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Taxation and Investment in South Africa 2015

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1.0 Investment climate

1.1 Business environment

The Republic of South Africa is a state in southern Africa. It is a parliamentary republic comprised of nine provinces. South Africa has a two-chamber parliament and an indirectly elected executive president. The National Assembly is elected by proportional representation; the National Council of Provinces consists of indirectly elected representatives of the provinces.

South Africa has a wealth of natural resources (including coal, platinum, gold, iron ore, manganese, nickel, uranium and chromium) and it has been enjoying increased attention from international exploration companies, particularly in the oil and gas sector. Nevertheless, the country has moved from an economy historically dominated by mining and agriculture to one where manufacturing dominates. Services are the most important contributor to GDP. The country's financial structure is sophisticated, with a large and active stock exchange.

South Africa has a relatively open economy. Most exports to industrialized countries consist of primary and intermediate commodities. A large proportion of exports consist of unprocessed raw materials; the mining industry contributes the most to the country's total exports. However, South Africa is increasingly adding value before exporting. The country is a major exporter of coal, gold, diamonds, platinum, wool, sugar, manganese and chrome ores, as well as base minerals, such as iron ore. It also is an exporter of fruit and animal hides and skins. Exports of chemicals, metal products, machinery, transport equipment and manufactured goods have increased, particularly into the rest of Africa, in recent years.

South Africa has sophisticated financial, legal and telecommunications sectors, and a number of global business process outsourcing (BPO) operations are located in the country. South Africa has a host of investment incentives and industrial financing mechanisms that are aimed at encouraging commercial activity, and its trade rules favor a further expansion in South Africa's levels of international trade. The special headquarter company (HQC) regime makes South Africa an attractive location for multinational companies wanting to invest into Africa.

South Africa is a member of the Cairns Group, an informal association of 19 agriculture exporting members of the World Trade Organization (WTO) that supports free and fair trade in agricultural markets and the lowering of agricultural tariffs by developed countries. South Africa (along with Lesotho, Namibia and Swaziland) is part of the Common Monetary Area (CMA). It also is part of the Southern African Customs Union (SACU) that seeks to maintain the free interchange of goods between member countries and provides for a common external tariff for the common customs area; other members are Botswana, Lesotho, Namibia and Swaziland. South Africa also forms part of the BRICS group of countries with Brazil, Russia, India and China. South Africa has concluded a number of trade agreements with other nations and regions. The country is not a member of the OECD (but has nevertheless adopted the OECD transfer pricing guidelines).

Price controls

The government has eliminated price controls on all but a few items, such as petrol, coal, paraffin, pharmaceuticals and utilities.

Intellectual property

South Africa is a member of most international conventions for the protection of intellectual property. Patents, trademarks, copyrights, and industrial designs and models are legally recognized in South Africa, which was one of the first signatories to the Trademarks Law Treaty of the World Intellectual Property Organization (WIPO) in 1994. The National Intellectual Property Management Office (NIPMO) of South Africa oversees intellectual property rights within the country.

The Intellectual Property Laws Amendment Act and the Counterfeit Goods Act reflect South Africa's determination to uphold its commitments under the WTO and to protect the rights of local and foreign companies. Promulgation of the acts ensures compliance with the Trade-Related Aspects of Intellectual Property (TRIPs) agreement of the Uruguay round of the General Agreement on Tariffs and Trade (GATT).

The Intellectual Property Laws Amendment Act further provides for compliance with the TRIPs agreement by amending the Patents Act, making it compatible with the Patent Co-operation Treaty. Amendments to the Patents Act removed uncertainties about the payment of renewal fees for patents, the assessment of damages and the principle of privilege regarding communications to and by patent agents. TRIPs compliance requires more amendments to the Copyright Act on technological advances, extending copyright to computer programs and adjusting the term of copyright in film. The Patents Act covers early working and specifications in line with the TRIPs agreement.

A patentee or an exclusive licensee may initiate proceedings for infringement. Licensees may institute defensive proceedings in their own name if, after two months, the patentees refuse to take action themselves. All processes applicable to trade or industry, along with products resulting from such processes, can be patented (except for simple mixtures). Know-how cannot be patented. Patent rights granted in South Africa are effective only in South Africa.

Individuals, companies, associations and other entities are eligible to register trademarks that they are using or propose to use. Registration gives the owner exclusive rights to the trademarks, which last for 10 years and are renewable for the same period.

1.2 Currency

The currency in South Africa is the Rand (ZAR).

1.3 Banking and financing

The South African banking system is well developed and effectively regulated, comprising the South African Reserve Bank (SARB), some large, financially strong banks and investment institutions, and a number of smaller banks. Investment and merchant banking is competitive.

The financial services sector is backed by a sound regulatory and legal framework with many domestic and international institutions providing a full range of financial services, such as commercial, retail and merchant banking, mortgage lending, insurance and investment.

Johannesburg is South Africa's main financial center, although most large insurance companies are based in Cape Town.

1.4 Foreign investment

The government has removed nearly all investment approval processes and there are few limitations on incoming direct investment in South Africa. The government has an investment promotion agency called Trade and Investment South Africa (TISA), a subdivision of the Department of Trade and Industry. The larger provinces also have investment promotion agencies.

Local and foreign-owned companies are treated equally, with two main exceptions: (1) there are local equity requirements for banks and financial institutions; and (2) businesses with nonresident ownership or control equal to or greater than 75% are restricted in their local borrowings. South Africa's thin capitalization rules apply where the nonresident lender is a connected person in relation to the South African borrower or is entitled to: (1) participate in at least 25% of the South African company's dividends, profits or capital; or (2) exercise at least 25% of the votes in the South African recipient.

With the exception of banking and insurance companies, a foreign company may establish a place of business and conduct its activities in South Africa without forming a separate locally incorporated company. The establishment of a branch requires registration as an "external company" within 20 business days of commencing business activities in the country. Registration requirements are similar for public and private companies. A branch is treated as a separate legal entity for South African exchange control purposes.

If an organization is to be involved in import and export activities, additional approval is required.

Foreigners do not need permission to invest in South African shares, bonds, money market instruments or other portfolio investments. Nonresidents may purchase both listed and unlisted securities. These transactions do not require permission from the SARB.

1.5 Tax incentives

Grants and tax incentives

The government offers a variety of grants and tax incentives, including the following:

Research and development (R&D) incentives

A deduction of 150% applies for expenditure incurred with respect to the discovery of non-obvious scientific or technological knowledge, the creation of an invention, a design or computer program or the creation of any knowledge essential to the use of the invention, design or computer program. A taxpayer must obtain approval from the Department of Science and Technology before commencing the project in order to claim the R&D tax incentive at the end of the relevant year of assessment.

Depreciation

Special capital allowances are available for certain depreciable assets such as plant and machinery, hotel equipment, buildings and assets used in farming to encourage investment in capital assets.

Urban development allowance

Taxpayers refurbishing a building within a designated urban development zone, or constructing a new commercial or residential building in such a zone, are entitled to the urban development allowance. The following are available:

- **Construction of new buildings, extensions or additions** – An allowance equal to 20% of the costs incurred is deductible in the year of assessment in which the building is brought into use solely for the purposes of the taxpayer's trade, followed by 8% of the costs in each of the following 10 years of assessment. The total cost can, therefore, be claimed over 11 years.
- **Improving an existing building** – An allowance equal to 20% of the costs incurred is deductible in the year of assessment in which the improved part is brought into use solely for the purposes of the taxpayer's trade, followed by 20% of the costs for each succeeding year of assessment. The total cost, therefore, can be claimed over five years.

Infrastructure development

Taxpayers involved in the construction of pipelines, transmission lines and railway lines may be entitled to a tax deduction for new or unused assets. The allowance is 10% of the cost per annum for pipelines used to transport natural oil and 5% for transmission lines and railway lines.

The critical infrastructure program (CIP) is a cost-sharing grant for projects designed to improve critical infrastructure in South Africa. The grant covers qualifying development costs from a minimum of 10% to a maximum of 30% of the total development costs of qualifying infrastructure. The cash grant is capped at ZAR 30 million. Infrastructure for which funds are required is deemed to be "critical" if, without the infrastructure, the investment would not take place or would not operate optimally.

Public private partnerships

Grants may be available to encourage the private sector to invest in infrastructure in partnership with the public sector, specifically to effect improvements to state-owned property. The grant is exempt from tax and a tax allowance is available in respect of the improvements actually effected by the taxpayer.

