

A pocket guide to SOUTH AFRICAN TAXES



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USE OF THIS GUIDE

It is not possible to discuss South African taxes in great detail within the scope allowed by a pocket guide like this. The emphasis of the guide is therefore on income tax, and those aspects of the law that I believe will be of most value to financial planners and their clients in the financial arena. I have also added other useful tax information to cover South African taxes as extensively as possible.

This pocket guide starts with a general discussion of the various principles involved in determining taxable income, and the normal income tax payable on this income. When discussing the available exemptions and deductions, only the most common are included.

Although capital gains tax (CGT) has been with us for more than 15 years, it remains complex to determine the capital gains on assets held before 1 October 2001. This is only discussed in brief in this guide.

Before you do any detailed financial planning or make any decisions based on this information, you should consult your accountant, financial planner or tax adviser to assess your specific circumstances.

Kind regards

Ronald N King

THE 2017/2018 BUDGET

With a R28 billion shortfall in taxes, significant tax increases were to be expected. Surprisingly, VAT was not increased, leading to the bulk of the shortfall being funded by personal income tax.

The R28 billion therefore came from:

Personal income tax bracket creep	R12.1bn
New top marginal income tax bracket of 45%	R4.4bn
Increase in dividend withholding tax	R6.8bn
Increase in general fuel levy	R3.2bn
Increase in "sin taxes"	R1.9bn

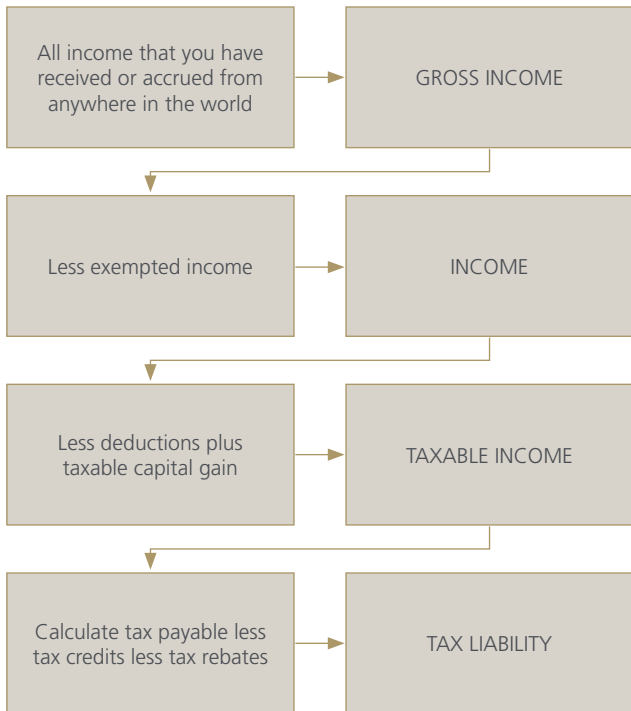
While there was a slight reduction in transfer duties, 2017 will also finally see the implementation of the promised tax on sugary beverages. At 2.1c/gram it will equate to between 50c and 60c per can of cooldrink.

March 2017 sees the implementation of the donations tax implication of interest free loans to trusts. The Budget Speech also announced that certain structures used to evade this tax will be addressed during the year.

Currently remuneration earned outside of South Africa is tax-free if the taxpayers meet certain conditions, mostly with regards to time spent outside the country. This exemption will in future only apply if the remuneration was taxed in the country of origin.

HOW TO CALCULATE INCOME TAX

A flowchart provides the best explanation of how income tax is calculated:



GROSS INCOME AND RESIDENCE

IN GENERAL, GROSS INCOME IN ANY YEAR OF ASSESSMENT MEANS:

1. in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident
2. in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the Republic

This excludes amounts of a capital nature.

There are, however, also amounts that are specifically included in gross income, whether those amounts are of a capital nature or not.

The definition of gross income states that the income of South African residents will be taxed in South Africa irrespective of where it was earned. If residents pay foreign taxes on this income, these tax amounts will be allowed as credits against their South African tax liabilities. Foreign residents will only be taxed on income from a South African source. It is thus important to determine when someone is a resident.

ACCORDING TO THE INCOME TAX ACT (THE ACT), 'RESIDENT' MEANS:

- any natural person who is ordinarily resident in the Republic
- a natural person who is not ordinarily resident in the Republic, but was physically present in the Republic:
 1. for more than 91 days in total during the tax year, and in each of the previous five tax years
 2. the period in the country for the previous five tax years was more than 915 days
- any legal person (which is not a natural person) that is incorporated, established, formed or has its place of effective management in the Republic

The Courts have interpreted 'ordinarily resident' to mean the place where a person has their place of permanent residence. If a person is outside the Republic but has the intention to return and keep the Republic their permanent home, they will be deemed a resident regardless of how long they spend outside the Republic. It is clear that the concept of ordinary residence is very subjective, as it is based on the intention of the taxpayer. Such intention can be deduced from the facts.

