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Budget 2021

South African Budget Newsletter written for Crowe HZK by Kent Karro, Managing Director of Crowe Taxation Cape (Pty) Ltd.

The Minister of Finance, **Mr Tito Mboweni**, delivered his annual budget on Wednesday 24 February 2021.

As expected, Government tax revenue declined compared to the previous year and the budget deficit widened. The impact of Covid-19 on the economy has been drastic. The percentage of debt to GDP is reaching dangerously high levels.

Certainly a difficult climate in which to present a national Budget.

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Some Important Developments and Proposals

The main announcements and proposals were as follows:

- A small reduction in the amounts of tax payable by natural persons (see para 3.6).
- No increase in the rate of VAT (see para 1.1).
- A proposed reduction in the rate of company tax to 27% but only for years of assessment commencing on or after 1 April 2022. The impact of this reduction may be less than anticipated due to the introduction of limited interest deductions and allowing incentives to lapse. There are also limits on the benefits of assessed tax losses brought forward from prior years (see para 14.2 and 14.11). This means that the rates of direct taxes including income tax and VAT have not been increased.
- There is no change in the inclusion rate of capital gains. There is therefore no increase in the rate of Capital Gains Tax.
- Increase in the fuel levies by a total of 26 cents per litre from 7 April 2022.
- Usual increases in excise duties on alcohol and tobacco. The carbon tax rate has also increased.
- The UIF contribution ceiling has been increased to R17 711,58 per month from 1 March 2021.
- The Venture Capital company incentive will not be extended beyond 30 June 2021 (see para 4.16). the same applies to some other incentives which will expire in January/February 2022.
- National Treasury is to review current travel and home office allowances in the light of the large scale move to working at home.
- An amendment to the employment tax incentive to close a loophole (para 4.13).
- The inception date of the new export tax on scrap metal has been delayed until 1 August 2021.
- Clarifying the basis of taxing capital gains realised on the disposal of assets in a deceased estate (see para 14.1).
- Cession of rights to income from services (see para 14.12).
- Loans to Trusts. Closing a loophole (see para 14.3)
- Flexibility in regard to the annuities on the investment of retirement funds when an individual ceases to be a tax resident (see para 14.5).
- Transfers between retirement funds (see para 14.6).
- VAT treatment on temporary letting of residential immovable property by developers (see para 14.7).
- Tax deductible donations to PBO's (see para 14.8).
- Penalties for failure by employers to file 6 monthly employees tax returns (see para 14.9).
- Provisional tax during short tax years (see para 14.10).

Summary of Some Important Rates

(Changes are indicated in colour)

	2022	2021
Individuals (including individual participants in partnerships) (see para 3.5) - highest marginal tax rate - reached at taxable income levels above	 45% R1 656 600	 45% R1 500 000
Companies and Close Corporations - normal tax - Standard rate (see para 6.1 and 6.2) - Small Business Corporations (see para 6.1, 6.2 and 15.2) (0% on first R87 300 (was R83 100); 7% on excess up to R365 000; 21% on excess up to R550 000; thereafter 28%) - Personal Service Provider Companies (see para 6.1 and 6.4) - Dividends Tax (see para 7)	 28% 28% 28% 20%	 28% 28% 28% 20%
Branches of foreign companies (see para 6.1 and 6.3) - normal tax - Dividends Tax	 28% Nil	 28% Nil
Trusts (see para 5) - special trusts - sliding scale as for individuals - all other trusts (flat rate)	 (see above) 45%	 (see above) 45%
Micro Business - maximum turnover (see para 16)	R1 million	R1 million
PBO trading income exempt up to (see para 19)	R200 000	R200 000
Recreational Club trading income exempt up to (see para 19)	R120 000	R120 000
VAT - basic rate (see para 2) - turnover threshold for compulsory registration (minimum R50 000)	15% R1 million	15% R1 million
Capital Gains - (see para 9) taxed at normal income tax rates - annual basic exclusion for natural persons and special trusts (increasing to R300 000 in year of death) - on 40% of gain in the case of natural persons and special trusts - highest effective rate - on 80% of gain in the case of most companies and close corporations - effective rate (excluding dividends tax which is also payable) - on 80% of gain in the case of other trusts - effective rate	 R40 000 18% 22,4% 36%	 R40 000 18% 22,4% 36%
Donations Tax (see para 10) - flat rate up to R30 million per 12 month period - flat rate thereafter - on amounts in excess of the tax year exemption of - for natural persons - for private companies	 20% 25% R100 000 R10 000	 20% 25% R100 000 R10 000
Estate Duty (see para 10) - flat rate up to R30 million - flat rate thereafter	 20% 25%	 20% 25%
Property Transfer Duties (including on sales of residential property companies/close corporations/trusts) (see para 13) - sliding scale	0% to 13%	0% to 13%
Withholding taxes in respect of payments to non-residents - on interest with effect from 1 March 2015 (see para 4.8 and para 8) - on gross royalties with effect from 1 January 2015 (see para 8) - on dividends with effect from 22 February 2017 (see para 7 and para 8) - on payments to visiting entertainers and sportspersons (see para 20) - on capital gains on the disposal of fixed property (see para 9.7)	 15% 15% 20% 15% 7,5% to 15%	 15% 15% 20% 15% 7,5% to 15%
Skills Development Levy - on payroll - exempt if payroll below R500 000 p.a.	 1%	 1%
UIF - Employer contributions on remuneration - Employee contributions on remuneration	 1% 1%	 1% 1%
Compensation for Occupational Injuries and Diseases Act - Employer contributions on remuneration paid (varying rate) - lowest rate	 0,14%	 0,14%
Securities Transfer Tax on the consideration passing for transfer of shares in companies and member's interests in close corporations	0,25%	0,25%

1 Exchange Control

1.1
Tax and Exchange Control treatment of individuals

As announced last year, following reforms to the income tax treatment of South African tax residents who receive remuneration outside the country, government has relaxed the exchange control treatment for individuals, while strengthening the tax treatment. The intention is to allow individuals who work abroad more flexibility, provided funds are legitimately sourced and the individual is in good standing with the South African Revenue Service. Individuals who transfer more than R10 million offshore will be subjected to a more stringent verification process. **Such transfers will also trigger a risk management test that will include certification of tax status and the source of funds, and assurance that the individual complies with anti-money laundering and countering terror financing requirements prescribed in the Financial Intelligence Centre Act (2001). This will commence on 1 March 2021.**

Under the new system, natural person emigrants and natural person residents will be treated identically. Additional restrictions on emigrants – such as the restrictions on emigrants being allowed to invest, and the requirement to only operate blocked accounts, have bank accounts and borrow in South Africa – have been repealed. The concept of emigration as recognised by the Reserve Bank has been replaced by a verification process based on the requirements above. Tax residency for individuals will continue to be determined by the ordinarily resident and physically present tests as set out in the income Tax Act (1962). Under existing international standards, South Africa participates in the automatic sharing of information between tax authorities on individuals' financial accounts and investments. These cooperative practices will remain in place to ensure that South African tax residents who have offshore income and investments pay the appropriate level of tax.

1.2
The current offshore investment allowance for natural persons resident in South Africa is R10 million per calendar year per person (18 years and over). A husband and wife can accordingly invest R20 million per year outside of South Africa. Applications for larger amounts will also be considered. Such application will however be carefully investigated to ensure no money laundering and tax evasion.

The income thereon does not need to be repatriated although such income and/or capital gains will be subject to the normal rules of South African tax. Tax clearance certificates are required before funds can be remitted. For amounts above R10 million, an extensive tax audit delays the process.

For most South Africans, these limits effectively remove all exchange control barriers (except for administrative and compliance controls).

Local debit and credit cards may be used for small transactions up to R50 000 per transaction.

1.3
The single annual discretionary allowance remains at R1 million (for those 18 years and over) and can be used for any legal purpose abroad and is not subject to restrictions in regard to use. This is in addition to the annual R10 million individual offshore investment allowance (see para 1.2). For children under 18, the annual travel allowance is R200 000. Bear in mind that large donations may still be subject to Donations Tax (see para 10).

For South African residents temporarily abroad, local debit and/or credit cards (within the overall single discretionary limit of R1 million per applicant during a calendar year) may be used by them outside of South Africa.

Travellers whose visits extend from one year into the next year may use their second year foreign currency allowance without returning to South Africa.

It is illegal for South African residents to participate in foreign lotteries, sweepstakes and betting organisations.

1.4
Foreign direct investments up to R1 billion per company per calendar year can be approved by your local bank. Requests for larger amounts must be submitted by your bank to the Financial Surveillance Department of Reserve Bank. There are of course a number of conditions and reporting obligations. These investments are available to companies wishing to expand their operations or to diversify their business interests to other countries. Passive and real estate investments may not benefit from this concession. South African companies exporting and using CFC accounts can retain such funds in foreign currency. Although needing to be reported, companies are also allowed to open and operate foreign bank accounts, make unlimited advance payments for imports and enjoy other similar relaxations.

1.5
Non-residents making bona fide direct investments into South Africa are not restricted in their ability to raise local finance. The current 1:1 ratio of local borrowings to foreign capital introduced remains in respect of the acquisition of certain financial instruments. The previous ratio of 1:1 no longer applies in respect of the acquisition of residential property.

1.6
To encourage foreign investors to establish South African **headquarter companies** to invest into the rest of Africa, they are allowed to raise and deploy capital offshore without prior Exchange Control approval.

Listed South African multinationals will be allowed to treat a single local subsidiary as a non-resident company for Reserve Bank purposes to encourage them to locate their treasury operations within South Africa. They are also allowed to use their foreign functional currency (rather than Rands) as the starting point for their tax calculations.

1.7
Intellectual property **-** Companies and individuals no longer need the Reserve Bank's approval for standard intellectual property transactions.

1.8
The loop structure restrictions which prohibited residents from holding any South African asset indirectly through a non-resident entity have been lifted. Such structures do however require reporting to the South African Reserve Bank.

1.9
Offshore investments by institutional investors are allowed subject to certain limits. This includes investments that are made into Africa. This allows many unit trusts to have exposure to offshore investments.

2 VAT

2.1
The rate of VAT was increased to 15% with effect from 1 April 2018 on goods and services supplied on or after that date. No further rate adjustment was announced. Certain supplies are subject to a zero rate (e.g. exports) or are exempt from VAT (e.g. passenger road or rail transport).

The main supplies of locally supplied goods to which the zero rate applies consists of basic foodstuffs.

2.2
The threshold for compulsory registration for VAT remains at an annual turnover of R1 000 000. The turnover threshold below which VAT registration will not be possible remains at R50 000. In respect of a commercial accommodation enterprise applying for registration, a minimum turnover of R120 000 p.a. is required for VAT registration.

Where VAT registration is compulsory, a person must apply to SARS within 21 days and cannot charge VAT on supplies until registered by SARS.

During any interim period of trading, prior to VAT registration being granted, the vendor needs to put aside the tax fraction (approx 15%) of his total selling price to pay to SARS in due course. However, he cannot issue a statutory tax invoice (for amounts of R5 000 or more) to his customer as he cannot record his VAT number on the tax invoice because he is not yet VAT registered. This means that his customer cannot claim any amount as input tax as he does not have a valid tax invoice (second hand goods are ignored for this example). Theoretically you could arrange with your customer to pay you R100 for the sale and a further R15 after you get your VAT registration and can issue to him a "proper" tax invoice.

On the other hand, the price of goods bought by you will probably include VAT. You will not be allowed to claim back the input tax as you will not be in possession of a valid tax invoice which has to record your VAT number as well as that of the supplier.

After you are VAT registered, you will need to go back to your suppliers to request them to issue you with "proper" tax invoices (with your VAT number thereon) with effect from the effective date of VAT registration so that you can now claim back the input tax. You have 5 years to do so.

It is clear that timeous application for VAT registration is essential to avoid those problems.

A valid invoice for VAT purposes is a "Tax Invoice". A full tax invoice must contain the following:

- The words "Tax Invoice" or "VAT Invoice" or "Invoice".
- The name, address and VAT registration number of the supplier.
- The name, address and, where the recipient is a registered VAT vendor, the VAT registration number of the recipient.
- An individual serialised number and the date on which the tax invoice is issued.
- Full and proper description of the goods or services supplied (indicating if the goods are second hand goods).
- The quantity and volume of the goods or services supplied.
- The value of the supply, the amount of VAT charged and the total consideration for the supply (in certain cases alternative information may be acceptable).
- The tax invoice must be in South African currency except if it is a zero-rated supply (e.g. an export) in which case a foreign currency can be used.

Where this consideration is less than R5 000, certain information may be omitted. You may omit the name, address and VAT number of the recipient and the quantity or volume of the goods or services supplied.

The Value-Added Tax Act determines that a deduction of input tax may be allowed where a vendor is in possession of alternative documentary proof that is acceptable to SARS. The discretion is limited to circumstances where the vendor is unable to obtain proper tax invoices. On application, SARS may take other considerations into account in accepting alternative documentary proof.

2.3
VAT returns and payments are generally due every two months. If the value of supplies (excluding VAT) exceeds R30 million p.a., monthly returns are required. Small businesses can elect to pay VAT on the payments basis if the value of their supplies (excluding VAT) is less than R2,5 million p.a. See para 15.6.

2.4
If a VAT vendor deregisters, there is a deemed supply of all assets of the enterprise at the lower of the cost or market value thereof and VAT at 15% is then payable in respect of such supply. If the deregistration is for the reason that the business has registered as a "micro business" (see para 16), the VAT payable on the value of such supplies as exceeds R100 000 may be paid in 6 equal monthly instalments or such further period as the Commissioner may allow.

2.5
The turnover threshold for farmers who submit VAT returns every 6 months remains at R1,5 million.

2.6
The sale of residential property by developers is subject to VAT while the leasing of residential accommodation is VAT exempt. This means that VAT input credits can be claimed for standard rated sales but not for exempt rentals.

If a property developer temporarily lets out a dwelling developed by him for the purpose of sale, this is a change of use as the letting of residential property is exempt from VAT. VAT has to be paid to SARS on the open market value of the dwelling at the date of change in use.

Many people in such position were caught when there was a downturn in the economy. Property acquired for the purpose of resale was not able to be sold and the property owners decided to let out the residential properties on leases ranging from 1 to 3 years but with the clear intention that, as soon as the market improved, they would sell the property. If there was a permanent change in use from selling to long term letting, output tax was payable on the open market value at the time of the change of intention.

SARS therefore introduced a concession which provided that, in such circumstances where a residential property which was available for sale was temporarily let for residential purposes, VAT did not have to be paid back to SARS for a period of relief of 36 months but not later than 1 January 2018. The idea was that, within that period, the property would be sold as was the original intention.

It is essential to realise that this concession is no longer available. In other words, in respect of each property, if such property has not yet been sold, VAT would have to be paid to SARS on the current open market value. See para 14.7 for further current developments.

2.7
A notional VAT input credit may be claimed where a VAT vendor buys second hand goods including fixed property or a share block share from a non-VAT vendor. The notional VAT input credit is set at the tax fraction 15/115 of the selling price (consideration) payable for the property but can only be claimed after payment for the goods and (if applicable) registration of transfer in the deeds office or after signature of the share block use agreement. There are also special record retention requirements.

The input tax credit is limited to the tax fraction of that portion of the purchase price which has actually been paid.

2.8
No VAT is payable on the importation of goods below the amount of R500 or services below the value of R100.

2.9
If an invoice for supplies to you is not paid within 12 months, the VAT input tax claimed needs to be returned to SARS. In a group of companies, the inter-company loans and current accounts continue indefinitely and it is impossible to determine if the particular invoice has or has not been paid. It may be advantageous to capitalise these current account balances into loans or equity. In a group structure as defined and under certain conditions, no adjustment will be necessary. Obviously a refund claimed by one entity will not be allowed unless there is a simultaneous claw-back by the other entity. See also para 2.12.