Energy savings tax deduction

The energy savings tax deduction provides a tax deduction for taxpayers that are energy efficient. This is an energy reduction incentive, not an electricity usage reduction incentive and applies to financial years commencing on or after 1 November 2013. The tax deduction is dependent on an "energy efficiency savings certificate" issued by SANEDI (South African National Energy Development Institute) and represents the energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment of the taxpayer at 95c/kWh (45c/kWh prior to 1 March 2015).

Incentive for industrial policy projects

An income tax allowance is available for industrial policy projects. The project can be classified as a greenfield project (a new investment project) or a brownfield project (expansion of an existing project). The extent of the additional investment allowance will depend on whether the project has “preferred” or “normal” status:

- **Preferred status project** – 55% of the cost of new and unused manufacturing assets, or 100% if the project is located in an industrial development zone (IDZ).
- **Normal status project** – 35% of the cost of new and unused manufacturing assets or 75% if the project is located in an IDZ.

In addition to the above deductions, a company may deduct an amount equal to the cost of training provided to employees in the year of assessment during which the cost of training is incurred for the furtherance of the industrial policy project carried on by the company, up to a cap of ZAR 36,000 per employee.

Manufacturing competitiveness enhancement program (MCEP)

The MCEP provides enhanced manufacturing support aimed at encouraging manufacturers to upgrade their production facilities in a manner that sustains employment and maximizes value addition in the short to medium term. The program has seven key components:

Production incentives (capped with regard to the historical cost of assets):

1. Capital investment – grant capped between ZAR 5 million and ZAR 30 million.
2. Green technology and resource efficiency improvement – grant capped between ZAR 5 million and ZAR 20 million.
3. Enterprise level competitiveness improvement – grant capped between ZAR 2 million and ZAR 10 million.
4. Feasibility studies – grant capped at ZAR 8 million.
5. Cluster competitiveness improvement – grant capped at ZAR 50 million.

Industrial financing loan facilities (benefit limited to manufacturing value added):

6. Post and pre-dispatch working capital facility.
7. Industrial policy niche projects fund.

Special Economic Zone (SEZ)

SEZs are geographically designated areas for specifically targeted economic activities, supported through special arrangements. Benefits available include: a preferential 15% corporate tax rate; a 10% building allowance; an employment tax incentive; and for businesses operating within a customs controlled area of an SEZ, additional VAT and duties reliefs.

Employment tax incentive

Employers may deduct the employment tax incentive from the employees’ tax due at the end of each month for employees earning less than ZAR 6,001 per month. The benefit is a deduction of ZAR 1,000 per employee per month in the first year of employment, reducing to ZAR 500 in subsequent years.

Customs rebate and drawback

A rebate or drawback of customs duties is offered on imported goods, raw materials and components used in manufacturing or processing of goods for export.

Headquarter company (HQC) regime

The HQC regime is a significant initiative directed at establishing South Africa as a jurisdiction of choice for investments into Africa. The regime is designed to eliminate fiscal and other regulatory barriers that have discouraged foreign investors from using South Africa as a holding company location and to allow South Africa to be more competitive with other established holding company/headquarter company jurisdictions.

An HQC is subject to South African corporate income tax (currently 28%) but is exempt from the dividend tax and capital gains tax (in the latter case, provided certain requirements are met). It is excluded from the scope of South Africa's controlled foreign company (CFC) and thin capitalization rules, and, as a resident South African company, is entitled to benefit from the country's broad tax treaty network. An HQC also is entitled to various relaxations of South Africa's exchange control regulations. The following areas of tax relief will be granted to an entity that qualifies as an HQC (or its shareholders, where applicable):

- Foreign subsidiaries of an HQC will not be treated as CFCs under the normal rules and, therefore, no "net income" of any CFC can be imputed to an HQC.
- Dividends declared by the HQC will be exempt from dividends tax, i.e. dividends received from an HQC will be taxable or exempt in the same way as foreign dividends.
- An HQC engaged in financial assistance will enjoy relief from the transfer pricing provisions to a certain extent (however, note that a new provision has been introduced, dealing with the ring-fencing of interest incurred by HQCs for the purposes of claiming a tax deduction).
- Interest paid or owed by an HQC to a foreign person, to the extent it relates to back-to-back lending arrangements, is exempt from the 15% withholding tax on interest paid to nonresidents that applies from 1 March 2015, (subject to certain exemptions and tax treaty relief).
- An HQC will be treated as a foreign company for purposes of the capital gains tax participation exemption, for the benefit of qualifying shareholders disposing of their interest in the HQC.

A resident company will qualify as an HQC if all of the following criteria are met:

- The company is resident for tax purposes in South Africa.
- Each shareholder (alone or together with another company that is part of the same group of companies) holds at least 10% of the equity shares and voting rights of the HQC for the year of assessment concerned and all previous years of assessment.
- At the end of the relevant year and all prior years, 80% or more of the cost of the total assets of the company are attributable to equity shares in, loans to or IP licensed to a foreign company in which the company (together with related group companies) held at least 10%; provided that, in determining the total assets of the company, there must not be taken into account any amount in cash or in the form of a bank deposit payable on demand.
- Where the gross income of the HQC exceeds ZAR 5 million for the year of assessment, 50% or more of the gross income for that year consists of: (1) dividends, interest, rent, royalties or service fees paid or payable by a qualifying foreign company; or (2) proceeds from the disposal of an interest in equity shares in a foreign company or IP licensed to a qualifying foreign company.

An HQC must submit an annual report setting out prescribed information demonstrating that the above requirements are met. An election to be classified as an HQC is made up front, although the above requirements are assessed on an annual basis. If a company fails to meet any of the requirements, it will forfeit its HQC status.

1.6 Exchange controls

South Africa maintains exchange control regulations that restrict the free flow of capital in and out of the country. The exchange control regulations are administered by the SARB, although it delegates routine transactions to approved private sector banks, which include most of the larger domestic and foreign banks. The banks report all transactions related to foreign exchange to the SARB.

The SARB does not target any particular level for the exchange rate, but it monitors the currency against a basket of the leading trading currencies—Euro, US dollar, pound sterling and yen. It can intervene if sharp movements in the exchange rate threaten to undermine its main goal of ensuring moderate levels of inflation.

The exchange control regulations target domestic companies and residents, but there are some special implications for foreigners. Long-term insurers and pension funds may maintain foreign assets of up to 25% of total assets, and investment managers registered as institutional investors for exchange control purposes may have 35% of total retail assets under management invested in foreign assets. The SARB's exchange control department reserves the right to require a staggered transfer of such funds to maintain stability (even though, under current policy, the SARB approves most transactions).

Dividends declared by South African subsidiaries of foreign companies, and profits distributed by a branch of a foreign company operating in South Africa, may be remitted abroad.

Residents (including resident entities) may remit payment for services actually rendered by nonresidents, provided the fees payable are not calculated on the basis of a percentage of turnover, income, sales or purchases (i.e. based on a direct charge method).

As noted above, South Africa is part of the CMA; no exchange controls exist within the CMA. South Africa also belongs to the Financial Action Task Force, an international organization charged with combating money laundering.

2.0 Setting up a business

2.1 Principal forms of business entity

The principal methods of doing business in South Africa are by using a company (public or private) incorporated under the Companies Act No. 71 of 2008, as amended by Companies Act No. 3 of 2011; personal liability company; partnership; business trust; sole proprietorship; or external company (branch of a foreign company).

Under the Companies Act, companies are classified as profit or nonprofit companies. The Companies Act distinguishes between four different types of profit company:

- Private Company (Pty) Ltd – A company that is not a state-owned company and has a memorandum of incorporation (MOI) that prohibits it from offering any of its securities to the public and restricts the transferability of its securities.
- Personal Liability Company Inc – The company and its directors are jointly and severally liable for debts and liabilities of the company.
- State-owned company – An enterprise registered as a company that is listed as a public entity under the Public Finance Management Act or is owned by a municipality.
- Public Company Ltd – A company that is not a state-owned company, private company or personal liability company. The securities of a public company are available to the public and are freely transferable.

Most foreign companies setting up South African subsidiaries use the private company form, but can also register as an “external company.”

A foreign company is a company incorporated outside of South Africa, irrespective of whether it is a profit or nonprofit company or carrying on business in South Africa. A foreign company is prohibited from offering securities to the South African public unless it follows the specific provisions of the Companies Act relating to offers to the public. A foreign company is required to register as an external company with the CIPC (Companies and Intellectual Property Commission) if it conducts, or intends to conduct, business in South Africa. The Companies Act lists a series of activities that are regarded as conducting business.