If a person is not ordinarily resident in South Africa, the second definition creates a physical presence test. According to this test a person will be deemed ordinarily resident if they were in the country for more than 91 days in the current year and each of the five years before the assessment. The total days spent in the Republic during the preceding five years must be more than 915 days in total. If a person classified as a resident by the physical presence test leaves the Republic and is away for a continuous period of 330 days, the person will no longer be deemed a resident. Non-resident status will apply from the day they left the Republic.

However, residency is not the only important factor in the definition of gross income. This definition includes any receipt or accrual on which a cash value can be placed. (The value of fringe benefits is determined according to the Seventh Schedule to the Act. Please refer to the relevant section in this guide). To be taxable, the amount need not necessarily have been received. The taxpayer must only have a right to it.

Receipts and accruals of a capital nature are specifically excluded from the general definition. Capital receipts include amounts like prize money and the profit on the sale of an asset or investment. This does not mean that such income is exempt from income tax, since any capital gain made since 1 October 2001 is taxable according to the Eighth Schedule to the Act.

APART FROM THE GENERAL PROVISION, A NUMBER OF ACCRUALS AND RECEIPTS ARE SPECIFICALLY INCLUDED IN GROSS INCOME, WHETHER OF A CAPITAL NATURE OR NOT. OF THESE THE MOST COMMON ARE:

- annuities, including living annuities
- alimony (however, please refer to exemptions)
- any amount, including any voluntary award, received or accrued for services rendered or any employment (an amount received by or accrued to any person for services rendered by any other person, will be deemed to have accrued to the other person)
- amounts received for a restraint of trade
- any amount received or accrued due to ending any office or employment (see the separate discussion on gratuities)
- any amount received or accrued due to a policy being ceded to a person by their employer (see the section on policies on the lives of employees)
- any retirement lump sum benefit or retirement lump sum withdrawal benefit (see the separate discussion on retirement lump sums)
- the cash value of fringe benefits as determined under the Seventh Schedule to the Act (see the separate discussion on fringe benefits)
- dividends, including foreign dividends (see the separate discussion, as well as exemptions)
- any amount received upon the maturity or surrender of a loan made against a policy on the life of an employee, if the premiums were deductible (see the discussion on policies on the life of employees)

INCOME

Income is the amount of gross income remaining after deducting any amount exempt from normal tax.

THE MOST IMPORTANT EXEMPTIONS ARE:

- interest exemptions
 - R23 800 received as interest from a South African source by taxpayers younger than 65 years
 - R34 500 received as interest from a South African source by taxpayers 65 years and older
 - Note: interest received by persons married in community of property is divided equally between them for tax purposes
- special uniforms or uniform allowances
- relocation allowances
- the capital portion of a voluntary annuity received from a life insurer
- dividends (see separate discussion on the taxation of dividends)
- any proceeds received by an employee from a policy owned by an employer, if the premiums were included as a fringe benefit in the taxable income of the employee
- alimony
- war pensions, disability pensions from the Social Assistance Act, unemployment insurance or Workmen's Compensation
- bona fide scholarships or bursaries
- remuneration received by residents who are outside the Republic for rendering services outside the Republic for or on behalf of their employer:
 - for a period of more than 183 full days in total, over a 12-month period starting or ending during a year of assessment,
 - during the 183-day period, residents must have spent a continuous period of at least 60 full days outside the Republic
 - Note: this does not exempt all income received, as the exemption is limited to remuneration while all other income (such as interest received overseas) will still be taxable. The Budget also indicated that this exemption will be changed to exempt the remuneration only if it was taxable in the foreign country
- foreign pensions and social security payments

DEEMED INCOME

Certain income accruing to or received by others is deemed to be that of the taxpayer according to Section 7 of the Act.

THE MOST IMPORTANT EXAMPLES OF DEEMED INCOME ARE:

- Income owing but not paid over, invested or dealt with in the taxpayer's name.
- Any income received from a donation by the taxpayer or the taxpayer's trade to their spouse that is more than what is considered a realistic remuneration is deemed to be that of the taxpayer.
- Passive income is divided equally between spouses married in community of property. This excludes pensions and the interest portion of voluntary annuities determined under Section 10A of the Act.
- Any income received by a child from a donation by a parent or someone else who received something from the child's parent, will be deemed to be the income of the parent.
- A person who makes a donation on the condition that the income will only be received after a certain event will be deemed to receive the income until the event occurs.
- A person who makes a donation but can still decide who receives the income from the donation will be deemed to receive the income.
- A person making a revocable donation will be deemed to have received the income from the donation.
- Any income received by a non-resident from a donation by a taxpayer will be deemed to be that of the taxpayer.
- Where an asset is sold for less than market value, the difference will be deemed a donation for the purposes of this section.
- The difference between the interest charged to a trust on a loan account and the official interest rate (currently 8%) will be deemed to be a donation to the trust.

Section 7(10) of the Act places a liability on the taxpayer to provide SARS with the necessary information if any of these donations are made.

TAXABLE INCOME

Taxable income is the amount remaining after deducting or setting-off all allowable amounts from income and adding all amounts included or deemed to be included by the Act.

That means that taxable income is gross income less exemptions and deductions, plus the taxable capital gain as determined under the Eighth Schedule of the Act.