2.10
VAT period end dates can be changed as long as they end 10 days before or after a month end. Constant changes are not allowed. Changes are not allowed more than once in a 12 month period.

2.11
Amounts overpaid to you by your customers -

Where an amount received in respect of a taxable supply of goods and services exceeds the consideration charged for the supply and that excess is not refunded within four months of receipt, that excess amount is deemed to be consideration for a supply of services on the last day of the VAT period during which the four month period ended.

In simple language, that means that if your customer overpays you and you don't refund the overpayment within four months (e.g. because your customer knows of the overpayment and asks you to use the overpayment towards his next purchase from you), the overpayment is vatable and the tax fraction (15/115) of the overpayment is payable by you as output VAT. When the overpayment is subsequently refunded or used against the later purchase, the tax fraction of the overpayment “used” can be claimed back as input tax.

2.12

Amounts Due by you to Suppliers -

If a VAT vendor claims input tax in respect of a taxable supply of goods or services made to him and within 12 months after the end of the VAT period within which the deduction of input tax was made, he has not paid the full consideration in respect of that supply, the tax fraction (15/115) of the portion of consideration not yet paid is deemed to be output tax payable. When the consideration is paid subsequently, the tax fraction can be deducted as input tax in that VAT period.

In simple language, that means if you haven't paid your supplier within 12 months and you claimed input tax on the supply, you must pay to SARS as output tax the tax fraction (15/115) of the amount not yet paid.

2.13

Tax invoices for VAT purposes must be issued in South African currency (unless it is a zero rated supply). Where vatable transactions are concluded in foreign currency, the foreign currency value of the transaction must be converted to Rands at the spot rate agreed between the parties. If there is no agreement, the spot rate at the (defined) date of supply must be used.

2.14

When a share block company is converted to sectional title, it is a non-supply for VAT purposes. No output tax will be payable by the company and no input tax can be claimed by the new sectional title owners.

2.15

Supplies to its members by body corporates and home-owners associations are exempt from VAT.

2.16

The supply of membership units by property co-operatives will be treated like the supply of a share in a share block company and be subject to VAT at the standard rate where the property co-operative (or share block company) is registered or is obliged to be registered for VAT.

2.17

Damaged or destroyed imports. No VAT is levied on goods imported that have been destroyed, damaged or abandoned. This aligns with the current customs duty treatment.

2.18

Foreign Suppliers of Electronic Services

All foreign suppliers of electronic services have had to register for VAT in South Africa where the total value of electronic services supplied in South Africa exceeds R1 million. **This limit was increased to R1 million with effect from 1 April 2019. This limit applies in any consecutive 12 month period.** This applies where the supply is by a person from a place outside South Africa to a recipient who is a resident of South Africa or where a payment made to the foreign supplier originates from a bank registered in South Africa.

The definition of electronic services is very wide and includes all services that are provided by means of an electronic agent, electronic communication or the internet for any consideration. The only clear exclusions are -

- **educational services provided by a person or entity that is regulated by an educational authority in the foreign country.**
- **telecommunication services.**

Electronic services supplied by an intermediary will also be subject to VAT if the principal is not liable for VAT registration. An intermediary is a person who facilitates the supply of electronic services supplied by an electronic services supplier and who is responsible for issuing invoices and collecting payment for the supply.

3 Income Tax Rates for Individuals

3.1
The top tax rate of 45% still applies for years of assessment ending on 28 February 2022 for those with a taxable income above R1 656 600 (was R1 577 300).

There is a small reduction in the amount of tax payable by all individuals. This is as a result of a **small increase in rebates as well as an adjustment to the tax tables**. This has the effect of increasing tax thresholds. (See paras 3.5, 3.10 and 3.11).

3.2
The rate of tax on the first amount of R216 200 (was R205 900) taxable income remains at 18% and the maximum marginal rate remains at 45% on taxable income levels above R1 656 600 (was R1 577 300.)

3.3
There remains a single tax table (see para 3.5) for all natural persons, estates and "special trusts" (see para 5) i.e. persons other than companies, close corporations and trusts (other than "special trusts").

Deceased estates (see para 5.14) and all trusts are not entitled to the primary rebate (see para 3.10) or the interest exemption (see para 4.8).

3.4
All residents of South Africa for tax purposes are taxable in South Africa on their worldwide income and capital gains. This applies to all taxpayers i.e. companies, close corporations, individuals, trusts and estates. South Africa has entered into or is negotiating Double Tax Agreements (DTA) and Tax Information Exchange Agreements with more than 90 countries and exchange of information takes place. **Declaration of all foreign income is accordingly essential. If such income has been subject to foreign tax, such tax will be allowed as a credit against the applicable South African tax payable. Voluntary disclosure without penalty is still available for defaulting taxpayers but only if SARS is not yet aware of the non-disclosure.**

Remuneration received by an employee in respect of employment outside South Africa is partly exempt from South African tax, if that employee was outside South Africa –

- for a period or periods (excluding in transit) exceeding 183 full days in aggregate during any period of 12 months, and

- for a continuous period exceeding 60 full days during that period of 12 months.

Bear in mind that foreign tax might still be payable on such remuneration subject to any applicable DTA.

With effect from 1 March 2020, this exemption will only apply on so much of the remuneration as does not exceed R1 250 000. Credit will be given for such foreign tax payable on such remuneration to the extent it relates to the remuneration in excess of R1 250 000.

The remuneration of South African based employees of foreign employers is often not subject to PAYE because the employer itself has no presence in South Africa. The remuneration is however taxable in South Africa and in most cases the employees need to be registered for provisional tax. It is essential that such employees do not neglect their statutory duties.

Foreign residents (for tax purposes) will only be liable for tax in South Africa on their income from South African sources as well as on capital gains on the disposal of South African immovable property (held directly or indirectly) or assets attributable to a fixed place of business/permanent establishment of that person in South Africa. Rules are in place to clarify the identification of the source of various types of income.

In general, if income accrues to a foreign company controlled to the extent of more than 50% by South African tax residents, then the proportionate share of the income of such "controlled foreign company" is deemed to accrue to the resident shareholder whether or not the income of the controlled foreign company was distributed. Credit is given for foreign tax paid and there are exemptions in the case of funds blocked in foreign countries until the restrictions are lifted.

Most foreign dividends received by individuals from foreign companies (where the shareholding is less than 10% in the foreign company) are taxable at a flat rate of 20%. For companies and trusts, the effective rate is also 20%. As the foreign dividends are taxed at a flat rate, no deductions are allowed for interest and other expenditure incurred to produce such foreign dividends.

Any dividend from a foreign company is exempt from South African normal tax if received by a person (if that person is a company, then together with any other company in the same group of companies) who holds at least 10% of the total equity share capital in the company declaring the dividend. At least 10% of the voting rights in the company declaring the dividend must also be held. The exemption does not apply if the declaration of the foreign dividend is part of a tax avoidance scheme or the foreign dividend is deemed income from a foreign trust. This is known as the "Participation Exemption". Capital Gains realised on the disposal of such shares are exempt from CGT.

Foreign dividends are also exempt from tax if the underlying profits out of which the dividend is declared have already been subject to tax in South Africa.

Dividends from local companies are subject to a final dividends tax at the rate of 20%. **See para 4.9 and 7 for further details.**

Dividends from Real Estate Investment Trusts (REITs) are subject to normal income tax.

3.5
The rates of tax for all persons other than companies and close corporations but including deceased estates and "special" trusts for the year ended 28 February 2022 **have been adjusted as compared to the previous year** and will be as follows:

Taxable Income	Amounts of Tax Payable and Percentages to be Applied to Excess over Base Amounts
Up to R216 200	18%
Exceeds R216 200 up to R337 800	R38 916 plus 26%
Exceeds R337 800 up to R467 500	R70 532 plus 31%
Exceeds R467 500 up to R613 600	R110 739 plus 36%
Exceeds R613 600 up to R782 200	R163 335 plus 39%
Exceeds R782 200 up to R1 656 600	R229 089 plus 41%
Exceeds R1 656 600	R587 593 plus 45%

The rates for the year ended 28 February 2021 were as follows:

Taxable Income previous year	Amounts of Tax Payable and Percentages to be Applied to Excess over Base Amounts
Up to R205 900	18%
Exceeds R205 900 up to R321 600	R37 062 plus 26%
Exceeds R321 600 up to R445 100	R67 144 plus 31%
Exceeds R445 100 up to R584 200	R105 429 plus 36%
Exceeds R584 200 up to R744 800	R155 505 plus 39%
Exceeds R744 800 up to R1 577 300	R218 139 plus 41%
Exceeds R1 577 300	R559 464 plus 45%

3.6
Examples of the tax payable (after age rebates) at various levels of taxable income are as follows:

Individuals under 65 years			
Taxable income	2022	2021	Increase (Reduction)
100 000	2 286	3 042	(756)
150 000	11 286	12 042	(756)
200 000	20 286	21 042	(756)
300 000	44 990	46 570	(1 580)
400 000	74 100	76 490	(2 390)
500 000	106 725	110 235	(3 510)
750 000	200 817	205 313	(4 496)
1 000 000	302 673	307 813	(5 140)
1 500 000	507 673	512 813	(5 140)
2 000 000	726 409	734 721	(8 312)

Individuals 65 years and over			
Taxable income	2022	2021	Increase (Reduction)
120 000	-	-	-
150 000	2 673	3 843	(1 170)
200 000	11 673	12 843	(1 170)
300 000	36 377	38 371	(1 994)
400 000	65 487	68 291	(2 804)
500 000	98 112	102 036	(3 924)
750 000	192 204	197 114	(4 910)
1 000 000	294 060	299 614	(5 554)
1 500 000	499 060	504 614	(5 554)
2 000 000	717 796	726 522	(8 726)

Individuals 75 years and over			
Taxable income	2022	2021	Increase (Reduction)
150 000	-	1 107	(1 107)
200 000	8 802	10 107	(1 305)
300 000	33 506	35 635	(2 129)
400 000	62 616	65 555	(2 939)
500 000	95 241	99 300	(4 059)
750 000	189 333	194 378	(5 045)
1 000 000	291 189	296 878	(5 689)
1 500 000	496 189	501 878	(5 689)
2 000 000	714 925	723 786	(8 861)

3.7
The maximum marginal rate of tax for individuals remains at 45% and the company/close corporation basic rate remains at 28% (see para 6.2). Dividends tax is payable at the rate of 20% (see para 7). If all company/close corporation income (after tax) is distributed, the total tax burden on such income is 42.4%. This is less than the top marginal rate for individuals of 45%. The tax burden for small business corporations is significantly lower. See para 15.2.

At levels of taxable income in excess of R1 656 600, the marginal rate of tax for individuals will exceed the overall company tax burden. Above those levels of taxable income, taxpayers will continue to attempt to reduce the "allocation" of company/close corporation profits to shareholders/members (by way of salaries, loan account interest, etc) and instead, where necessary, declare after tax company profits as dividends. Other persons will be tempted to "transfer" their personal incomes to companies/close corporations. Unless such changes are motivated by factors other than tax, it is likely that SARS will seek to disregard such "schemes".

3.8
Except in very limited circumstances (e.g. deliberate income splitting schemes and donations), all the income of a married couple (except in the case of marriage in Community of Property) continues to be separately taxed in the hands of the spouse to whom the income accrues. Each spouse is entitled to the exemption in respect of interest income (see para 4.8).

3.9
Special rules apply to the taxation of mainly the interest and rental income of spouses married in Community of Property. Please advise us if you are married in Community of Property to enable us to consider whether you or your spouse can take advantage of the benefits.

3.10
The rebates for the year ended February are as follows:

	2022	2021
Standard primary rebate for all natural persons (i.e. excluding all companies, trusts, estates, etc)	R15 714	R14 958
Additional rebate for all persons 65 years and over at the end of the tax year	R8 613	R8 199
Further additional rebate for all persons 75 years and over at the end of the tax year	R2 871	R2 736

3.11
The tax thresholds (i.e. levels of taxable income below which no tax is payable) will be as follows:

	2022	2021
Under 65 years at the end of the tax year	R87 300	R83 100
65 years and over	R135 150	R128 650
75 years and over	R151 100	R143 850

Because of the interest income exemption (see para 4.8), each person over the age of 65 but younger than 75 can earn annual income (including interest of at least R34 500) of R169 650 (was R163 150) without being liable for income tax at all. For those 75 and over with at least R34 500 of interest income, the tax free income limit is R185 600 (was R178 350).

3.12
Certain persons receiving a single source of taxable employment income (other than allowances) up to R250 000 (as well as interest and capital gains below the tax free limits - see para 4.8 and 9.3) do not have to submit annual Tax Returns to SARS. Contact us for further details.

3.13
Capital Gains are included to the extent of 40% in the normal taxable income of a natural person. At the maximum marginal tax rate of 45%, the maximum effective rate of tax on Capital Gains (CGT) is 18% for natural persons, deceased estates and special trusts (on the excess over the annual exclusion of R40 000). See para 9.

3.14
The treatment and taxation of fringe benefits and allowances is dealt with in para 4.11 and 18 below.

4 Other Deductions and Exemptions

4.1
The following rules apply to contributions to and benefits from Pension, Provident and Retirement Annuity Funds.

- All contributions paid by employers to Pension, Provident and Retirement Annuity Funds are **taxable as a fringe benefit in the hands of the employee** (including partners in a partnership) and fully tax deductible in the hands of the employer.

- The natural person employee will be deemed to have paid the total contributions to all these funds including both the employee's contributions and those of the employer.

- **The deduction is the lowest of**

  - **R350 000**
  - **27,5% of the greater of**
    - **remuneration but excluding retirement lump sums and severance benefits, or**
    - **taxable income including the taxable portion of capital gains but excluding retirement lump sums and retirement benefits and before deduction of donations**
  - **Taxable income excluding retirement lump sums and severance benefits and capital gains but before deduction of donations**

- Contributions not deductible (e.g. in excess of the limits) can be deducted off the taxable portion of the proceeds on the withdrawal or retirement from the funds.

- In respect of all 3 types of funds, only one third of the value of the fund will be allowed to be withdrawn as a lump sum with the balance having to be used to purchase an annuity.

4.2
The full value of a provident fund accumulated up to 1 March 2016 will however still be able to be taken as a lump sum. Accumulations after that date may also be taken as a lump sum although it is proposed that they may in future be subject to annuitisation. For those over 55 years of age, even subsequent contributions to a provident fund will not be subject to annuitisation.

How these lump sums will be taxed is dealt with in para 4.5 below.

On smaller pension values and on death or formal emigration, amounts may be distributed as lump sums.

If the retirement benefit of a member is R247 500 or less, the member will not be required to buy an annuity with at least two-thirds of the benefit. The full amount may be withdrawn as a lump sum. This applies to all types of retirement funds.

4.3
The contributions mentioned above may only be deducted from the income of the spouse who is the member of the fund. Excess amounts paid may be carried forward to the following tax year.

4.4
Premiums paid on income protection policies or similar policies covering death, disablement, severe injury or unemployment are not tax deductible. Premiums paid by employers will be taxable as fringe benefits in the hands of employees. Proceeds received from these policies are tax free whether paid as a regular annuity or as a lump sum (even if premiums on such policies were deducted for tax purposes in the past).

4.5
Lump Sum Receipts from Funds –

Compensation paid in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA) or Unemployment Insurance Act is tax free.

Portion of the lump sums payable on death or on retirement or withdrawal from Pension, Provident and Retirement Annuity Funds is exempt from tax as below.

Amounts payable by such funds on death or retirement are tax free up to a life time cumulative exemption of R500 000. It also applies to post retirement annuities subsequently converted into a lump sum as well as severance benefits (see para 4.6). This tax free portion does not apply in the case of early withdrawals prior to retirement. See below.