The Companies Act contains provisions relating to governance and reporting standards that bring the act in line with international best practices.

Formalities for setting up a company

An MOI governs a company’s internal affairs and deals with share transfers, borrowing powers, voting rights, meetings, etc.

A company must retain a document containing each director’s written consent to act as a director and providing personal details, including the names of all other companies of which the person is a director. The company also must keep on file a register of directors, the auditors’ consent and a certificate to commence business.

Private and public companies may allot shares for contributions other than cash, but the registrar of companies (which must be informed of any allocation of shares within 20 days) must receive a document reflecting the details of the new allotted shares.

Public companies must appoint company secretaries, and specified duties and directors’ fees must be disclosed.

Legislation specifies the procedural requirements for companies to acquire their own shares. If permitted by its MOI, a company may authorize the purchase of its own shares.

The registration process for private or public companies begins with the reservation of a company name. A preliminary name search may be conducted online on the Companies and Intellectual Property Registration Office website. Following approval, the name will be reserved for six months, during which time additional documentation must be submitted. Legal and other professional fees to register a company depend on the complexity of the individual application.

Registration applications must be submitted to a notary, who will file the application with the Office of the Registrar. If there are no errors or omissions, the application will be processed in approximately one to three months. The application package includes various forms, such as a power of attorney, MOI, certificate of incorporation, certificate to commence business, register of directors and appointment of an auditor.

Standard versions of an MOI are included in the Companies Act. A company may choose to submit its own version, but this may delay the approval process, since it will require closer examination by the Office of the Registrar.

A business permit/license may be required to establish certain businesses in South Africa and, in certain instances, trading without a valid license may be illegal and a punishable offense.

Any company that becomes liable for any regular taxes or becomes liable to submit a return of income, must register as a taxpayer with the South Africa Revenue Service (SARS) within 60 days after becoming a taxpayer.

Forms of entity

Requirements for public and private companies

Capital: *Both:* No legal limits.

Founders, shareholders: *Public:* Shares can be offered to the public, but the MOI can restrict or negate preemptive rights. *Private:* Private companies are prohibited from offering shares to the public and transferability of shares is restricted. A minimum of one shareholder is required. *Both:* There are no limits on the nationality or residence of shareholders or directors.

Board of directors: *Public:* There must be at least three directors. There is no nationality or residence requirement, except for the public officer, who must be a South African resident. *Private:* A private company must have at least one director. Again, there are no nationality or residence requirements, but a South African resident must be appointed as the public officer to handle income tax matters.

Management: *Both:* There are no limits on nationality or residence.

Taxes and fees: *Both:* A registration fee between ZAR 175 and ZAR 475 is payable, in addition to ZAR 250 for a change to a company's MOI to increase its share capital.

Types of share: *Public:* New authorized share capital will not have a nominal or par value. Shares may be bearer or registered (although use of the former is rare). *Private:* The same rules as for a public company apply, except that shares must be registered. A private company may not offer its shares to the public or receive other financing from the public. A private company's right to transfer shares is restricted.

Control: *Both:* A simple majority suffices for most decisions, although, in some cases, a 100%, 95% or 75% majority is required for special resolutions. A quorum normally is 25% of the shareholders, but varies with company articles and always is subject to the Companies Act requirements in respect of special resolutions.

Branch of a foreign corporation

South Africa does not consider a branch to be a separate legal entity.

The rules and procedures for establishing a branch are similar to those for setting up a domestically incorporated company. In some cases, it may be more beneficial to register as a South African company for a stronger domestic profile. It also may be an advantage when obtaining government contracts. A branch is subject to income tax at a rate of 28%, as is a domestic company. A branch pays no withholding tax on profits remitted to its head office.

The establishment of a branch requires registration as an external company within 20 business days of commencing business activities in South Africa. Unless granted an exemption by the Registrar of Companies, a branch must file an annual financial statement.

2.2 Regulation of business

Mergers and acquisitions

Under the Competition Act 89 of 1998, parties to a proposed merger that qualifies as an intermediate or a large merger may not implement the merger without the approval of the Competition Commission (for an intermediate merger) or the Competition Tribunal (for a large merger). If the relevant authority determines that the merger is likely to prevent competition or lessen competition substantially, it must prohibit the merger. This decision must be made after examining a number of factors that could affect the level of competition in the market.

The Competition Commission has the authority to require parties to small mergers (falling below the notification threshold) to give notice if it believes the merger might substantially prevent or lessen competition, or if it is not justifiable on public interest grounds.

Merger filing fees are payable to the Competition Commission for the notification of a merger or acquisition, for an exemption application and for the provision of an advisory opinion. Merger filing fees are based on the value of the combined annual turnover or gross assets of the parties involved in the transaction.

Takeovers and mergers of companies traded on the Johannesburg Securities Exchange are supervised by the Securities Regulation Panel, a takeover panel with statutory powers to protect the public interest.

The “corporate rules” provide relief for transactions between group companies or between founding shareholders and their company. An intragroup merger or acquisition may be structured under these provisions and may qualify for relief from income tax and capital gains tax, and possibly securities transfer tax.

Monopolies and restraint of trade

The Competition Act 89 of 1998 provides clear definitions of prohibited practices and extensive regulation of mergers. Restrictive practices can be “horizontal” or “vertical.” A restrictive horizontal practice is one in which the parties are in a horizontal (competitor) relationship and where the effect of an agreement is to prevent or substantially lessen competition in a market. The agreement may involve price fixing, production quotas, restricting technical innovation or development, avoiding or restricting investment, dividing markets or collusive tendering. Restrictive vertical practices are ones between parties in a vertical relationship, where they would prevent or substantially lessen competition in a market. Minimum resale price maintenance is prohibited. Both horizontal and vertical prohibited practices are unlawful, unless those who are party to such practices can prove a technological or efficiency gain outweighing that effect.

Abuse of dominant position rules refer to abuse of market power. The rules define a company as dominant in a market where it is the leader, with either at least 45% of that market, or less if it has “market power” (a concept not defined in the act). However, it appears that market power and dominance are determined on a case-by-case basis.

The act prohibits dominant firms from engaging in a range of practices, including limiting output or technological development to the detriment of consumers; charging excessive prices; engaging in any act that impedes or prevents competitors’ entry or expansion into the market; and selling a product or service on condition that the buyer purchase a separate product or service. Some exclusionary acts can be defended if the company can show technological, efficiency or other pro-competitive gain that outweighs the anti-competitiveness of the action. Price discrimination also is prohibited.

The Competition Commission has authority to grant exemptions to prohibited practices if they can be shown to be required to attain specified goals, such as promotion of exports or promoting the ability of small firms controlled by previously disadvantaged persons to become competitive.

2.3 Accounting, filing and auditing requirements

South Africa has been harmonizing its Statements of Generally Accepted Accounting Practice (GAAP) with international standards. In 2004, the South African Institute of Chartered Accountants (SAICA) announced its decision to adopt the text of International Financial Reporting Standards (IFRS) without any amendments. Regulations prescribe the application of IFRS, International

Financial Reporting Standards for small and medium-sized enterprises (IFRS for SMEs) or South African Statements of Generally Accepted Accounting Practice (SA GAAP), depending on the classification of the company.

All companies must file an annual return with the CIPC within 20 business days after their incorporation date, along with specified documentation.

Audit requirements are specified in the Companies Act, which prescribes a certain level of oversight and auditor review based on the classification of a company, although not all companies are required to have their financial statements audited. Companies that are not required to have audited financial statements must have their financial statements independently reviewed.

The Companies Act requires public companies and state-owned companies to have audited financial statements. The regulations to the act set out additional categories of company that are required to have their annual financial statements audited, based on activities and size.

3.0 Business taxation

3.1 Overview

The principal source of direct tax revenue in South Africa is income tax. Companies in South Africa are also subject to withholding tax on certain South African-source income, the skills development levy, turnover tax, VAT, transfer duty, securities transaction tax and customs and excise duties. There is no branch profits tax.

Dividends paid to individuals and foreign persons are subject to a 15% withholding tax, which may be reduced or eliminated under a relevant tax treaty. Amounts distributed are treated as dividends, except to the extent the distributions reduce “contributed tax capital” (the consideration received or accrued to that company for the issue of shares). A withholding tax on interest was introduced from 1 March 2015 and a withholding tax on services is expected to apply as from 1 January 2016.