The allowable deductions can be divided into general deductions and specific deductions. General deductions are deductions that comply with the requirements of Section 11(a) of the Act.

Specific deductions are deductions that do not comply with these requirements, or have certain specific limitations or requirements placed on them. In the following sections we will discuss the requirements of Section 11(a) before discussing some specific deductions.

GENERAL DEDUCTIONS

To determine the taxable income derived by any person from carrying on any trade, certain amounts will be allowed as deductions from the income derived. These include certain expenses and losses actually incurred when generating the income, provided these are not of a capital nature. Section 11(a)

THE FOLLOWING REQUIREMENTS MUST BE MET BEFORE THE DEDUCTION WILL BE ALLOWED UNDER SECTION 11(a) OF THE ACT:

The taxpayer must be carrying on a trade

The definition of 'trade' in the Act is quite extensive and not necessarily exhaustive. This depends on the facts and circumstances of each case. The intention to make a profit is not a necessity.

Expenses must be actually incurred in the year of assessment

Whether the expense or loss was necessary or prudent is irrelevant. The expense need also not yet be paid, but must merely have been incurred. It is important to establish the tax year in which the expense was incurred, as it is only in this year that it is deductible (unless the Act provides otherwise). If it was incurred in the previous year, it is not allowed as a deduction in the current year.

A loophole used by some was to incur the expense now, but to defer the accrual or receipt of the connected income to future years. This would create a loss. Now, where an expense is incurred but the taxpayer does not receive the full benefit, the deduction is limited to the portion of the benefit that the taxpayer received in that year.

It must be in the production of the income

A taxpayer must generate income to be able to apply the general deduction formula. In this case, income means gross income less exempt income. Expenditure on exempted income or income of a capital nature is therefore not deductible. This means that expenses incurred in the production of local dividends are also not deductible.

This is also why the Commissioner requires proof of the projected profits from letting a house before he will allow the deduction of any losses created in this way against other income.

This principle is entrenched in law by 'ring-fencing' the income received from secondary trades. If a secondary trade results in a loss, it will no longer be allowed as a deduction against income made from another trade. It will only be deductible against future profits made from the same trade. This will apply to taxpayers with a marginal tax rate of 45%.

The requirement that it must be in the production of the income is further qualified by Section 23(g) of the Act. This section disallows the deduction of any monies which were not laid out or spent for the purposes of trade. (See the discussion on disallowed deductions.)

If a taxpayer therefore visits the USA for business and holiday, they will only be allowed to deduct monies they can prove were laid out for the purpose of trade. The burden of proving a deduction is always on the shoulders of the taxpayer.

Expenses must not be of a capital nature

Trying to describe what is 'of a capital nature' is very difficult. Nowhere in the Act is it defined. According to case law the best way to describe this is to say that a deduction will be of a capital nature if it relates to the income-producing structure, and not the income-producing operations. With the persistent increases in CGT inclusion rates, this might become less important.

It is important to note that the Act limits the rights of salaried employees to claim any general deductions – and even specific deductions – against their salary. This is discussed later in the guide.

SPECIFIC DEDUCTIONS

Most of the specific deductions allowed are found in Sections 11 to 23 of the Act. Section 8 of the Act discusses the way in which deductions incurred against allowances should be handled.

THE MOST COMMON DEDUCTIONS ARE:

Motor vehicle expenses

If a taxpayer keeps accurate records of the true costs and maintenance of a vehicle, the deduction is determined based on these costs. If the taxpayer does not receive a motor vehicle allowance and the deduction is claimed under Section 11(a) of the Act, it can only be based on actual expenses.

If a taxpayer does not keep accurate records of expenses, costs are determined according to a scale published by the Minister of Finance. (See Table A, attached at the end of the guide).

The percentage of total costs to be deducted will equal the percentage of business kilometres travelled, relative to total kilometres travelled. Travelling between office and home is regarded as private travel.

Subsistence allowance

If a taxpayer is obliged to spend at least one night away from their usual place of residence on business and receives an allowance to cover subsistence costs, the taxpayer can deduct the actual costs incurred to pay for accommodation, meals and other incidental expenses. The maximum deduction allowed is the allowance amount, if subsistence costs were not reimbursed by the employer.

If the taxpayer cannot prove the expenses and they were not paid for or reimbursed by the employer, the taxpayer can deduct:

- R397 per day for meals, incidental costs and accommodation in the Republic
- R122 per day for incidental costs only
- a fixed amount per country if accommodation is outside the Republic

The employer can choose to pay for travel costs and accommodation. In such cases, the employee will not be able to deduct these expenses from their income.

Legal expenses

This relates to legal expenses actually incurred during or because of ordinary operations undertaken in carrying on a trade. The deduction is only allowed if the monies claimed would form part of income or would be deductible from income. Section 11(c)

Restraint of trade payments

If a recipient is taxed when receiving the restraint of trade, the payer can deduct it in equal proportions over three years or over the period of the restraint of trade (whichever is longer).