The **unchanged** table is –

Amounts of death or retirement benefit	Tax payable
Up to R500 000	- 0%
Exceeds R500 000 up to R700 000	- R0 plus 18% on excess over R500 000
Exceeds R700 000 up to R1 050 000	- R36 000 plus 27% on excess over R700 000
Exceeds R1 050 000	- R130 500 plus 36% on excess over R1 050 000

If an amount of R1 200 000 is received on retirement, the tax payable thereon will be R184 500. No rebates or deductions will be allowed against these receipts nor will losses be allowed to be deducted therefrom. The only deduction will be for contributions paid in the past which were not allowed as deductions from income. Other "bonus" distributions may in certain circumstances also be exempt from tax. There is also a roll over concession in respect of amounts paid into new funds of the same kind or payments to certain funds known as preservation funds.

Amounts payable on early withdrawal from such funds (mainly on resignation but can also apply on divorce) will be taxable at the rates of tax set out below (as opposed to the higher marginal rates) but after an initial tax free lifetime cumulative exemption of only R25 000 (as opposed to R500 000 available on death or retirement). Only the first **R25 000** is free of tax.

The **unchanged** table is -

Amounts of withdrawal benefit	Tax payable
Up to R25 000	- 0%
Exceeds R25 000 up to R660 000	- 0% plus 18% on excess over R25 000
Exceeds R660 000 up to R990 000	- R114 300 plus 27% on excess over R660 000
Exceeds R990 000	- R203 400 plus 36% on excess over R990 000

If an amount of R1 200 000 is received on early withdrawal, the tax payable thereon will be R279 000 (as opposed to R184 500 in the case of retirement).

The tax payable is determined by applying the above rate tables to the aggregate of the taxable portions of all lump sum death or retirement benefits accrued since October 2007 (or since March 2009 for withdrawals) during the current and previous years of assessment and all **severance benefits** from March 2011 (see para 4.6) and deducting tax payable according to the current tax table on the aggregate of those lump sums accrued since October 2007 (or March 2009) during previous years of assessment.

A retirement fund member may defer the drawing of retirement income until after their retirement date.

Retirement fund benefits are generally excluded from the dutiable estate for estate duty purposes when a member passes away although lump sum payments are subject to tax in the deceased's tax computation to date of death. An amount equal to the non-deductible contributions to retirement funds must however be included in the dutiable estate for estate duty purposes when a retirement fund member passes away. See also para 10.2.

4.6 Lump Sum Receipts from Employers –

Lump sum payments from employers on the death of an employee (in addition to any payment under COIDA (previously WCA) (see para 4.5)) is exempt from tax up to R300 000.

Amounts paid by employers to employees on termination or within the period of 5 years prior to termination of the services of the employee, are referred to as **“severance benefits”** and are to **be added to the lump sum death or retirement receipts and taxed at the concessional rates applicable to lump sums payable on death or retirement from funds as set out in para 4.5**, if –

- the employee has attained the age of 55 years, **or**
- the termination is due to ill health, **or**
- the Commissioner is satisfied that the termination is due to the employer having ceased to carry on or intending to cease carrying on the trade in which the employee was employed or due to the taxpayer having become redundant in consequence of his employer having effected a general reduction in staff or a reduction in staff of a particular class. This will also apply if an employee resigns voluntarily in terms of an offer from his employer in terms of a staff reduction scheme.

Where the employer is a company, this concession does not apply to someone who holds (or at any time held) more than 5% of the shares/members interest in the company/close corporation.

4.7 Medical and Physical Disability Expenses –

A medical scheme contribution tax credit will be available to taxpayers who belong to a medical scheme and for those taxpayers who incur qualifying medical expenses.

A medical tax credit in respect of medical scheme contributions is a direct deduction off tax as opposed to a deduction from income.

The amount of the medical tax credit in respect of medical scheme contributions has been increased **from the previous year** and is set at fixed amounts per month -

- **R332** (was R319) each per month for the taxpayer and one dependant (whether a spouse, child or other dependant).
- **R224** (was R215) per month for each additional dependant.

The amount of medical scheme contributions paid by an employer on behalf of an employee must be treated as a taxable fringe benefit. When an employee has retired from an employer and the employer continues to pay contributions on behalf of the retired employee, the fringe benefit will not be taxable.

These medical tax credits in respect of medical aid contributions can be taken into account for both PAYE and provisional tax purposes.

AN EXAMPLE OF THE CALCULATION APPEARS AT THE END OF THIS PARA 4.7

- For those below the age of 65, they will be entitled to the medical tax credits referred to above whether the medical aid contributions are paid by them directly or paid by the employer and taxed in their hands as a fringe benefit.

  They are entitled to medical tax credits calculated as follows –

  - The standard monthly medical scheme credits for the taxpayer, spouse and dependants; plus
  - 25% credits for medical scheme fees paid that exceed four times the standard medical scheme credits; plus
  - 25% credits for all qualifying medical expenses (other than medical scheme contributions).

  The allowable medical tax credit (in addition to the standard credits) is the amount by which the total of these last 2 items exceeds 7,5% of the taxpayer’s taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit).

- For a person 65 years and older (at tax year end) they are entitled to the medical tax credits referred to above whether the medical aid contributions are paid by them directly or paid by the employer and taxed in their hands as a fringe benefit.

  Taxpayers of 65 years of age and above are entitled to the standard monthly medical scheme credits, and further credits are set as below at a 33,3% level. More specifically, the medical tax credits will be calculated as follows:

  - The standard monthly medical scheme credits for the taxpayer, spouse and dependants; plus
  - 33,3% credits for medical scheme fees paid that exceed three times the standard medical scheme credits; plus
  - 33,3% credits for all qualifying medical expenses (other than medical scheme contributions).

- Disabled taxpayers or taxpayers who have a spouse or child who is disabled, are treated in the same way as taxpayers 65 years and older.

  They are entitled to the standard monthly medical scheme credits, and further credits are set as below at a 33,3% level. More specifically, the medical tax credits will be calculated as follows:

  - The standard monthly medical scheme credits for the taxpayer, spouse, and dependants; plus
  - 33,3% credits for medical scheme fees paid that exceed three times the standard medical scheme credits; plus
  - 33,3% credits for all qualifying medical expenses (other than medical scheme contributions).

Disability" means a moderate to severe limitation of a person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation –

- has lasted or has a prognosis of lasting more than a year; **and**
- is currently diagnosed by a duly registered medical practitioner in accordance with criteria and in the form prescribed by the Commissioner (form ITRDD).
- The medical tax credit is based on the total amount of such expenses actually paid during the year in respect of the taxpayer, his/her spouse and children (those who previously qualified for child rebates i.e. a child, step-child and legally adopted child who is unmarried at year end and not older than 18 years or not older than 21 years and dependent on you and not liable for income tax for that year or older if a full time student or incapacitated). A child of a taxpayer also refers to any child who was alive during a portion of the year of assessment and who, on the last day of the year of assessment -

  - was incapacitated by a disability from maintaining himself, **and**
  - was wholly or partially dependent for maintenance upon the taxpayer, **and**
  - has not become liable for the payment of normal tax for the year.

A child as defined would however exclude a foster child, a child not yet legally adopted or a child under your custodianship. However such person may be able to be classified as a dependant (see below).

The medical tax credit is based on -

- the amount of contributions paid to South African registered medical schemes (or to any other fund which is registered under any similar law in any other country where such medical scheme is registered) in respect of the taxpayer, his/her spouse and children (as above) and also for dependants (see below)

- as well as payments (including payments outside South Africa) to doctors, dentists, homeopaths, physiotherapists, chiropractors, hospitals, clinics, nurses, nursing agencies, etc in respect of professional services or pharmacists for medicines prescribed by any of the aforegoing or other expenditure in consequence of a physical disability of a permanent nature e.g. bad eyesight or hearing, diabetes, asthma, hyperactivity, etc for the above persons (excluding dependants) to the extent not recovered from a medical scheme.

For the purpose of medical scheme contributions, a **dependant** means the spouse or partner, dependant children or other members of the member's immediate family in respect of whom the member is liable for the family care and support, or any other person who, under the rules of the medical scheme, is recognised as a dependant of the member.

The deduction or tax credit is allowed only to the spouse who pays the expenditure (or if paid by his/her employer and treated as a taxable fringe benefit). Great care needs therefore to be taken before deciding which spouse should pay such amounts.

Where medical scheme contributions are shared by taxpayers and each taxpayer pays a share of the medical scheme contributions in respect of dependants, medical scheme fees tax credits must be proportionately allocated between the taxpayers who made the payment of medical scheme contributions. An example would be where children jointly contribute towards their parents medical scheme contributions.

Examples of Medical Expenses Tax Credit Relief (using rates with effect from 1 March 2021)

Assumed Facts –

1 Member, wife, 1 child

2 Medical aid contribution of R3 000 per month (R36 000 for the year)

3 Additional expenses R20 000

4 Taxable income R200 000

	Person under 65 A	Person over 65 B	Person with disability C
Tax credit for medical aid contributions [(332 x 2) + (224 x1)] x 12	10 656	10 656	10 656
Credit for excess expenses **A** 36 000 – (10 656 x 4) = -6 624 (ignore) 20 000 – (7,5% of 200 000) = 5 000 x 25%	- 1 250		
B [36 000 – (10 656 x3)] x 33,3% = 1 343 20 000 x 33,3%		1 343 6 660	
C [36 000 – (10 656 x 3)] x 33,3% = 1 343 20 000 x 33,3%			1 343 6 660
Total Medical Tax Credit	R14 594	R18 659	R18 659

4.8 Interest Income -

The first amount of local interest income is exempt from tax in the hands of a natural person**.** This limit is unchanged at R23 800 per annum for individuals under 65 and R34 500 per annum for those 65 and over on the last day of the tax year. There is no exemption in respect of taxable foreign interest and foreign dividend income.

Tax-free savings and investment accounts (which will produce tax free income) were introduced on 1 March 2015. These accounts have an annual maximum contribution limit of R36 000 (was R33 000) and a lifetime maximum contribution limit of R500 000. Investments in excess of these limits will be subject to a flat tax of 40%. Investments are allowed in bank deposits, collective investment schemes, exchange-traded funds and retail savings bonds. Eligible service providers include banks, asset managers, life insurers and brokerages.

See para 3.4 for the exemptions and the effective tax rate for certain foreign dividends.

Interest is exempt from normal tax in South Africa if it accrued from a South African source to a non-resident person or entity which at any time during the year did not carry on business in South Africa through a fixed place of business/permanent establishment and, in the case of a natural person, such person was not present in South Africa for more than 183 days in the year in question. Interest paid to non-residents is subject to a flat withholding tax of 15%. Interest is deemed to be paid on the date on which the interest becomes due and payable. Interest payments to non-residents may be subject to a reduced rate if there is an applicable Double Tax Agreement between South Africa and their country of residence. See para 8. Interest includes premiums and discounts payable or receivable. There are exemptions in respect of interest payable by the Government on listed debt investments, payable by a South African Bank (including the Reserve Bank), trade finance, etc.

4.9 Dividend Income -

Other than for the payment of dividends tax at the rate of 20% (see para 7), dividends/distributions from South African companies and close corporations are currently free of tax in the hands of the recipients.

Dividends from foreign companies are generally taxable in South Africa (but see the exemptions and special rate in para 3.4).

A “resident” is defined. Briefly it is a natural person who is ordinarily resident in South Africa or who falls within a defined physical presence test or a person other than a natural person (e.g. companies, trusts, etc) incorporated, established or formed or effectively managed in South Africa. If a natural person stays in South Africa for more than 91 days (or part days) in each of 6 consecutive tax years and more than 915 days (or part days) in aggregate in the first 5 years, he will be deemed to be a tax resident of South Africa with effect from the beginning of the sixth year. This test for residence is subject to the provisions of any applicable DTA. Consult us for further details in regard to this definition.

If the income from which the foreign dividend is declared has already been subject to tax in South Africa (e.g. interest income of a controlled foreign company), the dividend will not again be subject to tax.

Any foreign tax paid on the dividend will be allowed as a credit against the South African tax payable up to the amount of the applicable South African tax.

If the dividend, because of foreign laws, may not be remitted to South Africa, the dividend will only be taxable in the year in which it may be remitted.

To the extent that local unit trusts receive foreign dividends and distribute such income to their unit holders, such income will be taxable in the hands of the resident unit holders. Dividend distributions from overseas unit trusts are also taxable.

See para 4.8 for the primary interest exemption.

4.10
Donations -

Tax deductible contributions (not fees) may be made to a wide range of approved Public Benefit Organisations, including -

- universities, colleges and approved education funds (as defined)
- pre-primary schools that offer an approved educare programme
- primary schools that are Public Benefit Organisations
- approved Public Benefit Organisations whose activities are directed towards the prevention of HIV infection or the provision of care to individuals whose livelihoods have been impoverished by AIDS
- children's homes, which are approved Public Benefit Organisations, providing care to abandoned, abused or orphaned children
- approved Public Benefit Organisations whose activities are mainly directed towards the care of destitute aged persons.

It is clear that "approval" is required in terms of section 18A of the Income Tax Act for all these organisations before tax deductible donations may be made to them. **See also para 14.8.** The Income Tax Act provides for a definition of a "Public Benefit Organisation" and a comprehensive list of acceptable public benefit activities which are of a philanthropic or benevolent nature. The above organisations, once approved, will also themselves be exempt from income tax on their "non business" income subject to certain conditions. See para 19.

The deduction limit for individuals and for companies is 10% of taxable income (including capital gains) but excluding retirement fund lump sums and severance benefits. If such donations are paid by your employer for you, he may take into account for PAYE purposes such donations up to 5% of your taxable remuneration. Donations in excess of 10% of taxable income in any given year will be rolled over and treated as donations to qualifying public benefit organisations in the following tax year.

4.11
Employee Deductions -

4.11.1
The deductions available for employees are very restricted. The current position is as follows:

- All allowances (including entertainment allowances) of whatever nature are fully taxable to the extent that the amount is not a reimbursement of expenses that have been incurred on the instruction of the employer in furtherance of the business of the employer and with the appropriate proof provided to the employer. Actual expenditure reimbursements by employers remain tax exempt if the above rules apply and are followed. This includes entertainment expenditure reimbursements.

- The personal tax free subsistence allowance system remains unchanged. Accommodation, meals and incidental costs will be deemed to have been expended if proof of these expenses can be submitted by the employee. "Incidental costs" is defined to mean any beverages (including alcoholic beverages), private telephone calls, gratuities and room service. The employee must be away from his/her usual place of residence in all cases. The deduction does not apply if the employer has directly borne the expenses in question. If the employer simply reimburses the employee for actual expenditure against documentary proof, then no tax is levied on the employee.

If there is no proof of expenditure**, with effect from 1 March 2021,** the following amounts are currently deemed to have been actually expended by the recipient who is obliged to spend at least one night away from his/her usual place of residence on business and to whom an allowance has been granted or paid -

- where the accommodation to which that allowance relates is in South Africa and that allowance is paid or granted for -
  - incidental costs only, an **unchanged** amount equal to R139 per day, or
  - the cost of both meals and incidental costs, an **unchanged** amount equal to R452 per day, or
- **where the accommodation to which that allowance relates is outside South Africa,** and that allowance is paid or granted to defray the cost of meals and incidental costs, an amount which varies according to the country visited. Details are available in the Legal and Policy section on the following SARS website.

  https://www.sars.gov.za/AllDocs/Documents/PAYE%20tables/2020%20tables/PAYE-GEN-01-G03-A02%20-%20Subsistence%20Allowance%20Foreign%20Travel%20-%20External%20Annexure.pdf

- **With effect from 1 March 2021, the following amounts are currently deemed to have been actually expended by the recipient employee where the employee, on the instructions of the employer, is obliged to spend part of a day away from his or her place of work or employment. The amount is R139 per day to cover meals and other incidental costs if the costs are incurred in furtherance of the trade of the employer.**

- 80% of business travelling allowances are subject to PAYE. The percentage is reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes. On assessment, the full allowance is taxable and actual or deemed expenditure can be claimed up to the amount of allowance received.