South Africa has transfer pricing rules, thin capitalization rules and controlled foreign company rules.

As noted above in 1.5, tax and nontax incentives may be available and South Africa operates a beneficial regional headquarters regime.

Taxes are administered by SARS.

South Africa Quick Tax Facts for Companies	
Corporate income tax rate	28%
Branch tax rate	28%
Capital gains tax rate	0%/28% (on 66.6% of capital gains)
Basis	Worldwide income
Participation exemption	Yes
Loss relief	
– Carryforward	Indefinite
– Carryback	No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	Yes
Controlled foreign company rules	Yes
Tax year	Financial year
Advance payment of tax	Yes
Corporate income tax return due date	Within 12 months of financial year end
Withholding tax	
– Dividends	15%
– Interest	0%/15% on interest paid to nonresidents from 1 March 2015
– Royalties	15%
– Services	Withholding tax on service fees paid to nonresidents is expected to be introduced with effect from 1 January 2016

Employment taxes	Varies (comprised of employees' tax, unemployment insurance fund contributions and the skills development levy)
Capital tax	No
Securities transfer tax	0.25%
Real property tax	Varies
Transfer duty	0%-8%
CO ₂ emission levy	Varies
VAT	14%

3.2 Residence

Legal entities, including companies and trusts, are resident in South Africa if they are incorporated, established or formed in South Africa or have their place of effective management in South Africa. Effective management for these purposes means the day-to-day operational management of the business activities of an entity.

3.3 Taxable income and rates

South African resident companies are subject to corporate tax on their worldwide taxable income, subject to a number of exceptions. Nonresidents are taxed only on South African-source income.

The basic corporate tax rate of 28% applies to the worldwide income of South African companies, including their subsidiaries. Branches of foreign companies are taxed on their South African-source income at a rate of 28%. Trusts (other than special trusts) are taxed at a rate of 40%. Small business corporations (those that comply with various requirements and have a gross income of less than ZAR 14 million) pay tax at rates between 0% and 28%.

Gold-mining companies are taxed according to a special formula, but all other mining companies are taxed at the normal corporate rate (28%). All mining and exploration companies must pay a royalty to the government on their mining rights.

Taxable income defined

Taxable corporate income generally includes all income (e.g. business profits, interest, royalties and rent) of a South African resident company, less noncapital expenditure and losses incurred in an income-producing year.

Taxable income is computed as gross income, less exempt income and allowable deductions, plus taxable capital gains. Gross income of a resident is the total amount (in cash or another form) received by, or accrued to, the resident during the tax year, excluding receipts or accruals of a capital nature. Gross income of a nonresident is the total amount (in cash or another form) received by or accrued to the nonresident during the tax year from a source within, or deemed to be within, South Africa, except for receipts or accruals of a capital nature.

Dividends received by a South African company from another South African company are exempt from income tax and dividend tax. Foreign dividends received by a South African resident company are taxable in South Africa, subject to certain exceptions. For example, foreign dividends received are exempt from income tax where the shareholder holds at least 10% of the total equity share capital and voting rights in the company declaring the dividend.

Taxed profits can be remitted in full by a South African branch to a foreign head office without a deduction for withholding tax.

Deductions

Deductions are allowed for all expenditure incurred to produce income in the year of assessment. Capital expenditure is not deductible but can give rise to a number of allowances. Additional deductions are available for motor vehicle expenses, legal expenses, medical and dental

expenses, bad and doubtful debts, contributions to pension and provident funds, and retirement annuities. Lease premiums may be written off over the period of the lease.

Municipal rates may be deducted from taxable income.

Depreciation

The Income Tax Act contains a number of provisions under which capital allowances may be deducted against taxable income. For example, new machinery and equipment used directly in manufacturing may be depreciated over four years, with 40% of the cost of the asset deducted in the first year and 20% in each of the three subsequent years. Taxpayers may claim losses from ordinary income on the sale of devalued depreciable business assets with short useful lives.

Machinery used in farming operations (including biofuel equipment) may be depreciated by 50% in the first year, 30% in the second year and 20% in the third year.

New industrial buildings may be depreciated on a straight-line basis over 20 years (i.e. at 5% per year). If an employer builds housing for employees, an initial allowance of 10% of cost is available, with an annual allowance of 2%.

In areas designated for urban development, special depreciation allowances are made to address "urban decay." If a building within a designated area is refurbished, a 20% straight-line depreciation allowance over five years will be granted.

For new commercial or residential buildings in a designated urban development zone, a write-off over an 11-year period is permitted at 20% in the first year and 8% per year for the following 10 years.

Aircraft may be written off in equal installments over five years at 20% per year and oil pipelines over 10 years. Electricity transmission lines, water pipelines for electrical power generation, telephone transmission cables, railway tracks, and certain port and airport facilities may be written off over 20 years at 5% per year.

Companies or persons that purchase patents, inventions, copyrights or similar rights may claim an allowance of 5% of the expenditure per year (10% of the expenditure per year in the case of a design or similar property (other than a trademark)). Where the asset is acquired from a connected person, the allowance is based on the lesser of the cost to the connected person of acquiring, devising, developing or creating the invention, patent, etc., and the market value at the time acquired by the taxpayer.

An allowance of 150% of expenditure incurred directly for purposes of R&D is granted. For R&D expenses to qualify, the activity must be undertaken within South Africa and must be performed for one of the following purposes, if the expense is of a scientific or technological nature and the result is intended to be used by the taxpayer in the production of its income:

- The discovery of novel, practical and non-obvious information;
- The devising, developing or creation of an invention, a design or a computer program; or
- Developing or improving knowledge essential to the use of such invention, design or computer program.

Accelerated capital allowances at 40% apply for buildings; for plant, machinery and implements or articles used for R&D purposes, the rate is 20%.

Losses

A tax loss incurred by a company in any business activity generally may be carried forward and set off against future profits until exhausted, provided the company continues to trade during each year of assessment. However, the losses incurred by a foreign branch of a South African resident company cannot be set off against income from a South African source (ring fencing applies). The carryback of losses is not permitted.

South Africa does not have a system for group relief relating to losses.

3.4 Capital gains taxation

Residents of South Africa are liable for capital gains tax on gains derived from the disposal of their worldwide assets. Nonresidents are subject to capital gains tax in respect of the disposal of immovable property situated in South Africa, or any direct or indirect interest or right in immovable property situated in South Africa. The disposal of business assets of a nonresident that trades through a permanent establishment in South Africa also falls within the scope of capital gains tax.

A participation exemption may apply to capital gains derived by a South African resident holding company on the disposition of a substantial shareholding in a foreign company. To qualify for the exemption, the South African company must hold at least 10% of the equity shares and voting rights in a foreign company for at least 18 months before the disposal, and dispose of the interest to a nonresident that is not a CFC in relation to the resident, for an amount that is equal to or exceeds the market value of the interest.

A foreign tax credit is granted to residents that incur foreign tax on capital gains relating to the disposal of capital assets outside South Africa. Capital gains or losses are calculated as the proceeds from the disposal of an asset, less the base cost of the asset. A disposal is essentially any event that results in the creation, variation, transfer or extinction of an asset; there may be a deemed disposal in certain circumstances.

Gains or losses on all disposals are then aggregated. The aggregate capital gain for the year of assessment is reduced by any assessed capital loss brought forward to arrive at a net capital gain. An aggregate capital loss for a year, together with any assessed capital loss brought forward, is carried forward as an assessed capital loss for offset against future capital gains, but cannot be set off against ordinary taxable income in any tax year. There are attribution rules for gains made by trusts or as a result of donations, settlements or other dispositions.

A portion of any net capital gain is added to taxable income. In the case of companies and trusts, 66.6% of the net capital gain is included in taxable income.

3.5 Double taxation relief

Unilateral relief

Relief from international double taxation is obtained both unilaterally under domestic law and bilaterally under tax treaties.

A resident that is taxable in South Africa on income received from a foreign country and that is liable for tax in the foreign country on that income may be entitled to a credit or deduction for the foreign tax paid against the South African tax liability.

Tax treaties

South Africa has a broad tax treaty network, with most treaties following the OECD model treaty. The treaties generally provide for relief from double taxation on all types of income, limit the taxation of nonresident companies and protect nonresident companies from discriminatory taxation in the country in which they are nonresident. Many treaties provide for the credit method to avoid double taxation where credit is granted in one country for taxes deducted at source in another country.