Repairs

This relates to expenses incurred when making repairs. Note that this does not include improvements, since these expenses are of a capital nature and are therefore not deductible. Improvements are taken into account for CGT.

Wear and tear allowance

The Receiver will allow a reasonable wear and tear allowance on assets used for the purpose of trade. SARS provides a list of accepted wear and tear allowances. Certain assets, mostly used in manufacturing and hotel keeping, are written off according to specific allowances under the Act. Treasury has tried to increase investments in the manufacturing industry. This has created a number of benefits for taxpayers. Taxpayers will therefore profit by investigating these wear and tear allowances.

Bad and doubtful debts

Bad debts are allowed as deductions. Taxpayers must create an allowance for doubtful debts, which is then deductible. However, this allowance must be added to gross income in the following year. Section 11(i) and (j)

RETIREMENT FUND CONTRIBUTIONS

The deductibility of contributions to retirement funds was quite complicated, with different rules pertaining to provident funds, pension funds and retirement annuities. While the distinctions in the structures of these retirement funds still apply, the tax deductibility of their contributions has been streamlined.

Contributions by the employer

Any contributions made by the employer to an employee's pension or provident fund are now included in the taxable income of the employee as a fringe benefit. The employee is, however, allowed to claim that contribution as their own.

Contributions by the employee/fund member

The employee will be able to deduct the aggregate of their own and their employer's contributions to their pension or provident fund, as well as contributions to their retirement annuity. Their deductible contribution is limited to a maximum of 27.5% of the highest of their taxable income or remuneration. In addition, this amount may not exceed R350 000.

Any contributions exceeding these limits are carried forward to the next tax year and are deemed to be contributed in that year. If at retirement contributions remain which have not been deducted from income tax, they can be used to increase the tax-free lump sum from the retirement fund. If there are still contributions remaining, they can be deducted from the income earned from any compulsory annuities purchased from that retirement fund.

Entertainment expenditure

These expenses are only deductible as general deductions under Section 11(a) of the Act. They therefore need to comply with all the requirements of that section. Salaried employees will need to earn more than 50% of their income as variable income to be able to deduct such expenses.

Policy on the life of an employee

Employers can deduct the premiums of two types of policies on the life of an employee. The first is a policy on the life of an employee where the premium is included in the taxable income of the employee as a fringe benefit.

The second is a policy on the life of an employee where:

1. the employer is insured against any loss due to the death, disability or severe illness of the employee
2. the policy is a pure risk policy
3. the policy is owned by the employer
4. the policy states that the premiums are deductible

The first kind refers to the old deferred compensation policies and are only deductible if premiums are included in the taxable income of the employee. The second kind refers to a key person policy. It is important to note that key person insurance can only be deductible if it covers a loss. A policy taken out to cover a debt doesn't cover a loss, and is therefore not tax deductible.

Donations (Section 18a)

Donations made to certain public benefit organisations are allowed as deductions (up to 10% of taxable income). If the donation exceeds 10% of taxable income, the excess amount is treated as a donation to qualifying public benefit organisations in the following tax year.

Institutions like primary, secondary and tertiary educational institutions as well as homes for the elderly, children and AIDS sufferers can now benefit from tax-deductible donations.

Public benefit organisations (PBOs) are defined in Schedule 9 to the Act. They are organisations aimed at providing benefits to the public. Although all PBOs are tax-free institutions, only PBOs in certain fields of service have the additional benefit of receiving tax-deductible donations.

Assessed losses

Assessed losses carried over from previous years are offset against income. They can also be offset against a capital gain made in a year. Note, however, that losses from secondary trades are only deductible against future profits from those trades.

ALLOWABLE DEDUCTIONS FOR SALARIED EMPLOYEES

SECTION 23(m) OF THE ACT PROHIBITS THE DEDUCTION OF ANY EXPENSE, ALLOWANCE OR LOSS THAT RELATES TO THE EMPLOYMENT OF A TAXPAYER FOR WHICH THEY DERIVE REMUNERATION, OTHER THAN:

- deductions against motor vehicle allowances
- deductions against subsistence allowances
- donations to public benefit organisations
- contributions to a pension or retirement annuity fund
- legal expenses, wear and tear allowances and bad and doubtful debts

All of these deductions remain subject to the provisions and limitations discussed in the previous sections.

This limitation is not applicable to employees receiving more than 50% of their remuneration from commission based on their sales or turnover.

DEDUCTIONS NOT ALLOWED

THE DEDUCTIONS THAT ARE NOT ALLOWED ARE DISCUSSED IN SECTION 23 OF THE ACT. THE MOST IMPORTANT ONES ARE:

- costs of maintenance and private expenses, including rent and repairs to property not used in trade
 1. if a portion is used for trade, it must clearly and exclusively be allocated for this use
 2. if the taxpayer is a remunerated employee, they can only deduct home office expenses if more than 50% of their income is derived from commission (Section 23[a] and [b])
- expenses and losses, if they are covered by an insurance contract (Section 23[c])
- all taxes, fines and penalties (Section 23[d])
- expenses on amounts received or accrued, which do not form part of income as defined (Section 23[f])
- any monies claimed as a deduction from income derived from trade (if these were not laid out or spent for the purposes of trade) (Section 23[g])
- notional interest (Section 23[h])
- any bursary funded by a salary sacrifice from the employee (Section 23[j])
- any expenses other than salaries incurred by a non-exempted labour broker or a personal services company or trust (see the section on companies) (Section 23[k])
- restraint of trades not deductible under Section 11(cA) (Section 23[l])