  The table below sets out the rates per kilometre which may be used from 1 March 2021 to determine the allowable deduction for business travel where no records of actual costs are kept. Of course, it may be far more tax effective to keep records of actual costs instead of using the published table. Wear and tear must be calculated over 7 years on a cost not exceeding R665 000 (was R595 000). Any interest or finance charges must also be limited to an amount calculated as if the original debt did not exceed R665 000. Unless a detailed log book is maintained, all travel is deemed to be for private use. A standard form of log book is available on the SARS website https://www.sars.gov.za/AllDocs/Documents/Logbook/2019-20%20SARS%20eLogbook.pdf

  We strongly recommend that you ensure that the information in the SARS logbook is maintained by you as part of your records. Please consult us for further information.

Value of the vehicle (including VAT) (R)	Fixed Cost (R p.a.)	Fuel Cost (c/km)	Maintenance Cost (c/km)
Does not exceed 95 000	29 504	104.1	38.6
95 001 - 190 000	52 226	116.2	48.3
190 001 - 285 000	75 039	126.3	53.2
285 001 - 380 000	94 871	135.8	58.1
380 001 - 475 000	114 781	145.3	68.3
475 001 - 570 000	135 746	166.7	80.2
570 001 - 665 000	156 711	172.4	99.6
Exceeding 665 000	156 711	172.4	99.6

The fixed cost portion must be divided by the total distance in kilometres (for both private and business purposes) shown to have been travelled in the vehicle during the year. To this is added the final cost and maintenance cost from the above table.

No fuel cost may be claimed if the employee has not borne the full cost of fuel used in the vehicle and no maintenance cost can be claimed if the employee has not borne the full cost of maintaining the vehicle (e.g. if the vehicle is covered by a maintenance plan).

The fixed cost must be reduced on a pro-rata basis if the vehicle is used for business purposes for less than a full year.

Alternatively -

- In respect of the distance travelled for business purposes, no tax is payable on an allowance paid by an employer to an employee, up to the rate of 382 (was 398) cents per kilometre (plus actual parking and toll fees) regardless of the value of the vehicle. The actual distance travelled is not relevant

  Only the portion of the travel expenses reimbursed by an employer that exceeds the above rate fixed by the Minister of Finance should be regarded as remuneration for purposes of determining employees' tax.

- This alternative is generally not available if other compensation in the form of an allowance or reimbursement (other than actual parking or toll fees) is received from the employer in respect of the vehicle in which event 80% of the travelling allowance and compensation must be included in the employee's remuneration for the purposes of calculating PAYE.

- In general, deductions against the employment income of employees are limited to -
  - The items referred to above
  - Contributions to pension and retirement annuity funds (see para 4.1)
  - Certain legal expenses
  - Wear and tear (depreciation) allowances on items used for trade, e.g. computers and books
  - Bad debts and doubtful debt allowances (see para 4.15)
  - Donations to Public Benefit Organisations (see para 4.10)
  - Expenses for premises, finance charges, insurance, repairs and fuel and maintenance of assets, if these premises or assets are used wholly and exclusively for purposes of trade
  - Home study expenses (see para 4.11.2)
  - Remuneration for services rendered subsequently repaid and restraint of trade payments refunded

It is important to note that an agent or representative whose remuneration is normally derived mainly (i.e. over 50%) in the form of commission based on the sales or turnover attributable to that person, may claim all expenditure incurred in the production of income and does not suffer the same restrictions as for other employees referred to above.

4.11.2
For home study expenses to be deductible for tax purposes, the relevant portion of the premises (in respect of which the expenses are claimed) must be specially equipped for purposes of the person's trade and must be regularly and exclusively used for the purpose of trade. If the taxpayer is an employee or holder of an office, a deduction will only be allowed if either -

- the income of the taxpayer from such employment or office is derived mainly (i.e. over 50%) from commission or other variable payments which are based on the taxpayer's work performance and his duties are mainly performed otherwise than in an office which is provided to him by his employer,

  or

- his duties are mainly performed in such portion of the premises

The practical requirements of SARS are difficult but not impossible to fulfil. In particular, the requirement to use an office at home should, wherever possible, be included in your written employment contract.

The Capital Gains Tax implications when a portion of your primary residence is used for business purposes must also be considered. Please discuss this with us.

4.11.3
Details of the method of taxation of other fringe benefits are set out in para 18.

4.12 Learnership Incentives -

A registered learnership agreement means a contract of apprenticeship registered in terms of the Manpower Training Act if the minimum required period is more than 12 months. Alternatively, it is a learnership agreement that is registered in accordance with the Skills Development Act. All agreements have to be entered into before 31 March 2022. The enhanced incentive prioritises learners without basic intermediate qualifications.

In respect of all registered learnerships entered into on or after 1 October 2016, there is a flat commencement and annual allowance per learnership of R40 000 for learners within NQF 1-6 and R20 000 for learners within NQF 7-10 as well as a completion allowance of the same amounts irrespective of the remuneration of the employee. For employees with certain disabilities, both amounts are increased to R60 000 within NQF 1-6 and R50 000 within NQF 7-10.

Prior to 1 October 2016, the annual and completion allowances per learner were all at R30 000 or R50 000 in the case of learners with disabilities.

There are additional deductions for multi-year learnerships. The commencement allowance is claimed in respect of each successive year of learnership. In the final year of the contract, the completion allowance is multiplied by the number of consecutive completed full years of the learnership.

There are also rules in the case of employee terminations and for transfer of learnerships to a new employer. There is no recoupment irrespective of the reason for the cancellation or transfer. Learnerships lasting for a period of less than 12 months (for whatever reason) are eligible only for a pro rata amount of the commencement allowance and where the 12 months is over 2 tax years, it may be split over 2 tax years. If the learnership is taken over by a new employer, the completion allowance is then only available to the new employer as well as the remaining pro rata share of the commencement allowance.

4.13 Employment Tax Incentives (ETI) -

The Employment Tax Incentive Act benefits initially covered the period from 1 January 2014 to 28 February 2019. This window period was extended by 10 years to 28 February 2029.

The incentive benefit is set out below.

- Employers are entitled to claim the incentive benefit for **each employee** by way of a reduction in tax if the following conditions apply:
  - The employer must be registered as an employer for PAYE purposes.
  - The employee must be not less than 18 years old and not more than 29 years old at the end of the relevant month of the claim (this restriction does not apply if the business is situated in a Special Economic Zone).
  - The employee must be a South African citizen or permanent resident in possession of a South African identity document and must not be a domestic worker.
  - The employee must not be a connected person in relation to the employer e.g. the son of the member of the employer Close Corporation.
  - The employee must not have been employed by the employer or an associated person prior to 1 October 2013.
  - The salary payable to the employee must be above the sector determined minimum wage (or R2 000 if there is no wage determination) and be less than R6 500 (was R6 000) per month.
  - **The tax affairs of the employer must be up to date i.e. all tax returns in respect of all taxes have been filed and all payments due have been paid or appropriate arrangements made with SARS.**

  - **With effect from 1 March 2021, the work done by the employee must be performed in terms of an employment contract that adheres to the record keeping provisions in accordance with the Basic Conditions of Employment Act.**

- The monthly incentive benefit is based on the monthly remuneration of the employee (working for 160 hours per month) according to the following table. The benefit is for only 2 years and in the second year, the benefit is 50% of the amount in the first year. If employed for part of a month, the incentive is proportionately reduced for that month.

Monthly remuneration (MR) in first twelve months	Monthly incentive in first twelve months	Monthly incentive in the following twelve months
R2 000 or less	50% of remuneration	25% of remuneration
R2 001 to R4 500	R1 000 p.m.	R500 p.m.
R4 501 to R6 500	R1 000 p.m. less 50% of (MR-R4 500)	R500 p.m. less 25% of (MR-R4 500)

Example of calculations for the first year:

Monthly remuneration (MR)	R1 000	R2 500	R4 000	R4 500	R5 000	R6 000	R6 500
Monthly incentive	R500	R1 000	R1 000	R1 000	R750	R250	R Nil

- The incentive benefit for each month is collected from SARS by deducting the benefit amount for all the qualifying employees from the PAYE payment (in respect of all employees) due by the employer to SARS for that month. Benefits in excess of the monthly PAYE payment can be carried forward for set-off against future PAYE due. Not more than R6 000 per employee can be carried forward and amounts not claimed within 6 months will be forfeited. Direct refunds may be applied for where the incentive exceeds the PAYE payable.

- There will be substantial penalties if “old” employees are replaced with employees within the benefit age group. Penalties will also apply if the employer claims the benefit for an employee who does not qualify.

- The employee receives no benefit or reduction in PAYE. The benefit accrues only to the employer.

There is a deduction cap of R20 million per employer in respect of ETI in each tax year.

4.14 Variable Remuneration -

Certain types of remuneration are only deductible as expenses by employers at the same time as such amounts are taxable in the hands of the employees. This would include overtime pay, bonuses, commissions, travelling allowances and leave pay. The range has been extended to include nightshift allowances, standby allowances and re-imbursive expenses.

4.15 Bad and Doubtful Debts-

Bad Debts:
A deduction is allowed of the amount of any debt due to a taxpayer to the extent that it has during the year of assessment become bad, provided that the amount was included in the taxpayer’s income in either the current or some previous year of assessment. Certain information may be required to substantiate the claim.

Doubtful Debts:
An annual allowance can be claimed for so much of any debts due to a taxpayer as is considered doubtful of recovery but only if these debts would have been allowed as a deduction if they had become bad (see above). The amount of the allowance granted must be included in the taxpayer’s income in the following tax year.

The computation differs whether the taxpayer prepares annual financial statements in terms of International Financial Reporting Standard or not. Many larger companies are obliged to prepare their financial statements in terms of IFRS in general and IFRS 9 in particular.

If IFRS 9 is applied, in principle the doubtful debt allowance would be the sum of –

- 40% of the loss allowance relating to impairment equal to the lifetime expected credit loss, and
- The amount of debts disclosed as a bad debt for accounting purposes but not for tax purposes PLUS
- 25% of the loss allowance relating to impairment of debt not taken into account as part of the above 40% inclusion.

If you are using IFRS 9, please consult us for further information.

If IFRS 9 does **not** apply, the doubtful debt allowance is the sum of –

- 40% of so much of any debt if that debt is 120 days or more in arrears, and
- 25% of so much of arrear debt due for 60 days or more but excluding any debt taken into account under the above 40% inclusion.

It is intended to refine these rules where the taxpayer holds security in respect of the debts in question.

In either option, application can be made to SARS for a directive to allow higher write off percentages (not exceeding 85%).

The type of information likely to be called for by SARS could include the following:

- History of debt including dates and missed instalments
- Steps taken to enforce payment
- Likelihood of recovery
- Security available
- Criteria applied by the taxpayer in determining bad debts

SARS is issuing a very detailed Interpretation Note (currently in draft) to explain the workings of the Doubtful Debt allowance.

4.16
Venture Capital Company Investments –

Subject to strict and specific rules, investments into Venture Capital companies entitle the investor to a full tax deduction of the cost of the investment. Such deduction is not recoupable if the investment is held for at least 5 years. **No deduction is allowed in respect of shares acquired in Venture Capital companies after 30 June 2021.**

What is not always realized is that, on a subsequent disposal of such investment, tax is payable on any resultant capital gain. The base cost (having been previously deducted) is deemed to be Nil. This means that the full sale proceeds are subject to Capital Gains Tax.

In the case of a natural person, the current effective rate of tax on such capital gain is limited to 18%.

However, if the venture capital company has itself disposed of its underlying investments, the venture capital company would also have been subject to CGT on any gain realized.

The overall effective rate of tax to be borne by the investor could therefore exceed the 18% referred to above.

With effect from 21 July 2019, the aggregate tax deductible venture capital investment cannot exceed R5 million p.a. for companies and R2.5 million p.a. for other taxpayers. Amounts paid in excess of these limits may not be carried forward to future years.

5 Trusts and Deceased Estates

Trusts -

The flat rate of tax on the taxable income of trusts (other than special trusts) remains at 45% for years of assessment ending on 28 February 2022.

The current position in regard to trusts is as follows -

5.1
Trusts are divided into two categories for tax purposes -

- "Special" trusts
- All other trusts

5.2
A "special" trust means a trust created -

- solely for the benefit of a person who suffers from -
    - any "mental illness" as defined in the Medical Health Care Act, 2002 (see para 4.6), **or**
    - any serious physical disability

  where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person or from managing his or her own financial affairs.

  If the person for whose benefit the trust was created dies on or before the last day of the tax year, then the trust will not be classified as a "special" trust for that year.

  or

- by or in terms of the will of a deceased person, solely for the benefit of beneficiaries who are relatives (as defined) in relation to that deceased person and who are alive on the date of death of that deceased person (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust under the age of 21 years.

As such "special" trusts enjoy preferential tax treatment, it is prudent for separate trusts to be created for beneficiaries falling in the first category and not to have one trust for all classes of beneficiaries. Where existing trusts have both classes of beneficiaries, consideration should be given to splitting the trust into more than one trust (there is often the necessary power to do so already incorporated in trust deeds).

5.3
The rate of tax on Capital Gains has not been increased and is set out in para 5.10 and 9.2. The tax rates applicable to "special" trusts are the same as those applicable to natural persons (see para 3.5). The primary rebate (see para 3.10) and the interest exemption (see para 4.8) do not apply.

5.4
In regard to all other trusts (other than special trusts but including both testamentary and inter-vivos trusts), the tax rate (other than on Capital Gains – see para 5.10) remains at the flat rate of 45% on the total amount of taxable income of the trust (see para 5.5). Foreign dividends are however be taxed at the effective flat rate of 20%.

The primary rebate (see para 3.10) and the interest exemption (see para 4.8) do not apply.

Income vesting in a beneficiary of the trust is usually taxed in the hands of that beneficiary. **Many of the benefits of income splitting thus still remain. It is however not always advisable to distribute trust income to beneficiaries solely for tax purposes. Numerous other factors need also to be considered e.g. the needs of family members, estate duty, the creation of interest free loans, etc. It must also be remembered that the future taxation of trusts is still being considered.**

5.5
The income vesting in the trust as a taxpayer (i.e. not the income vesting in a beneficiary of the trust nor the income deemed to be that of another person in terms of Section 7 of the Income Tax Act) is taxed at the flat rate of 45%. See para 5.10 for the rate of tax on Capital Gains. In the case of "special" trusts, see para 5.3.

5.6
Trust losses are not allowed to flow through to the beneficiaries. The losses will be retained in the trust for carry forward to be set off against future income of the trust.

5.7
Where during a year of assessment -

- a South African resident (as defined) acquires a vested right to any portion of the capital of a trust which itself is not a resident (i.e. it has not been formed in South Africa nor is its place of effective management in South Africa), and

- the capital arose from income which was received by or accrued to the trust or from any receipts and accruals of such trust which would have constituted income if such trust had been a resident in any previous year during which such resident had a contingent right to such income or receipts and accruals, and

- such income or receipts and accruals had not been subject to South African tax,

  then

- such amount will be taxable in the hands of the resident during the year in which the resident acquires the right to the capital.