Certain requirements must be met for a person to obtain relief under a tax treaty. In respect of claiming relief for withholding tax on dividends, the beneficial owner of the dividends must submit a completed declaration form (DTR(RR)) to the person paying the dividend by a predetermined date, or prior to the date on which the dividends are paid. In addition, the beneficial owner of the dividends should submit a written declaration stating that it will inform the payer of any changes to the application of the reduced withholding tax rate or beneficial ownership. Similarly, in the case of interest, the foreign person to or for the benefit of whom interest is paid must submit a withholding tax on interest declaration form to the payer to claim a reduced rate or exemption under a treaty.

In respect of claiming relief for withholding tax on royalties, the person paying the royalties must obtain prior approval from SARS. The beneficial owner must provide confirmation to the payer that it does not have and has not had a permanent establishment in South Africa. The foreign person to or for the benefit of whom the royalty is paid must submit a withholding tax on royalties declaration form to the South Africa person making the royalty payment.

South Africa Tax Treaty Network			
Algeria	Germany	Malta	Sierra Leone*
Australia	Ghana	Mauritius	Slovakia
Austria	Greece	Mexico	Singapore
Belarus	Grenada*	Mozambique	Spain
Belgium	Hungary	Namibia	Swaziland
Botswana	India	Netherlands	Sweden
Brazil	Indonesia	New Zealand	Switzerland
Bulgaria	Iran	Nigeria	Taiwan
Canada	Ireland	Norway	Tanzania
China	Israel	Oman	Thailand
Croatia	Italy	Pakistan	Tunisia
Cyprus	Japan	Poland	Turkey
Czech Republic	Korea (ROK)	Portugal	Uganda
Denmark	Kuwait	Romania	Ukraine
Democratic Republic of Congo	Lesotho	Russia	United Kingdom*
Egypt	Luxembourg	Rwanda	United States
Ethiopia	Malawi	Saudi Arabia	Zambia
Finland	Malaysia	Seychelles	Zimbabwe
France			

* The 1946 treaty with the United Kingdom, as amended, applies to Grenada and Sierra Leone.

3.6 Anti-avoidance rules

Transfer pricing

South Africa's transfer pricing legislation is based on the arm's length principle. The rules, based largely on the OECD transfer pricing guidelines, are contained in the legislation and in guidance issued by SARS.

In determining an arm's length price/consideration, the five transfer pricing methods recommended by the OECD are used. These include the:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profit split method; and
- Transactional net margin method.

There is no priority of methods, but the most reliable method is preferred.

Although there is no legislative requirement for organizations to prepare transfer pricing policies and documentation for South Africa, the tax return does ask whether documentation is available, and SARS has recommended that taxpayers prepare documentation to cover the relevant intercompany transactions; the risk of an adverse transfer pricing audit from SARS is increased in the absence of such documentation. Advance pricing agreements are not available.

Thin capitalization

Thin capitalization provisions limit the deduction of interest payable by South African companies on debt provided by a nonresident connected person in relation to the South African borrower or entitled to participate, directly or indirectly, in not less than 20% of the company's equity.

For years of assessment commencing on or after 1 April 2012, the thin capitalization rules are merged into the general transfer pricing rules and the former 3:1 safe harbor ratio no longer applies. To this end, SARS has issued a draft interpretation note regarding thin capitalization. The test of whether interest on intragroup financial assistance is regarded as excessive is to compare the terms and conditions of the agreement between the South African taxpayer and the nonresident connected person with the commercial terms and conditions that would have applied had the agreement been concluded between independent parties dealing at arm's length.

For tax years commencing before 1 April 2012 (i.e. before the dividend withholding tax was introduced), any interest disallowed on excessive debt was recharacterized as a dividend subject to the secondary tax on companies.

Controlled foreign companies

South Africa has controlled foreign company (CFC) legislation, under which an amount equal to the net income earned by a CFC in relation to a South African resident is subject to tax in the hands of the South African resident, unless one of the exemptions applies. A CFC for these purposes is defined as a foreign company in which one or more South African residents hold, directly or indirectly, more than 50% of the total participation rights or more than 50% of the voting rights of the company. Where a South African resident holds participation rights in a CFC, an amount equal to the resident's proportional amount of the "net income" of the CFC, including its capital gains (based on the ratio of its participation rights to the total participation rights), will be included in the resident's South African taxable income, unless specific exemptions apply.

The income is grossed up and tax paid in the foreign country may be offset against the South African tax payable. There are rules in respect of interest, royalties, rentals and income of a similar nature paid to a CFC by another CFC, and in respect of exchange differences between such parties where the CFCs form part of the same group of companies. There are other exclusions from the CFC rules, such as where the net income of a CFC is attributable to a "business establishment" in a foreign country, provided the business establishment effectively operates at arm's length (subject to certain restrictions).

General anti-avoidance rule

Domestic legislation contains a general anti-avoidance rule (GAAR) for "impermissible avoidance arrangements." All of the following requirements must be met for the GAAR to apply:

- There is an avoidance arrangement that results in a tax benefit;
- The sole or main purpose of the arrangement is to obtain a tax benefit; and
- The arrangement is abnormal, lacking in commercial substance, carried out in a manner not normally employed for bona fide business purposes or would result in the misuse or abuse of the law.

The purpose test is subjective and there is a rebuttable presumption that an arrangement was entered into for the sole or main purpose of obtaining a tax benefit. The Commissioner of Taxation has absolute discretion as to the tax consequences that may be applied to an impermissible avoidance transaction, including disregarding any steps in an arrangement and recharacterizing income and expenditure, etc.

3.7 Administration

Tax year

The tax year is the same as the corporation's accounting year.

Filing and payment

Companies are required to file their income tax returns annually, within 12 months of the company's financial year-end. Advance payments of tax (provisional tax) must be made twice a

year, based on estimates of the final tax amount; the first payment is due during the first six months of the company's financial year and the second before the end of the year. To avoid an interest charge where the provisional tax payments are less than the final tax liability, a third provisional tax payment may be made within six months after the end of the tax year.

Consolidated returns

South Africa does not allow for taxation on a group or consolidated basis; each company in a group of companies is a taxpayer in its own right. Tax losses incurred by group companies cannot be set off against the taxable income of other companies in the group. There are provisions in the Income Tax Act that allow for deferral of tax in certain intragroup transactions, but anti-avoidance rules apply to counter any attempt to transfer taxable income between companies in the same group.

Statute of limitations

Where an assessment is issued by SARS, the statute of limitations is three years from the date of the original assessment. In the case of a self-assessment, it is five years from the date of the original assessment. No statute of limitations applies in the case of fraud, misrepresentation or nondisclosure of material facts. The period of prescription in respect of any tax debt due to the state is 15 years from the date of assessment.

Tax authorities

SARS is established by legislation to collect revenue and ensure compliance with tax law. It is an administratively autonomous organ of the state; it is outside the public service but within the public administration. SARS manages the tax regime in South Africa set by the National Treasury.

SARS is led by a Commissioner, Deputy Commissioner, Chief Operations Officer, Chief Finance Officer, Chief Customs and Border Management Officer, Chief Legal and Policy Officer and Human Resources Officer. The Commissioner may delegate powers or duties to SARS employees but not the responsibility attaching to those powers or duties.

Rulings

A taxpayer may apply for a binding private ruling in accordance with the advance tax ruling system. A binding private ruling allows the taxpayer to obtain clarity and certainty on the interpretation and application of the tax laws on proposed transactions. Provided the taxpayer has fully and accurately disclosed the facts in connection with the proposed transaction and actually carries it out as described in the application, the ruling generally will be binding on the Commissioner when the taxpayer is assessed on that proposed transaction.

3.8 Other taxes on business

Micro business turnover tax

A simplified tax system applies to micro businesses and serves as an alternative to the income tax, provisional tax, capital gains tax and VAT systems, but a micro business still has the option to use those regimes. A taxpayer qualifies as a micro business if the qualifying turnover for the tax year does not exceed ZAR 1 million.

4.0 Withholding taxes

4.1 Dividends

South Africa levies a 15% withholding tax on dividends paid by a South African company to a nonresident, although this may be reduced or eliminated under a tax treaty. The withholding tax replaced the secondary tax on companies (STC) from 1 April 2012.