SEQUENCE OF DEDUCTIONS

There are a few deductions that refer to taxable income before they are made. For that reason, these deductions must be made in a specific order:

1. the 27.5% deduction allowed for retirement funds
2. qualifying donations
3. determining the medical tax credit

Taxable capital gains can now be taken into account for the 27.5% contribution towards retirement funds. However, the contribution cannot exceed the amount of the taxable income before inclusion of the taxable capital gain.

FRINGE BENEFITS

The value of fringe benefits is determined according to the Seventh Schedule to the Act. The most common are:

ACQUISITION OF AN ASSET AT LESS THAN ACTUAL VALUE

The taxable benefit will be the difference between the market value of the asset and the amount the employee paid.

RIGHT OF USE OF MOTOR VEHICLE

The taxable value is 3.5% of the value of the vehicle (the cash cost including VAT) per month. If a maintenance plan is in place (not less than three years and/or 60 000km), it is 3.25%. This amount can reduce proportionately if the employee keeps complete records of business vs. private use, the cost of licencing fees and insurance (if this is paid by the taxpayer).

If the employee is responsible for fuel for private use, the value is reduced by the amount per kilometre published in Table A, on page 36.

RIGHT OF USE OF ANY OTHER ASSET

If the employer leases and holds the asset, the taxable value is equal to the amount of rent payable by the employer. If the employer owns the asset, the taxable value will be 15% p.a. of either the cost or the market value of the asset (whichever is lower).

MEALS, REFRESHMENTS AND MEAL AND REFRESHMENT VOUCHERS

The taxable value is equal to the cost of meals and refreshments, less the consideration paid by the employee. This does not apply if meals and refreshments are given on the employer's premises, or during business hours.

MEDICAL AID

Where an employer pays an employee's medical aid premiums, the value of the premiums is deemed to be a taxable benefit.

RETIREMENT FUND CONTRIBUTIONS

Where an employer has made any contribution for the benefit of any employee to any pension fund, provident fund or retirement annuity fund, the value of that contribution is deemed to be a taxable benefit.

RESIDENTIAL ACCOMMODATION

The taxable value of this benefit is the rental value of the property less the actual rent paid by the employee. If the accommodation is not owned by the employer but by an unconnected person, the rental value will be the lower of the formula value or the arm's length rental (from 1 March 2015).

The rental value is determined as follows:

$(A - B) \times (C \div 100) \times (D \div 12)$, where:

A is the employee's salary

B is an abatement equal to R75 750

C represents either:

- the quantity 17
- the quantity 18 (if the house consists of at least four rooms and is furnished *or* the employer supplies power)
- the quantity 19 (if the house consists of at least four rooms and is furnished *and* the employer supplies power)

D is the number of months in the year during which the employee has right of use of the property

Holiday accommodation is taxed at the cost of the accommodation to the employer, or the prevailing rate per day at which the accommodation could normally be let to other people.

FREE OR CHEAP SERVICES

The general rule is that the taxable value is equal to the cost of the services to the employer less any payment made by the employee.

The following services are excluded:

- services rendered to employees at their workplace for the better performance of their duties, or to be used at the workplace
- transport services between the workplace and the employee's home

LOW INTEREST LOANS

The taxable value is the difference between the official interest rate and the actual rate charged. No value is placed on casual loans (as long as their combined amount does not exceed R3 000) or any study loans for employees.

LUMP SUMS FROM RETIREMENT FUNDS AT RESIGNATION/WINDING UP

Any lump sums taken when resigning from a pension, pension preservation, provident or provident preservation fund, or when making a withdrawal from a retirement annuity fund (including due to a divorce order), will be taxed according to the retirement fund lump sum withdrawal benefit tax table.

Tax on a specific lump sum is equal to $(A - B)$, where:

A is the tax determined by applying the tax table to the aggregate of:

- the lump sum in question
- all other retirement fund lump sum withdrawal benefits that accrued from March 2009
- all retirement fund lump sum benefits that accrued from October 2007
- all severance benefits that accrued from March 2011

B is the tax determined by applying the tax table to the aggregate of:

- all other retirement fund lump sum withdrawal benefits that accrued from March 2009
- all retirement fund lump sum benefits that accrued from October 2007
- all severance benefits that accrued from March 2011

Retirement fund lump sum withdrawal benefit

Lump sum (R)	Rate of tax
R0 – R25 000	0% of lump sum
R25 001 – R660 000	18% of lump sum above R25 000
R660 001 – R990 000	R114 300 + 27% of lump sum above R660 000
R990 001 and above	R203 400 + 36% of lump sum above R990 000

LUMP SUMS FROM RETIREMENT FUNDS AT DEATH, RETIREMENT OR RETRENCHMENT

If a person dies while they are a member of a retirement fund, they are deemed to have retired the day before they died. Any lump sums taken upon death, retirement or retrenchment will be taxed according to the retirement fund lump sum table on page 23. These lump sums could be received from a pension, pension preservation, provident, provident preservation or retirement annuity fund upon death, retirement or termination of employment due to redundancy or termination of the employer's trade.