In many offshore trusts, a South African resident may be able to be awarded income (i.e. they have a contingent right). If that trust receives income and such income is not distributed, then, in a later year, when the capitalised income is awarded to the South African resident, it will be subject to South African tax in that later year. **If such income consists of foreign dividends, the 10% participation exemption referred to in para 3.4 will not apply.**

5.8
An offshore trust is not classified as a controlled foreign company/entity. Income of such foreign trust will accordingly not automatically be able to be deemed to be that of a South African resident unless the income is awarded to the South African resident or the income accrues to the trust by virtue of a donation, settlement or other disposition from the resident (or a connected person to such resident) even if such income has been awarded to an unrelated non-resident beneficiary**.** Trust income (including Capital Gains) will be taxable in the hands of a person who had been granted amnesty in respect of such assets which he had elected to be deemed to be his for tax purposes.

5.9
Where the beneficiary of a (local or foreign) trust is awarded trust income, then the deductions or allowances applicable thereto are deductible from such income.

If the trust is subject to tax in South Africa, then a loss incurred by the trust can be carried forward to be set off against the future income of the trust. Such loss can not be set off against the South African taxable income of a beneficiary. If the trust is not subject to tax in South Africa, then a loss incurred by the trust is carried forward to be set off against the beneficiary's future South African taxable income derived from the trust.

5.10
For the purposes of Capital Gains Tax (CGT), 40% of the Net Capital Gain of a Special Trust is included in the taxable income of that trust. See para 9. In respect of other trusts, the inclusion rate is 80%. Only the first category of Special Trust (see para 5.2) will enjoy the other CGT benefits available for Special Trusts, i.e. excluding the special testamentary trusts. The primary residence exclusion of R2 million (see para 9.3) and the annual exclusion of R40 000 (see para 9.3) will be available for the first category of special trust but will not be available for the special testamentary trusts.

5.11
Certain low interest and interest free loans to trusts create a liability for donations tax. See para 10.5 and 14.9.

Deceased Estates -

5.12
In respect of persons dying on or after 1 March 2016, the method of taxing the income arising after death has changed.

5.13
Prior to that date, the taxable income of the estate arising after date of death was taxed in the hands of the legatee or heir who inherited that income.

If the Will provided for the creation of a testamentary trust, the taxable income flowed to that trust and was taxed in the hands of the beneficiary to whom that income was awarded by the trust. Unawarded income of the trust was taxable in the hands of the Testamentary Trust at the flat rate of 45% (unless it was a special trust - see para 5.2). The primary rebate (see para 3.10) and the interest exemption (see para 4.8) did not apply.

5.14
In respect of persons dying on or after 1 March 2016, the taxable income of the estate arising after date of death is taxable in the hands of the estate itself until the liquidation and distribution account has been approved by the Master of the High Court. Income thereafter is taxable in the hands of the heirs.

The rate of tax for natural persons applies for the estate (see para 3.5). No natural person rebates or medical expense tax credits apply. The interest exemption of R23 800 applies (see para 4.8) as well as the CGT exemption of R40 000 p.a. (see para 9.3) and the primary residence exclusion (see para 9.3).

5.15
See para 14.1 in regard to the tax payable on the disposal of estate assets.

6 Tax Rates for Companies and Close Corporations

Corporate Income Tax –

It is proposed to reduce the rate of Company tax to 27% with effect from years of assessment commencing on or after 1 April 2022.

6.1
The rates of tax payable on the taxable income of companies and close corporations in respect of years of assessment ending on or after 1 April 2021 and on or before 31 March 2022 are as follows:

- Basic rate (on undistributed income) remains at 28% (see para 6.2). Foreign Dividend Income (where the shareholding is less than 10% in the foreign company) is taxed at the effective rate of 20%. The effective rate on capital gains remains unchanged. See para 6.5 and 9.

- Basic rate (on undistributed income) of a Small Business Corporation (see para 6.2 and 15.2 for full details).

- Basic rate (on undistributed income) of a Personal Service Provider Company – 28% (see para 6.4).

- Dividends Tax – 20% (see para 7).

- Branch profits tax on foreign resident companies – 28% (see para 6.3). No Dividends Tax applies.

- Foreign Dividends – remains at 20% (see para 3.4).

There is a major proposal in regard to assessed tax losses. See para 14.12.

The Residence based or Worldwide system of income tax (see para 3.4) applies to all entities resident in South Africa i.e. if they are incorporated, established, formed or effectively managed in South Africa.

So as to facilitate investment into Africa through South Africa and to encourage the development of regional investment banks and South African holding companies, headquarter companies may apply to be designated as such. A "Headquarter Company" has all the following unique characteristics (among others).

- it is a company resident in South Africa in which each shareholder holds at least 10% of the equity shares and voting rights for the full tax year, and
- at least 80% of the tax cost of the total assets of the company is attributable to equity or loan investments in foreign companies in which the company holds at least 10% of the equity shares and voting rights at the end of the current tax year and all prior years, and
- when its gross income for the year exceeds R5 million, at least 50% of the total receipts and accruals of the company consists of rents, dividends, interest, royalties, management fees or sale proceeds derived from the foreign investments.

Headquarter Companies are treated, inter alia, as follows -

- Companies which are significant foreign investments of the headquarter companies are not deemed to be controlled foreign companies and thus the income of such investment companies will not be taxable in the hands of the headquarter company.
- No Dividends Tax will be payable on dividends declared by the headquarter company.
- Thin capitalisation rules will not apply where headquarter companies have interest bearing foreign loans and have on-lent the funds to cross border companies. This means that "excessive" interest paid will not be disallowed as a deduction.
- No CGT on the capital gain realised on the disposal of the investments (subject to conditions).
- No Exchange Control restrictions on the headquarter company raising and using capital offshore.

6.2
In respect of years of assessment ending on or after 1 April 2021 and on or before 31 March 2022, the rate of normal tax payable by companies and close corporations remains at 28% of taxable income. See para 6.5, 7.13 and 9 for the rates applicable to Capital Gains. There is still inequality between the tax treatment of companies/close corporations as opposed to individuals. See para 3.7.

A "small business corporation" is separately recognised for tax purposes. To be classified as a "small business corporation", a company /close corporation needs to comply with and continue to comply with the following rules-

- the entire shareholding of, or interest in, the company/close corporation must be held during the entire year of assessment by shareholders/members all of whom are natural persons, and
- the gross income for the year of assessment does not exceed the **unchanged** amount of R20 million (or a proportion thereof if the trading period is less than 12 months), and
- not one of the shareholders/members at any time during the year of assessment held any shares or had any interest in any other company/close corporation (other than a listed company or unit trust or share block company or sectional title body corporate), (the holding of shares in a dormant company/close corporation which is in the process of liquidation or deregistration will no longer be a barrier even if the existence of such company has not yet formally ceased), (the shareholders/members can hold shares in a company or close corporation if it has not traded during the year and did not own assets in excess of R5 000 in value), and

- not more than 20% of the company's/close corporation's gross income (including capital gains) consists collectively of "investment income" (see below) and income from the rendering of a "personal service" (see below), and

- the company/close corporation is not a "personal service provider" company (see para 6.4).

"Personal service" is defined as any service which is performed personally by any person who holds an interest in the company/close corporation referred to in the definition of "small business corporation". See para 15.4 for details of the scope of this definition.

"Investment income" includes income in the form of interest, rentals derived from immovable property, annuities, royalties, dividends and income derived from trading and investing in financial instruments, marketable securities or immovable property.

See para 15 for further details of the benefits available to "small business corporations". In view of the definition of a "small business corporation", it will not be all small entities that will be able to avail themselves of these benefits. In some cases, a certain amount of restructuring may be necessary to bring the entity within the definition. For those that can, the concessions are significant. It is essential therefore that you contact us as soon as possible to ensure that you take all the steps necessary and do not break any of the technical rules.

6.3
The South African source income of foreign registered companies (which are effectively managed outside South Africa) derived from the commencement of years of assessment ending on or after 1 April 2021 and on or before 31 March 2022, remains subject to branch profits tax at the rate of 28%. If however a foreign registered company managed in South Africa becomes a non-resident entity (because its place of effective management is removed from South Africa), Dividends Tax is payable on the reserves of that company at that date.

Interest accruing from South African sources to a foreign company is only taxable if such company carries on business through a fixed place of business/permanent establishment in South Africa. See para 8 in regard to the interest withholding tax.

6.4
There are specific provisions to severely discourage the use of "personal service provider" companies as follows:

- remuneration payable to such a "personal service provider" is subject to PAYE.

- the allowable deductions of a "personal service provider" for tax purposes are limited to the amount of the remuneration paid to the shareholders, members or other employees of the company for services rendered as well as amounts paid for normally allowable legal expenses, bad debts and employee benefits. Also allowed will be expenses in respect of premises, finance charges, insurance, repairs, fuel and maintenance in respect of assets if such premises and assets are used wholly and exclusively for purposes of trade.

- the taxable income of a "personal service provider" is subject to tax at the rate of 28% and Dividends Tax will still be payable on the declaration of any dividends.

A "personal service provider" means any company or trust, where any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust and -

- such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust; or

- where those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or

- where more than 80% of the income of such company or trust during the year of assessment from services rendered, consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any associated institution as defined, in relation to such client.

A company will, however, not be regarded as a "personal service provider" where such company or trust employs three or more full time employees engaged in the business of the company or trust of rendering such service (other than any employee who is a shareholder or member) throughout the year of assessment, none of whom are connected persons in relation to such shareholder or member.

A labour broker is considered to be an employee (and PAYE is deductible from remuneration paid to it) unless it has received an exemption certificate. The criteria for determining whether a labour broker is an independent contractor for purposes of obtaining an exemption certificate provide that an exemption certificate will be refused where -

- more than 80% of the income of the labour broker relating to services rendered consists of income received from one client of the labour broker, or

- one or more employees of such labour broker have been specified or required by one or more of the clients of such labour broker to render a service to such client or clients.

If your entity falls within these definitions, it would definitely be preferable to acquire or sell the business out of the entity.

6.5
Dividends Tax is payable by shareholders and collected by the company as a separate final withholding tax at the rate of 20% (see para 7). The dividend will thereafter be exempt from further tax in the hands of the shareholder (i.e. it will not form part of the taxable income of the shareholder). Dividends tax will be payable not only on distributions during the life of the company but also on liquidation or deregistration.

Non-corporate and non-resident shareholders will be subject to the 20% Dividends Tax.

The overall tax payable on company normal profits and on Capital Gains is set out in para 7.13.

7 Dividends Tax (DT)

7.1
The rate of tax on dividends is 20% with effect from 22 February 2017.

The method of determining the applicable rate when there is a change is as follows.

For listed companies any dividends declared before 22 February 2017, but paid after that date are subject to the higher DT rate of 20%.

For unlisted companies, where dividends were declared (and were due and payable) before 22 February 2017, the DT rate applicable is 15%, even if paid after 22 February 2017. For dividends declared (and due and payable), by unlisted companies, on/after 22 February 2017, the rate of 20% applies.

For in specie dividends, the earlier of paid or due and payable applies to both listed and unlisted companies as is the case with cash dividends for unlisted companies explained above.

7.2
Dividends Tax is a final tax at a rate of 20% on dividends paid by all resident companies and also by non-resident companies the shares of which are listed on the JSE. 20% of the dividends declared will be withheld by the company (or regulated intermediary) and paid over to SARS. See para 7.8 for exemptions. **The balance received by the shareholder is thus tax exempt.**

7.3
A dividend is any amount transferred to or for the benefit of a shareholder to the extent that it is not a reduction of Contributed Tax Capital. See para 7.4.

7.4
An important concept to understand is Contributed Tax Capital. It is the amount of share capital and share premium immediately before the effective date less any capitalised profits included therein plus consideration for shares issued thereafter less subsequent repayments.

7.5
In simple terms, DT is a tax imposed at a rate of 20% on shareholders who receive dividends. The DT is categorised as a withholding tax, as collection of the tax is withheld and paid to SARS by the company paying the dividend or by a regulated intermediary (e.g. an equity unit trust, or a broker or CSDP through whom shares have been dematerialised), and not the person liable for the tax, i.e. the beneficial owner of the dividend. See para 7.6 for exceptions to this general rule. Also see para 7.11 for due date of payment.

7.6
The liability for DT is triggered by payment, falls on the recipient (i.e. beneficial owner) of the dividend, and is to be withheld from the dividend payment by either the company distributing the dividend or, where relevant, certain withholding agents.

Dividends in specie are an exception to this rule as the liability for the DT remains on the company paying the dividend and is not payable or borne by the recipient. Further, where loans at below the official rate of interest (see para 18.2) are provided by a company to a person by virtue of shares held in that company, the interest benefit so provided is deemed to be a dividend and consequently subject to DT payable and borne by the company.

7.7
Under DT, the default position is that tax at 20% should be withheld by the company (or paid in the case of a dividend in specie) once a dividend is paid, unless one of the exemptions or a reduced rate is applicable. **A reduced rate may be applicable in terms of a Double Tax Agreement in respect of dividends payable to non-residents. See para 8.**

7.8
Dividend payments could be exempt from DT depending on the nature or status of the recipient. The exemptions are "elective" in the sense that they will only apply where the company distributing the dividend or the relevant withholding agent receives the required notifications ("declarations" and "undertakings" in the form prescribed by SARS) from the recipient prior to payment of the dividend. Examples of exempt recipients are all local companies and close corporations, government, approved public benefit organisations, retirement funds and non-resident beneficial owners of dividends (but only if received from SA listed non-resident companies).

See also para 16.2 in respect of exemption from Dividends Tax for certain dividends paid by companies (including close corporations) which have elected to be micro businesses.

7.9
Dividend payments (which would include distributions from a Real Estate Investment Trust (REIT)) to non-residents may be subject to a reduced rate where the relevant Double Taxation Agreement (DTA) between South Africa and their country of residence provides for such. In order to qualify, the foreign resident needs to declare their status (by way of a similar "declaration" and "undertaking" referred to above) to the company declaring the dividend or the regulated intermediary involved – if they do not make a declaration, they will not qualify.

7.10
DT is based on the gross outflow of dividends with no reference to any period.

7.11
The payment of the tax will normally not be made by the party liable for the tax (the beneficial owner of the dividend), but will be withheld from the dividend payment by a withholding agent (either the distributing company or a regulated intermediary) who will then pay the tax to SARS (on or before the end of the month following the month in which the dividend was paid to the beneficial owner). Withholding agents who fail to withhold could be held personally liable under certain circumstances. Where a dividend in specie is distributed, the company distributing the dividend retains the liability for the tax as well as the duty to pay SARS.

7.12
Payment of DT has to be accompanied by a return in the form prescribed by the Commissioner. A return must be submitted to SARS by each entity that is involved in the dividend distribution chain (except in certain group structures). The returns must account for the payment of dividends to beneficial owners (including any withholding of tax) and/or the pass through of dividends to regulated intermediaries for further distribution (and withholding of tax where relevant). The return summarises how the dividends were dealt with and whether any taxes were withheld and must be accompanied by supporting data underpinning the return.

7.13
The overall tax payable on company normal profits remains **unchanged** as follows:

	2022	2021
Company normal profits (other than a Small Business Corporation)	100,00	100,00
Normal tax	28,00	28,00
	72,00	72,00
Dividends Tax - 20% of 72	14,40	14,40
After tax amount to individual shareholders	57,60	57,60
Overall tax burden	42,40	42,40

The **unchanged** effective rate of tax on company Capital Gains is calculated as follows:

		2022		2021
Taxable Capital Gain		100,00		100,00
Normal tax thereon (inclusion rate 80%) and normal tax rate 28% - (80% of 28% = 22.4%)		22,40		22,40
Balance available for distribution		77,60		77,60
Dividends tax at 20% of distributable amount	15,52		15,52	
Dividend (after deduction of dividends tax)	62,08		62,08	
		77,60		77,60
		NIL		NIL
Overall tax burden		37,92		37,92

8 Non-Residents

- Withholding Taxes on payments of income from a South African source to a person not resident in South Africa (natural person, company or trust). Interest is deemed to be paid on the date on which the interest becomes due and payable.