4.2 Interest

From 1 March 2015, a 15% withholding tax is levied on interest paid to or for the benefit of a nonresident, to the extent that such interest accrues from a source within South Africa. The rate may be reduced or eliminated under a tax treaty. The withholding tax is payable by the last day of the month following the month in which the interest is paid and is a final tax. Certain exemptions apply (e.g. for interest on government bonds, listed debt, interest on debt owed by local banks, local collective investment schemes, etc.). Interest paid by an HQC also is exempt. The 15% withholding tax does not apply to nonresidents that previously were not eligible for the interest exemption (i.e. nonresident companies carrying on business through a South African permanent establishment).

Before 1 March 2015, South Africa did not levy a withholding tax on interest.

4.3 Royalties

A 15% withholding tax applies to royalties that arise from a source within South Africa and are paid to a nonresident, unless the rate is reduced under a tax treaty. The withholding tax does not apply to amounts derived by a nonresident company from a branch or agency in South Africa, to amounts relating to the use of certain copyrights in printed publications or to royalties paid to a CFC. The rate was 12% prior to 1 January 2015.

The withholding tax on royalties is a final tax.

4.4 Branch remittance tax

South Africa does not levy a branch profits tax.

4.5 Wage tax/social security contributions

South African employment taxes comprise employees' tax (PAYE), unemployment insurance fund (UIF) contributions and the skills development levy (SDL).

PAYE is payable to SARS monthly at prescribed tax rates in respect of any remuneration payable by an employer to an employee. PAYE ensures that an employee's income tax liability is settled in a continuing fashion at the time the income is earned. The advantage of this is that the tax liability for the year is settled throughout the tax year. As a general rule, if an employer is required to withhold PAYE in respect of an amount paid to a person, that employer would, subject to certain limited exceptions, also be required to withhold SDL and UIF in respect of that amount.

Every employer is required to make a monthly contribution to the UIF, which is based on the monthly gross remuneration paid to employees, up to a limit of ZAR 14,872. The employer will contribute 1% and the employee (by means of a deduction from salary) will contribute 1% of remuneration up to the limit. Remuneration for purposes of calculating UIF excludes the following:

- Nonemployment-related payments (such as annuity or pension payments);
- Payments made to a labor broker that holds a valid exemption certificate;
- Retrenchment payments;
- Lump sums paid from pension, provident or retirement annuities;
- Restraint of trade payments;
- Commissions;

- Payments made to juristic persons; and
- Payments to independent contractors.

Where the employer's annual payroll exceeds ZAR 500,000, the employer also is liable to pay a monthly 1% payroll levy known as the SDL. The levy is calculated on the total value of remuneration paid, excluding amounts paid to independent contractors, reimbursement payments to employees, pensions paid and remuneration of learners under contract. The levy is deductible by the employer for income tax purposes.

4.6 Other

Withholding tax on services

As from 1 January 2016, South Africa is expected to introduce a 15% withholding tax on payments made to nonresidents in respect of services, although certain exemptions will apply. The withholding tax will not apply if the foreign payee is an individual who was physically present in South Africa for a period exceeding 183 days during the 12-month period preceding the date the fees are paid, if the service fees are effectively connected to a South African permanent establishment or if the service fees are paid in respect of services rendered by a person in his/her capacity as an employee.

Foreign entertainers and sportspersons

South African residents who are liable to pay amounts to foreign entertainers and sportspersons for their performances in South Africa must deduct or withhold tax at a rate of 15% from the gross payments, and pay over the amount to SARS on behalf of the foreign entertainer or sportsperson before the end of the month following the month in which the tax was withheld. Failure to deduct or withhold tax or to pay it to SARS will render the resident taxpayer personally liable for the tax.

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

The withholding tax is a final tax.

Payments to nonresidents on sale of South African immovable property

A withholding tax is payable by a person that acquires immovable property in South Africa from a seller who is not a resident of South Africa, where the total amount payable for the immovable property exceeds ZAR 2 million. The purchaser must withhold from the amount to be paid in respect of the acquisition of immovable property an amount equal to:

- 5% of the amount payable, if the nonresident seller is an individual;
- 7.5% of the amount payable, if the nonresident seller is a company; or
- 10% of the amount payable, if the nonresident seller is a trust.

The amount withheld by a South African resident purchaser must be paid to SARS within 14 days after the date on which the amount is withheld (28 days where the purchaser is a non-resident).

Where the purchaser fails to pay the tax withheld to SARS within the prescribed timeframe, he/she will be liable for a penalty equal to 10% of the tax due. The amount withheld may be credited against the seller's income tax liability for the tax year of the disposal.

5.0 Indirect taxes

5.1 Value added tax

The principal source of indirect taxation revenue in South Africa is VAT, which is charged on the supply of goods or services made by a vendor in the course of doing business and on the importation of goods or services.

The standard VAT rate is 14%. Exports, certain foodstuffs and other supplies are zero-rated, and certain supplies are exempt (mainly certain financial services, residential accommodation and public transport).

A person that carries on an “enterprise” (as defined) in South Africa and generates taxable supplies in excess of ZAR 1 million annually or is contractually obliged in writing, at the commencement of any month, to make a total value of taxable supplies exceeding ZAR 1 million in the 12-month period beginning from that month, will be required to register as a vendor for VAT purposes. Investment in South Africa through a branch or subsidiary may constitute an enterprise and may therefore require VAT registration.

Any South African VAT charged to the vendor by suppliers, as well as VAT levied on the importation of goods, generally will be deductible as an input tax credit by the vendor.

VAT returns generally must be submitted every two months, but businesses with an annual turnover in excess of ZAR 30 million (or where there are reasonable grounds to expect that this threshold will be exceeded), must submit monthly returns. Returns must be submitted by the 25th day, or the last business day, of the month after the end of the tax period. Payment in full must accompany the return.

Since 1 April 2014, foreign suppliers of electronic services to South African customers are required to register for VAT in South Africa in respect of supplies of e-commerce services made on or after that date. Foreign suppliers fall into the compulsory VAT registration category, with a monetary threshold of ZAR 50,000 before a VAT registration requirement is triggered.

5.2 Capital tax

South Africa does not levy capital duty.

5.3 Real estate tax

Municipal taxes are levied on the assessed value of land and property at rates that vary between municipalities.

5.4 Transfer tax

Securities transfer tax is levied at a rate of 0.25% on every transfer of securities issued by a close corporation or company incorporated, established or formed in South Africa and by foreign incorporated companies listed on a licensed exchange.

Real estate transactions that are not subject to VAT are subject to transfer duty. The transfer duty rates are:

- 0% – first ZAR 600,000;
- 3% – ZAR 600,001 to ZAR 1,000,000;
- 5% – ZAR 1,000,001 to ZAR 1,500,000; and
- 8% – excess over ZAR 1,500,000.

5.5 Stamp duty

Stamp duty was abolished in 2009.

5.6 Customs and excise duties

Customs and excise duties are levied on a number of goods imported and manufactured in South Africa. South Africa also operates a warehouse regime that provides for the deferral of customs duties and import VAT on goods subject to customs duty.

5.7 Environmental taxes

New passenger motor vehicles with carbon dioxide (CO₂) emissions in excess of 120g/km and motor vehicles used for the transportation of goods with CO₂ emissions exceeding 175g/km, manufactured in or imported into South Africa, attract an environmental levy, based on CO₂ emissions.

The CO₂ emission levy is not payable on motor vehicles that can transport 10 or more persons or new motor vehicles manufactured and cleared for home consumption for the following purposes:

- Vehicles designed for travelling on snow, golf carts and similar vehicles;
- Hearses and ambulances;
- Off-road logging trucks and road tractors;
- Shuttle cars for use in underground mines;
- Special purpose motor vehicles (e.g. breakdown lorries, crane lorries);
- Motor vehicles designed principally for the transport of physically disabled persons, or adapted or to be adapted for the transport of physically disabled persons;
- Motor cars and other motor vehicles designed principally for the transport of persons, or adapted or to be adapted to be driven solely by a physically disabled person; and
- Motor vehicles for personal or official use by the president, diplomatic, consular and other foreign representatives.

5.8 Other taxes

The Financial Services Board imposes various levies on financial institutions.

Donations (gift) tax is payable by a donor at a rate of 20% of the value of property donated by South African residents (nonpublic companies), subject to certain exemptions. There are exemptions for donations up to ZAR 10,000, prorated per year of assessment, in the case of donors other than individuals.

6.0 Taxes on individuals

Individuals in South Africa are subject to several taxes, including personal income tax, VAT, estate duty, donations tax and capital gains tax.