Tax on a specific retirement fund lump sum is equal to $(A - B)$, where:
 A is the tax determined by applying the tax table to the aggregate of:

- the lump sum in question
- all other retirement fund lump sum withdrawal benefits that accrued from March 2009
- all retirement fund lump sum benefits that accrued from October 2007
- all severance benefits that accrued from March 2011

B is the tax determined by applying the tax table to the aggregate of:

- all other retirement fund lump sum withdrawal benefits that accrued from March 2009
- all retirement fund lump sum benefits that accrued from October 2007
- all severance benefits that accrued from March 2011

Retirement fund lump sum benefit	
Lump sum (R)	Rate of tax
R0 – R500 000	0% of lump sum
R500 001 – R700 000	18% of lump sum above R500 000
R700 001 – R1 050 000	R36 000 + 27% of lump sum above R700 000
R1 050 001 and above	R130 500 + 36% of lump sum above R1 050 000

From 2017 it will no longer be required for taxpayers who retire from employment to retire from their pension or provident funds as well. They would be able to preserve their retirement funds within the existing funds or transfer their retirement funds to retirement annuities. Retirement from the retirement annuity can then be effected at any later date. Transfers to preservation funds will not be allowed.

GRATUITIES AND SEVERANCE BENEFITS

Gratuities are all lump sums received (but not received from a retirement fund) when ending employment or the holding of office. Such an amount is included in gross income. There are, however, some tax concessions if the taxpayer is retrenched. In such cases, the amount is taxed under the retirement fund lump sum tax table on page 23. It is therefore important to note that severance benefits will have the effect of reducing the tax-free amount that can be withdrawn from the retirement fund upon retirement.

REBATES

Tax on taxable income is determined according to the relevant tax table of the entity. If it is a natural person, a rebate or rebates can be deducted based on the age of the taxpayer on the last day of the financial year. If the taxpayer is younger than 65, they are entitled to the primary rebate. If they are older than 65 but younger than 75, they are also entitled to a secondary rebate. For those over the age of 75, a tertiary rebate is available as well.

The rebates are provided in Table C at the end of the guide.

MEDICAL TAX CREDITS

If there is still a tax liability left, a medical scheme fees tax credit can be deducted if the taxpayer is the primary member of a medical scheme. For the first two members of the scheme, a tax credit of R303 per month can be deducted from the tax liability. For every additional member, a further R204 per month can be deducted.

There is also an additional medical expenses tax credit available. This tax credit does not require membership to a medical scheme. The amount of the additional medical expenses tax credit must be:

- (a) where the person is older than 65 or where the person, their spouse or their child is a person with a disability, the aggregate of 33.3% of:
 - (i) the amount in fees paid by the person to a medical scheme that exceeds three times the amount of the medical scheme fees tax credit calculated above
 - (ii) the amount of qualifying medical expenses paid by the person
- (b) in any other case, 25% of the aggregate of:
 - (i) the amount in fees paid by the person to a medical scheme that exceeds four times the amount of the medical scheme fees tax credit to which that person is entitled
 - (ii) the amount of qualifying medical expenses paid by the person which exceeds 7.5% of their taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit)

PAYE

Employees tax is payable on remuneration paid to an employee by an employer. This tax is payable as and when the employee earns the remuneration, and is therefore generally known as Pay As You Earn (PAYE). Remuneration is defined in the Act. It basically consists of all payments that is generally included in one's salary, except for a taxpayer's motor vehicle allowance (of which only 80% is included). The only deductions allowed from defined remuneration are contributions to retirement funds. If the employee is older than 65, they may also deduct the medical tax credit.

Many taxpayers have left their employers only to create their own company and return to their previous employer as a consultant. In this way, they not only benefited from the lower tax rate applicable to companies, but were also exempted from paying employees tax on the income they received. These companies and trusts, known as personal services companies or trusts, are now also classified as employees, and as such are liable for PAYE at rates of 28% and 45% respectively.

PROVISIONAL TAX

As with PAYE, provisional tax is not a separate tax but a different way of paying taxes that are due. Since some taxpayers have no salary from which regular tax deductions can be made, the Receiver has implemented two provisional tax payments. These are at the end of August and the end of February each year. As the name indicates, payments are based on estimates of what the taxpayer's taxable income will be. A final payment based on the real taxable income is then made before the end of September.

Individuals are exempt from paying provisional tax if they do not carry on any business and their taxable income either:

- will not exceed the tax threshold for the tax year
- will not equal or exceed R30 000 from interest, dividends, foreign dividends, rental and remuneration from an unregistered employer for the tax year.