	Rates	Effective date
Dividends (including distributions from a REIT)	20%	22 February 2017
Royalties	15%	1 July 2013
Interest	15%	1 March 2015

- **These rates may be reduced in terms of applicable Double Tax Agreements which South Africa has with many foreign countries. In such cases, appropriate declarations are required from the recipient.**

- These are final taxes and are payable by the recipient of the income although collected by the payer in the form of a withholding tax.

- A foreign recipient of interest or royalties will be exempt from the withholding tax if –

  - the foreign payee is a natural person who was physically present in South Africa for a period exceeding 183 days during the twelve month period preceding the date on which the amounts are paid,
    or
  - the amounts are effectively connected with a fixed place of business/permanent establishment in South Africa.

  In such cases, South African normal tax will be payable as opposed to the final withholding tax.

- Service fees paid in respect of services rendered by an employee to an employer with a presence in South Africa is exempt from withholding tax but is subject to PAYE which is the normal tax collected by the employer and withheld by the employer from the amount payable to the employee. See also para 11.1.

- For interest, there are further exemptions if the amounts are paid by the Government, any bank, any headquarter company or in respect of any debt listed on a recognised Stock Exchange. See also para 4.8.

- Payment of the withholding taxes on all these amounts must be made to SARS by the end of the month following the month in which the amounts are paid. If denominated in a foreign currency, the amount must be converted at the spot rate on the date of withholding.

- See para 14.16 in respect of awards of interest income by local trusts.

The other withholding taxes are for Dividends (para 7), for Capital Gains on the disposal of South African immovable property (para 9.7) and for Foreign Entertainers and Sportspersons (para 20).

9 Capital Gains Tax (CGT)

9.1
The effective rate of tax on Capital Gains remains **unchanged**.

CGT is payable on the gains derived from the disposal of capital assets. Events that trigger a disposal include a sale, donation, exchange, loss, death (see para 10.4) and emigration. However, on emigration, the holding of fixed property and certain business assets in South Africa are not treated as a disposal until they are subsequently sold.

Exemptions include most personal use assets, retirement benefits and proceeds of original long term insurance policies. See para 9.3 for further exemptions.

The base cost of an asset includes the expenditure actually incurred in respect of the acquisition or creation of the asset. Also included is expenditure directly related to the acquisition or disposal of the asset including the remuneration of auctioneers, accountants and lawyers. Transfer costs are included but not bond registration or cancellation costs and raising fees.

9.2
CGT is not a separate tax. A portion of the net capital gain is "included" in and combined with other taxable income.

The following rates apply in respect of disposals during years of assessment commencing on or after 1 March 2019. The rates remain unchanged.

	Individuals and Special Trusts	Companies	Other Trusts
Inclusion rate	40%	80%	80%
Effective rate (assuming a 45% rate for individuals and special trusts)	18%	22.4%	36%
If balance of profits declared as a dividend the additional dividends tax is	-	15,52%	-
Total tax burden	18%	37,92%	36%

9.3
There are certain **unchanged** exemptions from CGT in addition to those in para 9.1 above:

Annual exclusion of gains or losses (applicable only to individuals and special trusts)	R40 000
In the year of death, the annual exclusion is	R300 000
Primary residence exclusion (see para 9.4)	R2 million
On the disposal of a small business when a person is over age 55	R1.8 million
Maximum market value of assets for the small business disposal exemption	R10 million

In addition, capital gains on the disposal of shares subject to the "Participation Exemption" (see para 3.4) would also be exempt from CGT.

9.4
Subject to certain conditions, the capital gain or loss realised by a natural person or special trust (excluding the special testamentary trust) in respect of the disposal of the primary residence of that person or that trust is disregarded to the extent it does not exceed R2 million. If there are joint owners occupying the property as their primary residence, they each are allocated a portion of the R2 million exemption. If only one of the two owners occupies the property as a primary residence and the other owner does not reside in the property, only the first person is entitled to the full R2 million exemption.

9.5

The sale of all shares after a period of holding in excess of three years automatically triggers a Capital Gains Tax event. The gain will then not be treated as normal income. The normal tax treatment of executive employee share schemes are not affected. Gains realised on shares purchased for long term investment and sold before three years will not automatically be treated as a revenue gain subject to full normal tax.

Share dealers will however need to take great care that shares which have declined in value should be sold before the 3 year period to ensure that the deduction of the realised loss will be able to be claimed as a revenue instead of as a capital loss. Anti-avoidance measures are in place to prevent the creation of artificial losses.

9.6

When ownership of shares in a share block company is converted into sectional title ownership, there is technically a disposal which could give rise to CGT. In such cases, the base cost of the property is rolled over to the sectional title holders and any CGT will accordingly be deferred.

9.7

Non-residents (as defined for tax purposes) are liable for tax on Capital Gains realised on the disposal of South African immovable property (owned by them personally or through a company (if they hold at least 20% of the shares and 80% of the value of the assets of the company consists of immovable property)).

If the total purchase price of the transaction is R2 million or more for each seller, the purchaser is liable to withhold a percentage of the gross amount payable to a non-resident seller of immovable property. This percentage is not payable on the deposit until the deposit is applied in reduction of the purchase price.

The withholding tax rates are **unchanged**. The rate is 7,5% of the purchase price if the non-resident seller is a natural person, 10% if the non-resident seller is a Company/Close Corporation and 15% if the non-resident seller is a Trust.

The amount withheld must be paid over to SARS (with a declaration in a prescribed form) within 14 days if the purchaser is a resident and 28 days if the purchaser is a non-resident. This provisional amount is then set off against the tax liability of the seller as finally determined.

The seller can apply to SARS for a directive that a lower or no amount should be withheld by the purchaser. Reasons for the granting of a directive would be that security is furnished to SARS by the seller to cover the potential tax liability; the seller may have other assets in South Africa sufficient for SARS to attach if the seller defaults; the seller may be exempt from CGT (e.g. due to the provisions of a Double Tax Agreement); the seller's actual liability for CGT may be less than the amount of the withholding tax (e.g. there may be a capital loss). Sufficient evidence must be provided to allow for this claim to be verified.

Failure to withhold and pay over to SARS, will make the purchaser personally liable for the amount that should have been paid if he knew or should reasonably have known that the seller was a non-resident.

An estate agent and a conveyancer who is entitled to any remuneration in relation to the transaction must notify the purchaser that the seller is a non-resident and that tax must be withheld. If they knew or should reasonably have known that the seller was a non-resident, and did not advise the purchaser, then they will be jointly and severally liable for the amount that should have been paid but limited to the amount of the remuneration they derived in connection with the disposal or registration of transfer of the immovable property.

If the purchaser, estate agent or conveyancer becomes liable to pay personally as described above, they have a right of recovery against the seller for the required withholding tax but not for any penalties (10%) or interest they incur.

10 Estate Duty and Donations Tax

10.1
The rates of estate duty and donations tax are **unchanged**.

In respect of Estate Duty, the rate of 20% of the dutiable amount will apply to so much of that dutiable amount as does not exceed R30 million and 25% of the dutiable amount on the excess over R30 million.

In respect of Donations Tax, the rate of 20% of the value of the donation applies to so much of such value as does not exceed R30 million and 25% of the value on the excess over R30 million donated during the immediately preceeding 12 month period.

Although the higher rate applies to donations in excess of R30 million during the preceding 12 month period, the annual exemption of R100 000 applies for each tax year. See below.

The primary exemption from estate duty of the net value of an estate (i.e. after deduction of liabilities and costs as well as bequests to PBO's and surviving spouses) remains at R3,5 million. Donations to PBO's and spouses and bequests between spouses remain exempt from donations tax and estate duty.

The first R100 000 of all donations made by natural persons (husband and wife separately) during a year of assessment remains exempt from donations tax. For private companies (including close corporations) and trusts the exemption remains in respect of casual gifts not exceeding R10 000 p.a. in total.

Tax deductible donations are dealt with in para 4.10.

As both estate duty and CGT are payable on death, there is an element of double taxation. Estate duty is often substantially reduced by the use of trusts, etc. The rules relating to low interest loans to Trusts were introduced to combat this. See para 10.5.

10.2
For the purpose of determining the dutiable value of an estate for estate duty purposes, certain assets (referred to as "property") are included and certain property is excluded.

Currently excluded is so much of a benefit that is due and payable by, or in consequence of membership or past membership, of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund. Preservation funds are funds not linked to employment.

Accordingly, retirement fund benefits are excluded from the dutiable estate for estate duty purposes when a member passes away although lump sum payments are subject to tax in the deceased's tax computation to date of death.

The effect of this exclusion was that some individuals transferred large amounts (beyond the tax deductibility limits) into a Retirement Annuity Fund before their death. To eliminate the potential to avoid estate duty on such contributions, the amount equal to the non-tax deductible contributions to retirement funds is included in the dutiable estate when a retirement fund member passes away.

10.3
Spouses have flexibility to use the R3,5 million deduction they are each entitled to. The surviving spouse's estate will automatically benefit from the unused deduction of the deceased spouse irrespective of the date of death of the first spouse.

As an example, if the estate of spouse "A" has a net value of R2 million and "A" dies first leaving all to the children, there will be no estate duty. On the death of the survivor, the estate will be entitled to a first deduction of R5 million, being R3,5 million for his estate plus R1,5 million (R3,5 million less utilised R2 million) unutilised from "A's" estate.

10.4
As death is an event which triggers CGT, a deceased estate will be liable for CGT on the net capital gains deemed to have been made and which will be based on the value of the assets in question for estate duty purposes. In other words estate duty would be computed on the gross value of such assets (less liabilities and expenses) and CGT on the deemed capital gain. Any CGT payable will be allowed as a deduction for estate duty purposes. Sufficient cash must be available in the estate to meet the liability for both Estate Duty and Capital Gains Tax.

10.5
Loans to Trusts –

- With effect from 1 March 2017, this provision applies to any loan, advance or credit made directly or indirectly to a Trust by a natural person, or by a Company at the instance of a natural person and that Company is a connected person in relation to that natural person and the natural person or Company is a connected person in relation to the Trust. Such loans to Companies owned by a Trust are also included in this anti-avoidance rule. **Further anti-avoidance rules are proposed. See para 14.3.**

- **The interest not charged on the loan (i.e. the amount of interest charged below interest at the official rate) would be treated as a donation on the last day of the tax year and subject to donations tax at the rate of 20% payable by the lender.**

- The official rate of interest changes from time to time. See para 18.2. The current rate is 4.50% p.a. If interest is charged on the balance of the loan from time to time at a rate below these rates, the shortfall is deemed to be a donation on the last day of the tax year and the donations tax is payable before the end of the following month.

- Donations tax at 20% will only apply on annual donations (whether to Trusts or others) in excess of the natural person primary exemption (applicable to the donor/lender) of R100 000 per annum.

- Loans to the following are excluded from the application of this provision –

  - Special Trusts established solely for the benefit of persons with disabilities.
  - Trusts that are registered with SARS as Public Benefit Organisations.
  - Vesting Trusts where the rights of beneficiaries are clearly established.
  - To the extent that a loan is used by the Trust for funding the acquisition of the primary residence of the lender.
  - International loans where non arms-length loans are subject to adjustment in terms of special tax rules.
  - Loans in terms of Sharia compliant financing arrangements.
  - Loans which are deemed to be dividends.

- These provisions apply to all loans with effect from 1 March 2017 whether such loans were advanced before or after that date.

- The annual Donations Tax will be payable for as long as the low interest loan exists even when the accumulated interest not charged exceeds the capital amount of the loan.

- Simple Example

Facts -	Interest free loan of R2 million granted by a natural person to a connected Trust on 1 March 2020. Further interest free loan of R1 million advanced on 1 August 2020.	
Calculation -	Interest on R2 million at 7.25% p.a. for 1 month	6 041
	Interest on R2 million at 6.25% p.a. for 1 month	5 208
	Interest on R2 million at 5.25% p.a. for 1 month	4 375
	Interest on R2 million at 4.75% p.a. for 1 month	3 958
	Interest on R2 million at 4.50% p.a. for 2 months	7 500
	Interest on R3 million at 4.50% p.a. for 6 months	67 500
		94 582
	Annual donations tax exemption	100 000
	Amount subject to donations tax	R Nil
	Donations Tax at 20% (payable before end March 2021)	R Nil

11 Provisional Tax & PAYE on Directors Remuneration

11.1
A provisional taxpayer is any person who earns income by way of remuneration from an unregistered employer (e.g. foreign employer) or income that is not remuneration or an allowance or advance payable by a person's principal.

An individual is not required to pay provisional tax if the individual does not carry on business and the individual's taxable income -

- **will not exceed the tax threshold for the tax year (see para 3.11); or**
- **from interest, dividends, foreign dividends, rental from the letting of fixed property and remuneration from an unregistered employer will be R30 000 or less for the tax year.**

Deceased estates are not provisional taxpayers.

11.2
Any natural person who derives any amount of income which does not constitute remuneration must register as a provisional taxpayer. This would include all sole traders and those earning taxable investment income.

An individual who does not carry on business and his taxable income is below the tax threshold for that year (see para 3.11) is exempt from the payment of provisional tax.

If however such person does not carry on business and his taxable income will be below the tax threshold (see para 3.11) or he does not derive any taxable income (other than remuneration) (e.g. interest, foreign dividends and rental) in excess of R30 000 p.a., there is an exemption from payment of provisional tax for the year in question. This amount of R30 000 is after deduction of the tax exempt portion of interest income. See para 4.8.

Annual tax returns may still have to be submitted. The fact that there are exemptions from the payment of provisional tax does not affect the actual liability to tax - only the timing of the payment thereof. Accordingly those concerned will need to budget carefully for their single tax payment for that year which will only be payable when the assessment in respect of that year is received.

Any resident director of a private company or member of a close corporation no longer automatically needs to register as a provisional taxpayer unless the other conditions apply.

All companies, close corporations, trusts and any other person who is notified by SARS that he is a provisional taxpayer must also register and is liable for the rendition of provisional tax returns (Form IRP 6).

There is often an uncertainty as to whether or not a taxpayer must register as a provisional taxpayer and submit regular provisional tax returns. PBO's and recreational clubs are exempt from rendering provisional tax returns.

The remuneration of South African based employees of foreign employers are often not subject to PAYE because the employer itself has no presence in South Africa. The remuneration is however taxable in South Africa and in most cases the employees need to be registered for provisional tax. It is essential that such employees do not neglect their statutory duties in this regard.

Without penalty, provisional tax payments can be based on the taxable amount reflected on the latest tax assessment (excluding taxable capital gains and retirement fund lump sums and pre-retirement withdrawals). SARS has the right to call for justification of the estimate and to increase the amount payable. In respect of taxpayers with a taxable income for the current year in excess of R1 million, in order to avoid substantial automatic penalties, the total of the first and second provisional tax payments cannot be less than the tax on 80% of the taxable income as finally assessed for that year.

11.3
Provisional tax returns are required (and payments made) every 6 months. The first payment is due by not later than 6 months from the beginning of the tax year. The second return must be filed by the last day of the tax year. See also para 14.10.

Companies/close corporations having taxable income in excess of R20 000 p.a. and individual provisional taxpayers having taxable income in excess of R50 000 p.a. will continue to be liable for interest at the current rate of 7% per annum (non-tax deductible) on any tax liability outstanding more than 7 months (6 months in the case of companies/close corporations having a year end other than February) after the end of their financial years. Consequently, the voluntary third provisional tax ("topping-up") payment due 6 or 7 months (as applicable) after the year end remains.

