000
Rwanda	3 August 2010
Saudi Arabia	1 May 2008
Seychelles	29 July 2002 (Protocol 15 May 2012)
Sierra Leone	5 October 1960
Singapore	5 December 1997
Slovak Republic	30 June 1999
Spain	28 December 2007
Swaziland	8 February 2005
Sweden	25 December 1995 (Protocol 18 March 2012)
Switzerland	27 January 2009
Taiwan	12 September 1996
Tanzania	15 June 2007
Thailand	27 August 1996
Tunisia	10 December 1999
Turkey	6 December 2006
Uganda	9 April 2001
Ukraine	29 December 2004
United Kingdom	17 December 2002 (Protocol 13 October 2011)
USA	28 December 1997
Zambia	31 August 1956
Zimbabwe	3 September 1965

Conclusion

Given the extensive and constantly changing tax laws, it is imperative that local and foreign investors carefully consider the South African tax consequences of investing in South Africa. When obtaining advice regarding South African tax laws, it is important to note that, in terms of the newly-enacted Tax Administration Act, No. 28 of 2011 (which came into effect on 1 October 2012), no person may provide tax advice to another person or assist a person in completing a tax return without being registered as a tax practitioner with SARS.

Note

This chapter provides foreign investors with a high-level overview of the South African tax landscape. It is by no means exhaustive and the information is valid at time of print.