South Africa Quick Tax Facts for Individuals	
Income tax rates	Progressive to 40%
Capital gains tax rates	Progressive to 40% (on 33.3% of capital gains)
Basis	Worldwide
Double taxation relief	Yes
Tax year	1 March–end February
Return due date	Varies
Withholding tax	
– Dividends	15%
– Interest	0%/15% on interest paid to nonresidents from 1 March 2015
– Royalties	15%
– Services	Withholding tax on service fees paid to nonresidents is expected to be introduced with effect from 1 January 2016
Net wealth tax	No
Social security	1%
Inheritance tax	20%
Donations tax	20%
Real estate tax	Varies
Securities transfer tax	0.25%
Transfer duty	Up to 8%
VAT	14%

6.1 Residence

The term “resident” refers to an individual who is ordinarily resident in South Africa or an individual who is not at any time during the relevant tax year ordinarily resident in South Africa, but who is physically present in South Africa for at least 91 days during each of the current and preceding five tax years, and physically present in South Africa for a period exceeding 915 days in aggregate during the five preceding years (“physical presence test”).

The term “ordinarily resident” is not defined in the Income Tax Act, but the South African tax courts have held that a taxpayer will be ordinarily resident in the place where his/her real permanent home is and the place to which the taxpayer will return. Although an individual’s subjective intention underlies an assessment whether he/she regards him/herself as ordinarily resident in South Africa, SARS will consider a number of factors to determine whether a person’s stated intention is objectively justifiable.

Where an individual also is a resident of another country, the tiebreaker rules in the relevant tax treaty must be applied to determine the country of exclusive tax residence.

6.2 Taxable income and rates

Residents are taxed on their worldwide income and capital gains, with a foreign tax credit for taxes paid in the country of source (subject to a tax treaty or bilateral reciprocity). Individual taxpayers may be entitled to a tax credit for foreign tax paid where income from foreign sources was subject to tax in a foreign country and in South Africa.

Nonresidents are taxed on all income derived from a South African source or deemed to have a South African source, and on capital gains on the disposal of immovable property situated in South Africa.

The source of income is determined by the location of the originating cause of the income and not by the location of the payer. For example, the source of remuneration generally is considered to be the place where the services to which the remuneration relates were rendered, and not where or by whom the remuneration is paid or where the employment contract was concluded.

An exemption is available to individuals for remuneration received for services rendered offshore under an employment contract if certain requirements are met: the individual must be out of South Africa for an aggregate period of more than 183 days and for more than 60 consecutive days in any 12-month period.

Taxable income

South African residents are subject to tax in South Africa on their worldwide income and capital gains. Nonresidents are taxed only on their South African-source income and capital gains on immovable property situated in South Africa or assets of a permanent establishment situated in South Africa.

The rules for determining the taxable income of corporate taxpayers also apply to individuals. Additional rules apply for, *inter alia*, the taxation of fringe benefits and the deduction of employees' tax (PAYE).

Taxable income is gross income, less exempt income and allowable deductions. Gross income from employment includes all remuneration in cash or in kind, including bonuses, allowances and taxes reimbursed or paid on the employee's behalf.

Tax residents are subject to capital gains tax in South Africa on the disposal of their worldwide assets. Nonresidents are subject to capital gains tax in South Africa only on the disposal of fixed property, held directly or indirectly, located in South Africa.

Lump sum amounts received from retirement funds are taxable at various rates.

Dividends received from South African companies are exempt from tax. In addition, a resident person will not be taxed on foreign dividend income where the person holds more than 10% of the equity shares and voting rights in a nonresident company.

Deductions and reliefs

General deductions are permitted under what is called the "general deduction formula." The general rule is that if an expense does not comply with the requirements of the formula, it will not be deductible, unless specifically allowed by another section of the Income Tax Act. Where an expense qualifies for a deduction under both the general formula and a specific provision, it may be deducted only once. Certain rebates (that are a credit against tax payable) also are granted to individuals.

Deductions include the following:

- Contributions to an approved pension fund of the greater of 7.5% of retirement funding employment income or ZAR 1,750.
- Current retirement annuity fund contributions, limited to the greater of:
 - 15% of net income, excluding income derived from "retirement funding employment" (i.e. pensionable earnings); or
 - ZAR 3,500 less deductible current pension contributions; or ZAR 1,750.
- Reinstatement contributions, at ZAR 1,800 per year.

- Charitable donations to certain public benefit organizations, up to 10% of taxable income (before deductions for medical expenses and donations).
- Allowances for travel and motor vehicle expenses, subject to restrictions excluding nonbusiness use and taxation on the unexpended portion.
- Entertainment expenses, if an employee is paid on a commission basis.

A tax credit is available for medical expenses incurred by a taxpayer.

Rates

Personal income tax rates are progressive up to 40%.

For capital gains tax purposes, 33.3% of the gain is included in the individual's taxable income and taxed at the applicable marginal tax rate. For capital gains tax purposes, there is a primary residence exclusion in terms of which a taxpayer must disregard any capital gain on the disposal of primary residence by a natural person not exceeding ZAR 2 million.

Where a nonresident sells immovable property situated in South Africa, a withholding tax on the proceeds will be levied as follows:

- 5% if the seller is an individual;
- 7.5% if the seller is a company; and
- 10% if the seller is a trust.

There is no withholding tax on the sale of immovable property situated in South Africa to a nonresident where the proceeds do not exceed ZAR 2 million.

From 1 March 2015, a 15% withholding tax is levied on interest paid to a nonresident. Nonresident individuals are exempt from the withholding tax on interest if they are physically present in South Africa for more than 183 days in the 12-month period preceding the date on which interest is paid.

6.3 Inheritance and gift tax

Estate duty is payable at the rate of 20% on the worldwide net estate of an individual who dies while ordinarily resident in South Africa, with a standard deduction of ZAR 3.5 million per estate (ZAR 7 million for a married couple). Certain other deductions are allowed, the most important of which is the deduction for assets accruing to the surviving spouse. Estate duty also is payable on the net South African estate of a person who dies while not ordinarily resident in South Africa. The same deductions and exemptions are applicable.

Donations tax is levied on donations made by a tax resident, at a rate of 20% on the aggregate value of donations made during a tax year. Donations not exceeding ZAR 100,000 per annum, donations between spouses and donations to approved public benefit organizations are exempt.

6.4 Net wealth tax

There is no net wealth tax in South Africa.

6.5 Real property tax

A transfer duty is paid on the acquisition of immovable property, where the transaction is not subject to VAT. Transfer duty is payable on the acquisition of residential property through an interest in a company, close corporation or trust. It is levied progressively at rates ranging from 0% for consideration up to ZAR 600,000 to 8% in respect of consideration in excess of ZAR 1.5 million.

6.6 Social security contributions

Employers must contribute the equivalent of 1% of remuneration for each employee, plus a 1% deduction from the employee, to the UIF up to a determined maximum.

6.7 Other taxes

South Africa does not impose any other significant taxes on individuals.

6.8 Compliance

The tax year for individuals runs from 1 March to the end of February of the following calendar year.

An individual whose income from employment does not exceed ZAR 120,000 per year from one employer (total salary income before tax) and who is not in receipt of any allowances or other income generally does not need to file a tax return.

Individual taxpayers must submit a return for the year of assessment by the date determined by SARS. Spouses are taxed separately, subject to some exceptions.

Any person who is registered for tax purposes is required to file a return. PAYE contributions, under which income tax is deducted from an employee's salary and paid by the employer, offset the final tax liability of the individual.

Individuals who receive income other than employment income may have to make provisional tax payments. If required, they must make additional payments at six-month intervals during the tax year and a final payment six months after the end of the tax year.

An assessment will be issued after an individual's tax return is filed and will detail any additional tax due (shortfall between the final tax liability and the PAYE withheld and/or provisional taxes paid). The assessment is payable within 30 days after the due date provided in the notice of assessment.

An individual will be liable to pay income tax if he/she earns more than ZAR 70,700 in the 2015 year of assessment and is younger than 65 years of age. If he/she is 65 years of age or older, the tax threshold (i.e. the amount above which income tax becomes payable) increases to ZAR 110,200. For taxpayers aged 75 years and older, this threshold is ZAR 123,350.

7.0 Labor environment

7.1 Employee rights and remuneration

The Labor Relations Act (LRA) defines the rights of employees and employers and sets out procedures for dispute resolution. It contains a section dealing with collective employment matters, which aims to make collective bargaining procedures more cooperative by introducing a dispute resolution system that relies on compulsory arbitration and mediation. The LRA provides for the creation of workplace forums (in companies with more than 100 employees), where employees consult with employers, share information and take a joint role in decision-making. On a collective basis, the LRA regulates trade union rights, freedom of association, agency and closed shop agreements, collective agreements and industrial action.