Because these income limits have not been increased, many more provisional taxpayers are affected each year simply due to inflation. The abovementioned taxpayers as well as any other provisional taxpayers entitled to a refund in excess of R10 000, will receive taxable interest on tax overpayments at the current rate of 3% per annum calculated from 6 or 7 months (as applicable) after the end of the financial year.

11.4
It is also necessary to deduct and pay over to SARS, PAYE on remuneration paid to directors of companies (including members of close corporations). However, see para 11.5.

11.5
SARS has clarified in Interpretation Notes, that, except in very exceptional circumstances, PAYE will not apply to a non-executive director's fee. VAT registration will be necessary by the director if total turnover (i.e. non-executive director's fees from all sources) exceeds R1 million p.a.

It is now also clear that non-executive directors will be able to claim deductions for certain expenses such as travel and home study expenses which are prohibited for ordinary employees.

12 Intellectual Property

12.1
Intellectual property means patents, designs, trade marks, copyrights registered in South Africa or elsewhere, property of a similar nature and knowledge connected to the use of such rights.

12.2
An **"end user"** means a taxable person (generally a taxpayer other than a non-resident) or a person with a permanent establishment in South Africa who or which uses intellectual property.

12.3
Intellectual property is "tainted" if (in brief) -

- it was the property of the end user or his connected person
- it is the property of a taxable person
- a material part of it was used by a taxable person in certain circumstances
- it was discovered, developed, etc by its end user or by a taxable person

12.4
A deduction is generally denied for expenditure for the use of tainted intellectual property to the extent such expenditure does not constitute income received by or accrued to another person.

12.5
There are exchange control restrictions applying to the export of intellectual property from South Africa. See also para 1.8.

12.6
If the recipient is taxable at a rate of at least 10%, then a deduction is allowed to the payer but only as to one third of the amount payable.

13 Transfer Duty

13.1
The rate of transfer duty is **unchanged** in respect of the acquisition of all immovable property on or after 1 March 2021.

Based on the amount on which transfer duty is to be charged, the rates (which apply irrespective of the type of purchaser) and which apply to properties acquired under purchase agreements concluded on or after 1 March 2020.

Value of property	Rate
Up to and including R1 000 000	0%
Exceeds R1 000 000 up to R1 375 000	3% of value above R1 000 000
Exceeds R1 375 000 up to R1 925 000	R11 250 plus 6% of excess over R1 375 000
Exceeds R1 925 000 up to R2 475 000	R44 250 plus 8% of excess over R1 925 000
Exceeds R2 475 000 up to R11 000 000	R88 250 plus 11% of excess over R2 475 000
Exceeds R11 000 000	R1 026 000 plus 13% of excess over R11 000 000

13.2
The main existing exemption from Transfer Duty applies where the acquisition of property is subject to Value-Added Tax (VAT) at the standard or zero rate. Some of the other exemptions are:

- Acquisition as an heir from a deceased estate.
- Acquisition by a surviving spouse in respect of the acquisition in any manner from the estate of a deceased spouse.
- Transfers of property between spouses in the case of divorce or death.
- Acquisition as part of an approved group corporate rationalisation scheme.
- Acquisition by certain tax exempt bodies.

Example of calculation of Transfer Duty for sales on or after 1 March 2020 -

Consideration payable by a related natural person R11 000 000
Appraised value of the property R12 000 000

Calculation of tax -

As the parties are related, the transfer duty is calculated on the appraised value as it is higher than the consideration payable.

- 0% of first R1 000 000	-
- 3% of next R375 000	11 250
- 6% of next R550 000	33 000
- 8% of next R550 000	44 000
- 11% of next R8 525 000	937 750
- 13% of balance of R1 000 000	130 000
Total transfer duty payable	R1 156 000

13.3
The transfer of shares in residential property owning companies (as well as the transfer of such close corporations and discretionary interests in trusts) is liable for normal transfer duty as if the property itself had been acquired. An entity falls into this category where (briefly) the fair value of the property comprises more than 50% of the aggregate gross fair value of all the assets held by the entity at the date of sale.

There is a duty on Estate Agents who derive remuneration from such transactions, to report the transaction to SARS within 6 months of the date of acquisition. Failure to do so is a criminal offence subject to a fine and/or imprisonment.

14 Sundry Items

14.1
Deceased Estates -

For tax purposes, it is to be clarified as to when the heirs are regarded as having acquired an asset from the estate of the deceased. It is proposed that the disposal by the estate occurs on the date when the liquidation and distribution account becomes final. This seems to clarify that the disposal of an estate asset prior to that date will, for tax purposes, be a treated as a disposal by the estate as opposed to the heir.

14.2
Assessed Tax Losses -

When the tax deductible expenses of a company exceed its income, there is an assessed loss which (subject to certain limitations) is carried forward for offset against taxable income in future years.

To broaden the tax base, it is proposed for years of assessment commencing on or after 1 January 2022, that the offset of assessed losses carried forward will be limited to 80% of current year taxable income.

The amount of the loss not utilised is carried forward to subsequent years. It seems that only companies (including close corporations) are affected.

14.3
Loans to Trusts –

Interest free or low interest loans to trusts give rise to donations tax. Currently there are transactions where loans in a trust are transferred to other related party trusts to avoid the donations tax consequences. Anti-avoidance rules are proposed to counter this type of transaction.

14.4
Annuities on Retirement –

On retirement, a member of a retirement fund must acquire an annuity with at least two thirds of the retirement fund value. To increase flexibility, these retirement funds available to purchase an annuity will be allowed to be used to acquire a variety of annuities.

14.5
Tax on Withdrawals of Retirement Funds when an Individual Ceases to be a Tax Resident -

When an individual becomes non-tax resident (e.g. on emigration), but only withdraws from retirement funds later, South Africa usually gives up the rights to tax such withdrawals in terms of the many double tax agreements (DTA) in place between South Africa and other countries. If not for the DTA, the source of such withdrawals would be deemed to be from South Africa and taxable here.

It is proposed that, on ceasing to be tax residents, the individual will be deemed to have withdrawn from the fund the day before becoming non-resident and the retirement withdrawal tax will become payable. If the person leaves the investment in South Africa and only withdraws from the fund at a later stage, payment of the retirement withdrawal tax will be deferred until payments from the retirement fund are actually received. The tax will then be based on the prevailing lump sum tax tables at the time. A tax credit will be provided for amounts of tax paid on ceasing to be resident.

14.6
Transfer between Retirement Funds by Members over 55 -

Currently transfers from one fund to similar funds are taxable. It is proposed to allow tax free transfers to similar or more restrictive funds.

14.7
VAT Treatment of Temporary Letting of Residential Immovable Property -

Property developers are entitled to deduct input tax on the costs incurred to build residential properties for sale. If the developer is unable to sell and temporarily lets out the property until a buyer is found, the developer must claw back and pay output tax based on the open market value of the property when the property is let for the first time. The rate of this claw back is disproportionately high compared to the temporary rental income. It is proposed to amend the VAT Act to determine an equitable value and rate of claw back.

14.8
Tax Deductible Donations -

Donations to certain public benefit organisations (PBO) are deductible for tax purposes (up to certain limits) in terms of section 18A of the Income Tax Act. This section specifies the information which must be included on the receipt issued by the PBO to the donor. To curb fraud and abuse it is proposed that additional information will be needed to be included in the receipts. No details yet. Further reporting requirements are also likely to be extended.

14.9
Penalties for Failure by Employers to File Six Monthly Employees' Tax Returns -

The penalty is normally calculated as a percentage of the employees tax for the period covered by the return. Where there is a failure to file a return, it is proposed that an alternate basis of determining the penalty should be introduced (e.g. by use of estimates of the employees tax).

14.10
Provisional Tax Returns for Short Periods –

It sometimes occurs that a tax year is less than 6 months. This can occur if an individual dies before 31 August or becomes non-tax resident in that period. It can also happen when a new company is formed or a change in financial years takes place. It is proposed that a first provisional tax payment and return is not required if the duration of the year of assessment does not exceed six months.

14.11
Limiting Excessive Interest Deductions –

There are currently certain limits to the amount of the deduction for interest paid by companies to connected parties. It is proposed to expand the scope of the current interest limitation rules to include some similar interest items e.g. raising fees payable to the lender.

It is also proposed to limit the net interest expense deduction (i.e. interest paid less interest received) to 30% of earnings. Earnings is normally defined as earnings before interest, tax, depreciation and amortisation. It is further proposed to restrict only connected party interest rather than total interest.

14.12
Cessions of Rights to Income Services -

There are currently schemes in terms of which payments to be received for services to be supplied are ceded in advance to (say) a family trust. That income should be taxed in the hands of the service provider and also subject to donations tax if passed over to the trust. It is proposed to prevent any tax benefits for such transactions.

14.13
Corporate Re-organisation Rules -

Once again, amendments will be introduced to further clarify the rules and also to prevent abuse of these roll over provisions.

14.14
Venture Capital Company Incentive Regime -

This favourable tax system currently has a sunset clause of 30 June 2021. **This incentive will not be renewed.**

14.15
Interest Withholding Tax -

There is still no certainty as to who bears the withholding obligation when a local trust awards interest income to a non-resident beneficiary. This is to be distinguished from the payment of interest on loans from non-resident beneficiaries.

It is the view of SARS that interest income awards to non-resident beneficiaries are subject to withholding tax.

15 Small Business

The benefits currently available are generous and make it extremely important for those who may qualify to ensure that they do all that is necessary to comply.

15.1
The definition of a "small business corporation" is set out in paragraph 6.2 of this newsletter. The annual turnover (gross income) must not exceed R20 million to qualify. This is a substantial amount and many entities may be able to be classified as a small business corporation.

15.2
The amount of normal tax payable by a "small business corporation" in respect of years of assessment ending on or after 1 April 2021 is set out below. A normal company pays tax at the flat rate of 28% (see para 6.1).

In a table form, the rates will be as follows –

Taxable Income 2022	Amounts of tax payable and percentages to be applied to excess over base amounts
Up to R87 300	0%
Exceeds R87 300 up to R365 000	7% of excess over R87 300
Exceeds R365 000 up to R550 000	R19 439 plus 21% of excess over R365 000
Exceeds R550 000	R58 289 plus 28% of excess over R550 000

In respect of the previous year, the rates were as follows -

Taxable Income 2021	Amounts of tax payable and percentages to be applied to excess over base amounts
Up to R83 100	0%
Exceeds R83 100 up to R365 000	7% of excess over R83 100
Exceeds R365 000 up to R550 000	R19 733 plus 21% of excess over R365 000
Exceeds R550 000	R58 583 plus 28% of excess over R550 000

Dividends tax still remains payable on dividends declared – see para 6.5 and 7.

Example	Normal Company	Small Business Corporation
Total taxable income	550 000	550 000
Less: Tax thereon (see para 15.2 above)	154 000	58 289
Balance available for dividend	396 000	491 711
Dividends tax at 20%	R79 200	R98 342
Total tax burden	R233 200	R156 631

15.3
The cost of manufacturing assets acquired and brought into use for the first time may be written off in full in the first year. On all other assets, the standard write off/depreciation rates apply. In respect of assets acquired and brought into use, the depreciation rates on these other assets are 50% (first year); 30% (second year) and 20% (third year). If the cost of individual assets is less than R7 000, the full cost can be written off in the year of purchase.

15.4
All the above measures also apply to small companies and close corporations that offer a variety of services that were previously excluded such as accounting, engineering and information technology. To prevent abuse there must be a minimum of three employees, unrelated to the shareholders, who are employed on a full-time basis engaged in the core operations of the business.

The full list of service fields are: accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science.

15.5
Taxpayers over the age of 55 receive a lifetime cumulative CGT exclusion for the first R1.8 million of Capital Gains realised on the disposal of small business assets (subject to certain conditions). See para 9.3. This concession is not limited to small business corporations as defined above.

15.6
Small businesses can elect to pay VAT on the cash/payments basis if their turnover is less than R2,5 million per annum. Consult us for further details.

15.7
If a shareholder owns multiple companies, the small business relief (or micro business relief - see para 16) will not be applicable. This creates a problem for business owners who place their business in a purchased shelf company which already has non-qualifying shareholders. Relief is granted by excluding the prior ownership of a purchased shelf company or an inactive dormant company in the process of liquidation or deregistration.

15.8
All employers with an annual payroll of R500 000 or less (even if required to register for PAYE purposes) are exempt from the payment of Skills Development Levies. The levy is not payable by an employer during any month that there are reasonable grounds for believing that the total amount of remuneration paid or payable by that employer to all its employees during the following 12 month period will not exceed R500 000.

16 Turnover Tax Payable by Micro Businesses

16.1
This special tax is based on the taxable turnover of the person or entity.

16.2
A person (which is not a trust) qualifies as a Micro Business if that person is a -

- natural person (or the deceased estate of such person if registered as such prior to death), or
- company (including a close corporation)

where the qualifying turnover (see below) of that person for the year of assessment does not exceed R1 million**.** If the period of carrying on business is less than 12 months, the R1 million is proportionately reduced. If the turnover does not exceed R335 000 then no turnover tax will be payable.

Dividends paid by a company registered as a micro business **are exempt from dividends tax** to the extent that the aggregate amount of dividends paid by the micro business to its shareholders during the year of assessment in which the dividend is paid does not exceed R200 000.

16.3
Excluded from qualification as a Micro Business is -

- a person who, at any time during the year, holds shares or has an interest in a company or close corporation (other than listed shares, unit trusts, share block companies, sectional title body corporates, housing associations, venture capital companies, less than 5% of a social or consumer co-operative, less than 5% of a primary savings co-operative bank or similar institution, or any friendly society). Shares held in a liquidating dormant company will not be a problem.

- a person, where more than 10% of the total receipts during that year consists of investment income (i.e. dividends, royalties, immovable property, rents, annuities, interest, or proceeds of trading in shares or property).

- a person who is a “personal service provider” or labour broker (without an exemption certificate) (see para 6.4).

- a person who renders a professional service i.e. the service fields referred to in para 15.4.
- a person whose total receipts from the disposal of business immovable property or other business capital assets exceeded R1,5 million over a period of 3 years being the current and preceding two tax years.

- In addition, in the case of a company -

  - if its year ends on a date other than end February
  - if any of its shareholders at any time during the year was not a natural person
  - if any of its shareholders held shares or an interest in a company or close corporation (other than those listed in the first exclusion above)
  - if it is a PBO or Recreational Club

- In addition, in the case of a person that is a partner in a partnership during the year -

  - if any partner is not a natural person
  - if any partner is also a partner in any other partnership during the year
  - the qualifying turnover of the partnership exceeds R1 million for the year

16.4
Qualifying Turnover means the total receipts from carrying on business activities, excluding amounts of a capital nature and amounts exempt from tax. To prevent abuse, the amounts received by connected persons can, in certain circumstances, be included in qualifying turnover.

16.5
The taxable turnover of a registered micro business is the qualifying turnover plus 50% of receipts of a capital nature from the disposal of business capital assets plus investment income.

16.6
In the case of a natural person however, taxable turnover excludes investment income, exempt income and income previously subject to normal tax.

16.7
A person needs to elect to be registered as micro business - it is not compulsory. If you elect, you may also deregister as a VAT vendor. See para 2.4. Micro businesses that register for VAT are not barred from registering for turnover tax. One needs to apply for registration as a micro business before the beginning of a tax year (or such longer period as SARS allows). To be deregistered, one also needs to apply before the beginning of a tax year.

If you register, and thereafter deregister, you cannot re-register for 3 years. This applies even if one is deregistered by SARS because the micro business no longer complies as such.

16.8
Within 6 months from the beginning of the year, a micro business must estimate its taxable turnover for that year and calculate the tax thereon and pay to SARS 50% of the tax so calculated. The estimate may not be less than the taxable turnover of the previous year unless SARS agrees. Interest is payable on shortfalls.