TAXATION OF TRUSTS

Any income received by or accrued to a trust will:

- be taxed in the hands of the beneficiary, if it is for the benefit of a beneficiary with a vested right
- be taxed in the hands of the specified beneficiary, if it is allocated for the benefit of a specified beneficiary; or else
- be deemed to be income which has accrued to the trust

If a resident beneficiary acquires any vested right to an amount that wasn't taxed in the Republic during any tax year, this amount will be included in the income of the beneficiary in the year of assessment.

Any deductions and allowances made in connection with this income will be deemed to have been made by the beneficiary or the trust, as the case may be. Deductions allowed by the beneficiary will only be allowed up to the amount of income received from the trust. The amount not allowed as a deduction for the beneficiary will be allowed

as a deduction for the trust. Again, this will be limited to the amount of the taxable income before the deduction is made. The excess will be deductible by the beneficiary in the next year, against their income from the trust.

The tax rate of all trusts excluding special trusts and testamentary trusts for the benefit of minor children is taxed at 45%.

Personal service trusts will be liable for PAYE at 45% on their income. They will not be allowed any deductions against income except salaries. (For more information on personal service companies and trusts, see the section on companies).

If the founder of the trust lent money to the trust at no or low interest, this will be deemed a donation to the trust. The amount of the donation will be equal to the difference between the interest charged to the trust on the loan account and the official interest rate (currently 8%).

COMPANY TAXES

Companies and close corporations continue to be divided into four groups: normal companies, micro businesses, small business corporations and personal services companies.

NORMAL COMPANIES

Normal companies are taxed at a flat rate of 28% on taxable income.

SMALL BUSINESS CORPORATIONS

Small business corporations are companies or close corporations:

1. whose shareholders are natural persons
2. whose shareholders have no interest in another company other than a listed company
3. which earn a gross annual income of less than R20 million
4. which receive less than 20% of their gross income from investments or personal services
5. which are not personal service providers

Small business corporations will pay no income tax on the first R75 750 of taxable income. The normal rate for companies of 28% will only be applicable to the taxable income exceeding R550 000. (For the full tax rate, see the table at the end of the guide).

MICRO BUSINESSES

A micro business is a natural person or company:

- with a turnover of less than R1 000 000
- whose shareholders (if a company) are natural persons who have no interest in another company (other than a listed company)
- who receives less than 20% of their gross income from investments or personal service
- whose total amount received from the disposal of all immovable property or any other asset of a capital nature used mainly for business purposes (other than any financial instruments) did not exceed R1.5 million over a period of three years (comprising the current year of assessment and the immediately preceding two years)

Micro businesses can elect to pay a turnover tax of between 0% and 3%.

PERSONAL SERVICES COMPANIES

According to the Fourth Schedule to the Income Tax Act, personal services companies will be liable for PAYE at 28% of all income received. The only allowable deduction against taxable income will be salaries. Remaining income will be taxed at 28%.

PARTNERSHIP

A partnership is not deemed to be a separate tax entity. The partners are therefore taxed in their own hands on the income of the partnership. The income received by the partnership is divided among partners in the same proportion as profits and losses.

DOUBLE TAXATION AGREEMENTS

A double taxation agreement is an agreement between South Africa and another country where a formula is created to calculate the tax payable by taxpayers who fall within the tax net of both countries. Currently, South Africa has 67 agreements in place, with 26 others under negotiation.

DIVIDEND TAX

Dividend tax has been increased by 33% from 15% to 20%. A dividend tax of 20% is now levied on any dividend paid by a resident company. Dividends are exempted if the beneficial owner of the dividend is a South African company, a retirement fund or other exempt person.

Dividend tax is a withholding tax and is therefore withheld by the companies paying the dividends or by regulated intermediaries such as stockbrokers.

The dividends of foreign companies are exempted to a certain percentage, based on the recipient.

Portion of foreign dividend exempted	
Nature of taxpayer	Portion exempted
Natural persons and trusts	25/45
Individual policyholder funds	10/30
All others	8/28

The result is an effective maximum rate of 20% of foreign dividends for all taxpayers.

TRANSFER DUTIES

When a natural person acquires fixed property, transfer duty rates are as follows:

Value of property	Rate of tax
R0 – R750 000	0%
R750 001 – R1 250 000	3% on value above R750 000
R1 250 001 – R1 750 000	R15 000 + 6% on value above R1 250 000
R1 750 001 – R2 250 000	R45 000 plus 8% on value above R1 750 000
R2 250 001 – R10 000 000	R85 000 plus 11% on value above R2 250 000
R10 000 001 and above	R937 500 plus 13% on value above R10 000 000

DONATIONS TAX

According to Section 54 of the Act, any person ordinarily resident in the Republic will pay a donations tax on the value of any property disposed of as a donation. Section 64 fixes this rate at 20%. The person liable for the tax is the donor.

There are, however, a few exemptions:

- any donations between spouses
- donations that only come into effect after the donor's death
- property outside the Republic that the donor acquired before becoming ordinarily resident in the Republic, or received from someone who was not ordinarily resident in the Republic
- any donation to a public benefit organisation
- any disposals under a trust
- donations by a public company
- any casual gifts that do not exceed R5 000
- all donations by a natural person not exceeding R100 000 a year
- all donations by a legal person not exceeding R10 000 a year

If the founder of a trust lent money to the trust at no or low interest, this will be deemed a donation to the trust. The amount of the donation will be equal to the difference between the interest charged to the trust on the loan account and the official interest rate (currently 8%).