The LRA also addresses individual employment law issues, largely relating to fair labor practice pre-employment, during employment and on termination of employment. Employment may be terminated fairly on grounds of misconduct, incapacity, poor performance and for operational reasons (retrenchments). The LRA also deals with certain types of dismissal that may be classified automatically as unfair dismissals.

The LRA further regulates the transfer of employees from one business to another. In essence, the LRA's provisions secure the continuation of employment upon the sale or transfer of a business from one employer to another as a going concern. The section ensures an automatic migration of the entire employment relationship from the old employer to the new employer. This will mean that all rights and obligations applicable between the old employer and its employees continue in force as if they were rights and obligations between the new employer and the employees.

The Basic Conditions of Employment Act provides for a 45-hour work week and extends other minimum employment rights and benefits relating to working hours, overtime, leave and remuneration. The Employment Equity Act provides that companies with 50 or more employees, and/or companies who employ fewer than 50 employees, but have a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of schedule 4 of the Employment Equity Act, must develop employment equity plans and, after consulting with employees, outline methods to eliminate discrimination and ensure a diverse and representative labor force. These plans contain affirmative action goals and companies must submit results each year to the Department of Labor until the goals have been reached. The Commission for Employment Equity monitors compliance, which it can enforce by exclusion from state tenders, fines or by order of the Labor Court.

7.2 Wages and benefits

South Africa does not have a national minimum wage, but the Minister of Labor can make sectoral determinations, which may include a basic remuneration level. Legislation differentiates between urban and rural areas. Certain industries are self-regulated by Bargaining Councils, which may include minimum wages and conditions specific to the industry.

Social insurance

The state-run UIF provides tax-free benefits for the unemployed using a formula based on whether wages were paid weekly or monthly. The length of time the individual will receive benefits also depends on a formula. Benefits are available for illness, maternity and survivors of deceased employees. The government, employers and employees contribute to the fund. Employers and employees each contribute 1% of wages; the government's contribution rate is not prescribed.

Employers are required to insure employees against industrial accidents and disabling or fatal illness. Employers contribute to the Workers' Compensation Fund for staff earning up to a set annual amount. Benefits also apply to domestic and seasonal workers.

Other benefits

Annual paid leave is three weeks (15 work days). Around 10 days per year are allowed for paid sick leave. An employer may request a medical certificate for an absence of more than two consecutive days, or for absence on a Friday or Monday. There is provision for three-day family

responsibility leave and for births and deaths in the family. Female employees are granted four months' unpaid maternity leave by law, although most medium to large employers pay their employees for this period.

There are 12 paid national holidays per year. Many companies close from Christmas until New Year's Day. Although not legally required to do so, many companies pay a 13th month salary as a bonus and support pension funds for employees. Performance-based incentive schemes are used for management employees.

Benefits packages provided by foreign employers vary. One common feature is the provision of private medical insurance; South Africa has no system of national medical insurance.

7.3 Termination of employment

The LRA regulates the grounds and procedures required for a fair termination of employment, and the Basic Conditions of Employment Act (BCEA) deals with the notice periods required in instances of a no-fault termination of employment (resignation, incapacity and retrenchment). Four weeks' notice is required, in writing, for an employee with more than one year of service, although a collective agreement may reduce this to not less than two weeks. Termination payments include accumulated annual leave due as at the date of termination. The BCEA also provides for severance pay for retrenchments, namely, a minimum of one week for every completed year of continuous service. Most employers pay, on average, two weeks for every completed year of service.

A Code of Good Practice on Dismissal for Operational Requirements deals with retrenchment dismissals and describes the procedural and substantive obligations of the employer but it is not a binding legal document. The code suggests consultation with employees and full disclosure on matters relevant to the consultation process. Trade unions have the right to initiate strike action in relation to retrenchments. Dismissal for incapacity, misconduct and operational requirements must be both substantively and procedurally fair according to the LRA. This means that there must be a valid substantive reason for the dismissal and it must be accompanied with a fair procedure for the dismissal to be classified as a fair one.

7.4 Labor-management relations

Most industries are governed by bargaining councils, through which employers and unions negotiate minimum wages and conditions for the industry. The LRA outlines various procedures for settling a dispute prior to initiating a strike. The LRA has reconstituted the Labor Court, with wider powers established for the Commission of Conciliation, Mediation and Arbitration, formalizing the system of arbitration. All disputes go to independent conciliation or arbitration before the parties involved resort to strikes or lockouts. Moreover, the dispute must have lasted for at least 30 days before workers can strike or employers can lock out workers and written notice of 48 hours must be given to the employer before any strike action is taken. If the employer is the state, a seven-day notice must be given before any action is taken. Non-unionized labor during employer-initiated lockouts is prohibited.

7.5 Employment of foreigners

South Africa does not impose limits on the employment of foreign nationals. Responsibility for the control of foreigners ultimately lies with the Department of Home Affairs, however employers, schools and providers of accommodation also have a responsibility to ensure compliance with immigration legislation. The basic assumption underlying the legislation is that jobs should be given to South Africans or permanent residents in South Africa where possible.

There are four other types of visa that allow a foreign national to work in South Africa:

- **Intra-company transfer work visa:** This type of visa is appropriate when a foreign national employed abroad is required to work at a branch or affiliate in South Africa for the purpose of transferring skills. The foreign national must be employed by a branch or affiliate of the South African company offshore for at least six months prior to the start date of his/her assignment in South Africa and the intention must be for the person to return back to his/her home country on completion of the assignment. A skills transfer plan needs to be developed

showing how the skills will be transferred to a South Africa or permanent resident. The visa can be issued for a maximum period of four years and cannot be renewed.

- **Critical skills work visa:** This type of visa applies when a foreign national who has a critical skill or qualification is required to work in South Africa. The foreign national's skill or qualification needs to fit into one of the critical skills categories on a list determined by the Department of Home Affairs and the foreign national needs to be registered with an accredited professional body, council or board recognized by South African Qualifications Authority. Where there is no employer, proof of employment must be provided to the Department of Home Affairs within 12 months after obtaining the critical skills work visa. The critical skills work visa can be issued for a period of five years and can be renewed provided the foreign national has a permanent employment contract.
- **General work visa:** This type of visa is required when a foreign national who does not qualify for an intracompany transfer work visa or critical skills work visa is required to work in South Africa. The visa will only be granted if the employer can demonstrate that it has conducted a diligent search for South African citizens/permanent residents to fill the position before deciding that the foreigner is the best person for the position. A certificate from the Department of Labour confirming this is the case must accompany the visa application. A general work visa can be issued for a period of five years and is renewable, provided the person has a permanent employment contract.
- **Corporate worker visa:** This type of visa is utilized when an employer has secured a corporate visa from the Department of Home Affairs allowing the holder to employ a number of foreign nationals required to work in South Africa for large scale or ongoing projects. To obtain the corporate visa the employer must obtain approval from the Departments of Labour, Trade and Industry and Home Affairs. The basis of this type of visa is that the project and positions are preapproved and the Department of Home Affairs issues authorization certificates enabling the employer to easily obtain the visas. Corporate worker visas can be issued for a maximum period of three years.

There also are a number of other categories of visa (e.g. business, visitor, study, exchange, medical and retired person's visa). It is best practice that foreign nationals apply for the appropriate visa via the South African Embassy, High Commission or Consulate in their home country prior to them arriving in South Africa. Renewals and change of conditions or status for specific categories can be applied for with the Department of Home Affairs via the FVS visa facilitation center in South Africa.

8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

Connect to the source and discover:

A database that allows users to view and compare tax information for 65 jurisdictions that includes –

- Corporate income tax rates;
- Historical corporate rates;
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Guides and Highlights – Deloitte's Taxation and Investment Guides analyze the investment climate, operating conditions and tax systems of most major trading jurisdictions, while the companion Highlights series concisely summarizes the tax regimes of over 130 jurisdictions.

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Tax publications – Global tax alerts and newsletters provide regular and timely updates and analysis on significant cross-border tax legislative, regulatory and judicial issues.

Tax resources – Our suite of tax resources includes annotated, ready-to-print versions of holding company and transfer pricing matrices; a summary of controlled foreign company regimes for the DITS countries; an R&D incentive matrix; monthly treaty updates; and expanded coverage of VAT/GST/sales tax rates.

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9.0 Office locations

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