The balance of the estimated tax must be paid by the end of the tax year. If this estimate of taxable turnover is less than 80% as finally assessed for that year, a 20% penalty is charged on the shortfall which may be waived in whole or in part on application to SARS.

Micro businesses have the option of VAT and PAYE returns and payments to be made twice a year.

16.9
Records to be maintained are prescribed including records of all amounts received, dividends paid, asset register for all assets costing more than R10 000 and each liability at year end exceeding R10 000.

16.10
The rates of tax for financial years ending on or after 1 April 2021 are **unchanged** and are as follows -

Taxable Turnover	Tax Liability
0 to R335 000	0%
R335 001 to R500 000	1% of each R1 above R335 000
R500 001 to R750 000	R1 650 + 2% of the amount above R500 000
R750 001 to R1 000 000	R6 650 + 3% of the amount above R750 000

16.11
If a micro business grows to the extent that it becomes a small business corporation (see para 15) certain relief transitional rules will apply.

17 Housing Allowances

17.1
There is an allowance of 5% p.a. of the cost to a taxpayer of a new and unused residential unit (or a new and unused improvement to a residential unit) owned by him, if –

- the qualifying unit or improvement is used by the taxpayer solely for his trade, **and**
- it is situated in South Africa, **and**
- he owns at least 5 residential units in South Africa (not necessarily in the same development or place) that are used by him for the purposes of a trade carried on by him.

17.2
A residential unit is a building or self-contained apartment mainly used for residential accommodation unless it is used by a person in carrying on a trade as a hotel keeper.

17.3
An additional allowance of 5% p.a. applies in respect of the cost of a "low-cost residential unit".

A low-cost residential unit is an apartment qualifying as a residential unit in a building in South Africa, when

- its cost does not exceed **R350 000, and**
- its owner does not charge a monthly rent exceeding 1% of its cost (increasing at not more than 10% p.a.)

It also means a building qualifying as a residential unit located in South Africa, when

- its cost does not exceed **R300 000, and**
- its owner does not charge a monthly rent that exceeds 1% of its cost plus a proportionate share of the cost of the land and bulk infrastructure (increasing at not more than 10% p.a.).

17.4
In regard to residential units acquired by purchase by the taxpayer (or an improvement) representing only a part of a building, his costs are deemed to be 55% of the acquisition price for the unit being acquired, or 30% of the acquisition price for the improvement being acquired.

17.5
So as to encourage the disposal of such units to his employees, the taxpayer may claim a deduction equal to 10% p.a. of the amount owing to the taxpayer by the employee for the unit at the end of his tax year. No interest can be payable by the employee and the allowance falls away on termination of employment. No deduction applies in the eleventh and subsequent years. If any amounts are paid back to the taxpayer, the taxable recoupment is the lesser of the amount paid back or the amount allowed as a deduction in terms of this allowance in the current and previous years of assessment.

17.6
With effect from 1 March 2019, there is no taxable fringe benefit if a low interest or interest free loan up to R450 000 is provided by an employer to a low income earning employee (i.e. earning up to R250 000 p.a.), provided the loan is granted solely for the acquisition of residential accommodation. Loans to connected persons are excluded.

18 Fringe Benefits

Employers are obliged to deduct PAYE from the determined value of fringe benefits granted to their employees. The law allows SARS to raise an assessment on the employer if the full value of the fringe benefit has not been taken into account for PAYE purposes.

18.1
Employer owned vehicles/“Company Car” -

- The deemed value of each company car is 3,5% per month of the cash cost of the car (including VAT). The effect is that a high earning employee pays tax of 18.9% of the value of the car in each year. After about 6 years, he has paid the full cost of the car in the form of tax and will continue to pay in subsequent years. If a maintenance plan is included in the cost, the inclusion is reduced to 3,25%. The maintenance plan must cover all costs of maintenance (excluding oil, tyres, etc) for at least 60 000 km or 3 years. The “cost” of vehicles will be based on actual retail market values.

  If the vehicle was acquired by the employer under an operating lease, the taxable value is the cost incurred by the employer under the operating lease plus the cost of fuel.

- 80% of the fringe benefit must be included in the employees remuneration for the purpose of calculating PAYE. The percentage is reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes.

- On assessment, the fringe benefit for the tax year is reduced by the ratio of the distance travelled for business purposes substantiated by a log book divided by the actual distance travelled during the tax year. See para 4.11.1 for a link to a SARS approved log book.

- On assessment, further relief is available for the cost of licence, insurance, maintenance and fuel for private travel if the full cost thereof has been borne by the employee and if the distance travelled for private purposes is substantiated by a log book.

18.2
Fringe Benefits and Dividends Tax - interest rate -

- If inadequate interest is charged to an employee (including working directors) on loans (other than for the purpose of furthering his own studies) in excess of R3 000 from his employer (or associated institution), tax on the fringe benefit may be payable.

- **Unless interest is charged at the “official” rate or greater, the employee is deemed to have received a taxable fringe benefit calculated as being the difference between the interest actually charged and interest calculated at the “official” rate. But see para 17.6 for a specific concession in this regard.**

- For employees’ tax purposes, the tax deduction must be made whenever interest is payable. If not regularly, then on a monthly basis for monthly paid employees, weekly for weekly paid employees, etc.

- In general, only distributions of income from a company / close corporation are subject to Dividends Tax. Loans or advances to or for the benefit of a shareholder / member will be deemed to be dividends to the extent that interest at less than the “official” rate (or market related rate in the case of foreign currency loans) is payable on the loan or fringe benefits tax is payable on an interest free (or subsidised interest) loan to an employee.

- It is not the amount of the loan but the interest reduction which is deemed to be a dividend. Low interest loans are accordingly subject to Dividends Tax (see para 7.6) in respect of the interest benefit only.

- The official rate has been defined as the rate of interest equal to the South African “repo rate” plus 1%. For foreign currency loans, the rate is the equivalent of the foreign “repo rate” plus 1%. The South African repo rate is currently 3.50% p.a.

- The “official” rate of interest over the past 5 years is as follows -

  With effect from 1 August 2015 - 7.00% p.a.
  With effect from 1 December 2015 - 7.25% p.a.
  With effect from 1 February 2016 - 7.75% p.a.
  With effect from 1 April 2016 - 8.00% p.a.
  With effect from 1 August 2017 - 7.75% p.a.
  With effect from 1 April 2018 - 7.50% p.a.
  With effect from 1 December 2018 - 7.75% p.a.
  With effect from 1 August 2019 - 7.50% p.a.
  With effect from 1 February 2020 - 7.25% p.a.
  With effect from 1 April 2020 - 6.25% p.a.
  With effect from 1 May 2020 - 5.25% p.a.
  With effect from 1 June 2020 - 4.75% p.a.
  With effect from 1 August 2020 - 4.50% p.a.

18.3
In respect of residential accommodation, the fringe benefit to be included in gross income is the **greater** of the benefit calculated by applying a **prescribed formula** (based on prior year income) **and the cost** to the employer if the employer does not have full ownership of the accommodation.

No rental value is placed on accommodation provided by an employer to an employee away from his usual place of residence outside South Africa -

- for a period not exceeding two years from the date of his arrival in South Africa for the purpose of performing his duties of his employment, or

- if that accommodation is provided to him during the year and he is physically present in South Africa for a period of less than 90 days in that year.

This concession does not apply -

- if the employee was present in South Africa for a period exceeding 90 days during the year immediately preceding the date of arrival in South Africa to perform his duties, **or**

- to the extent that the cash equivalent of the value of the taxable benefit derived from the occupation of the residential accommodation exceeds R25 000 multiplied by the number of months during which the accommodation is provided.

18.4
Scholarships and Bursaries –

If a scholarship or bursary has been granted by an employer to an employee, it will be **tax exempt for the employee** as long as **there is no salary sacrifice involved and** the employee agrees to reimburse the employer for the scholarship or bursary if he fails to complete his studies for reasons other than death, ill-health or injury. If the scholarship or bursary is granted to enable employees or relatives of an employee to study, this will also be **exempt** if the remuneration derived by the employee during the year of assessment is not in excess of **R600 000**.

The value of the qualifying bursaries is R20 000 for National Qualifications Framework levels 1 to 6 and R60 000 for levels 7 to 10.

18.5
Telephones and Computers –

The use of an asset consisting of telephones (including cellphones) or computer equipment which the employee uses mainly for the purposes of the employer's business, does not have any value for fringe benefit tax purposes. The same applies to any communication service (e.g. internet) provided to an employee if the service is used mainly for the purposes of the employer's business.

18.6
Medical Aid Contributions –

Such contributions paid by employers are fully taxable in the hands of employees. See para 4.7.

18.7
Employer Provided Long-Term Insurance –

The premiums paid on such policies are deductible in the hands of the employer if –

- the insurance cover must be restricted to the employee's death, disability or severe illness, and
- the policies must have no investment element. In other words, they must be term policies, and
- the employer must be not only the sole owner of the policy but also the sole beneficiary during the relevant tax year. This provision is not breached if the policy is ceded as security for a debt when the policy was initially taken out and a creditor of the employer is thus the owner of the policy or beneficiary of the proceeds.

The proceeds of such policies would obviously be taxable in the hands of the employer. If the proceeds are to be applied for the benefit of an employee or director, the employer loses the tax deduction. Furthermore, the employee or director is taxable on such proceeds at his/her marginal rate of tax without the benefits and exemptions set out in para 4.5 and 4.6.

Alternatively, premiums paid on such long-term insurance policies will be deductible in the hands of the employer if the expenditure incurred on such premiums is included as a fringe benefit in the taxable income of the employee or director when paid by the employer.

19 Public Benefit Organisations & Recreational Clubs

19.1
Generally, PBO's and recreational clubs registered with and approved by SARS are exempt from income tax on any taxable income arising from their normal activities provided the provisions of the Income Tax Act in this regard have been complied with including special rules relating to the distribution of assets on dissolution. The system of partial taxation for PBO's and clubs exempts from tax their non-exempt trading activities (which do not form an integral part of their public benefit or recreational activities) to the extent that the taxable income from these activities does not exceed 5% of gross income or R200 000 in the case of PBO's and R120 000 in the case of clubs, whichever is the greater.

19.2
The rate of normal tax payable by any PBO or any recreational club approved by SARS in respect of their non-exempt taxable income is fixed at the flat rate of 28%. This rate applies whether the organisation or club is constituted as a trust, company, association or any other form. PBO's and recreational clubs are not required to register for provisional tax purposes.

19.3
A PBO can also be a conduit to other PBO's. In other words, if a PBO receives donations which are passed on to other PBO's which themselves carry on certain Public Benefit Activities, the conduit PBO is entitled to issue Section 18A receipts to its donors.

The rule relating to conduit PBO's is that during the tax year in question and until the end of the following year, the conduit PBO is obliged to distribute to appropriate PBO's not less than 50% of the donations received by it during the year in respect of which it had issued Section 18A receipts. **See also para 14.8.**

In addition, it must distribute its income received from its investments not later than 6 months after each period of 5 years from 1 March 2015 for existing PBO's and 5 years after registration as a PBO if formed after 1 March 2015.

The combination of these provisions has the important benefit that conduit PBO's will be allowed to "plough back" and not distribute 50% of its donations received and, in so doing, ensure its longer term sustainability. On the other hand, investment income has to be distributed to qualifying PBO's on a more regular basis.

19.4
Donations to Section 18A qualifying PBO's are tax deductible up to 10% of the taxable income of both companies and individuals. Donations in excess of 10% of taxable income in any given year will be rolled over and treated as donations to qualifying public benefit organisations in the following tax year. See also para 4.10.

19.5
Audit Certificates –

Certain Public Benefit Organisations (PBO) areas entitled to issue section 18A receipts for donations received. Such donations (subject to certain limits) are tax deductible in the hands of the donors. The funds received in respect of which section 18A receipts have been issued must be utilized solely in carrying on activities contemplated in Part II of the Ninth Schedule to the Income Tax Act.

Section 18A makes it clear that the PBO must obtain and retain an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued as above, were utilized in the manner set out above.

Failure to do so will result in the donations received being regarded as taxable income of the PBO.

It is not unusual for a PBO to conduct all of its activities as contemplated in the Ninth Schedule. Activities in Part I of the Ninth Schedule do not however entitle a donor to a section 18A receipt. Only the activities in the more restrictive Part II fall into this category.

The current law does not make it clear that, where the PBO conducts mixed activities, some of which qualify for the issue of section 18A receipts and some which do not, the audit certificate must deal with the use of the funds in respect of which the section 18A receipts have been issued. The audit certificate required is now set out in SARS Interpretation Note number 112 issued in 2020.

20 Tax on Foreign Entertainers and Sportspersons

The South African income of foreign entertainers and sportspersons is exempt from SA Normal Tax if the withholding tax (as set out below) applies. No tax return is required.

- Instead a final withholding tax of 15% is payable. This rate is applied to the total gross payments made for the performance in South Africa. If the entertainer requests amounts to be paid to others, the total of all amounts paid is subject to the 15% tax.

- No amounts are allowed to be deducted from the gross amounts to calculate the tax.

- An "entertainer or sportsperson" is defined as a person who, for reward, performs any activity as a theatre, motion picture, radio or television artiste or a musician **or** takes part in any type of sport or takes part in any other activity that is usually regarded as of an entertainment character. This tax applies if a specified activity is carried on viz. any personal activity exercised in the Republic or to be exercised by a person as an entertainer or sportsperson, whether alone or with another person or persons.

- If the payment to the entertainer, etc was made outside South Africa, the withholding tax does not apply. Instead, in such case, the entertainer is obligated to make payment of the 15% tax. In other cases, the resident who is liable to pay the entertainer must withhold and pay over the tax before the end of the month following the month in which it is withheld. Failure to do so brings about personal liability for the resident. Within 14 days of an agreement relating to a specified activity having been concluded, the resident must advise SARS in advance of the forthcoming performance.

- There are various exceptions and special conditions. Applicable Double Tax Agreements also need to be considered.

21 Tax and VAT Interest Rates

It is important to remember that interest and penalties paid to SARS are not deductible for tax purposes**.** On the other hand, interest received from SARS is fully taxable (after deducting the current initial exemption of R23 800 per annum (R34 500 if you are 65 or older) for all interest income earned by natural persons.

- VAT -

  Payable to SARS on late payments: **7% per annum from 1 November 2020** (was 7.25% per annum from 1 September 2020).

  Payable by SARS on VAT refunds but only after all SARS queries have been responded to and 21 business days thereafter: **7% per annum from 1 November 2020** (was 7.25% per annum from 1 September 2020).

- Income Tax, Provisional Tax, Dividends Tax, etc -

  Payable to SARS on short payments of all such taxes (other than VAT): **7% per annum from 1 November 2020** (was 7.25% per annum from 1 September 2020).

  Payable by SARS on refunds of tax (where interest is applicable): **3% per annum from 1 November 2020** (was 3.25% per annum from 1 September 2020).

  If the refund is made after a successful tax appeal or where the appeal is conceded by SARS, the interest rate is **7% per annum from 1 November 2020** (was 7.25% per annum from 1 September 2020).

- Fringe Benefits -

  Official interest rate for loans to employees below which a deemed fringe benefit arises: **4.50% per annum from 1 August 2020**. See para 18.2.

- Dividends Tax -

  Official interest rate for loans (designated in Rands) to shareholders below which the interest on such loans can be deemed to be dividends on which Dividends Tax is payable: **4.50% per annum from 1 August 2020**. See para 7.6 and 18.2.

- Penalties -

  The amount of penalties for late payments (where applicable) are substantial and are in addition to interest charged.

This newsletter has been written by Kent Karro who is the Managing Director of Crowe Taxation Cape (Pty) Ltd.

Crowe in Southern Africa

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