ESTATE DUTIES

Estate duty will be charged on the dutiable amount of the estate, calculated according to the Act and levied at 20%. Section 2(2) of the Estate Duty Act 45 of 1955.

To arrive at the dutiable estate, you first need to determine the net estate. The net estate includes all assets and deemed assets, from which certain deductions are allowed. From here one arrives at the dutiable estate by deducting the R3.5 million abatement allowed.

ASSETS

Assets include everything normally seen to be assets in your estate. It also includes personal rights that may have expired upon the death of the deceased. The values of these personal rights are determined according to the Act.

DEEMED ASSETS

Deemed assets include all domestic policies on the life of the deceased, less the total amount of all premiums and considerations paid by the person entitled to the proceeds, plus 6% interest p.a.

The only policies excluded are:

- policies taken out under an ante- or postnuptial contract
- policies taken out by a partner, co-member or co-shareholder on the life of the deceased to acquire the share of the deceased (provided that no premium on the policy was paid or borne by the deceased)
- policies which the Commissioner is satisfied were not taken out by or at the request of the deceased, had no premiums paid by the deceased and where no benefits from the policy were paid or are payable to any relative¹ of the deceased or any family² company
- any lump sums received from any retirement or group fund
- property donated with effect after death
- possible accrual claims against a spouse
- property which the deceased was competent to dispose of prior to death

¹Any person related to the deceased or their spouse within the third degree of consanguinity.

²Any company controlled by the deceased, or the deceased and a relative.

DEDUCTIONS

- funeral, tombstone and deathbed expenses
- all debts due
- costs incurred when liquidating and distributing the estate
- all bequests to public benefit organisations
- any possible accrual claims by a spouse
- all bequests to a surviving spouse (the definition of spouse now includes any partners with whom the deceased had a marital-like relationship)

VAT

The VAT Act makes provision for goods and services to be taxed at either 14% or 0%. Certain goods and services are further exempted from VAT. There is a marked difference between goods and services exempted from VAT and those taxed at 0%, as all VAT paid as an input tax on goods and services taxed at 0% can be reclaimed.

GOODS AND SERVICES TAXED AT 0% (SECTION 11 OF THE VAT ACT)

The most imported goods and services are:

- all goods and services exported or used in an export country
- the sale of a business as a going concern
- products used in farming, as described in the Second Schedule to the Act
- a total of 19 basic foods and food groups, as listed in Part B of the Second Schedule to the Act
- illuminating paraffin, petrol and diesel

GOODS AND SERVICES EXEMPTED (SECTION 12 OF THE VAT ACT)

The most imported goods and services are:

- financial services, as defined in the VAT Act
- rent
- the services that a sectional title scheme delivers to members

SKILLS LEVY

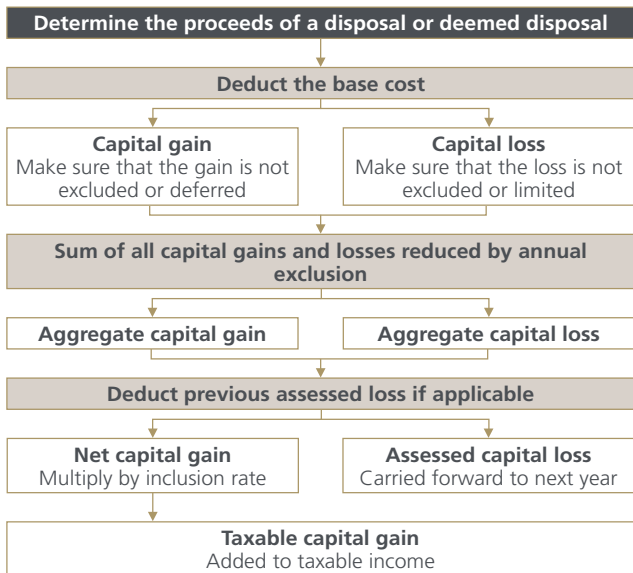
All companies with a payroll exceeding R500 000 must pay a skills development levy. From April 2001, this levy has been set at 1.0% of payroll.

CAPITAL GAINS TAX (CGT)

CGT is payable on the taxable capital gain made after 1 October 2001 on the disposal of any asset held by a South African resident anywhere in the world. Similarly, CGT is payable by non-residents on the disposal of immovable property in South Africa. CGT is triggered by the disposal or deemed disposal of an asset. The taxable capital gain, determined according to the Eighth Schedule to the Act, is included in the taxpayer's taxable income through Section 26A of the Act.

There is an intricate system in place to make sure that only capital gains that accrued after October 2001 are taxed. This will not be discussed in detail in this guide.

CGT is best described using the following flowchart:



Capital gain is the difference between the value at disposal and the value at acquisition. All expenses incurred in acquiring and improving the asset can also be deducted from this. All the gains and losses made on the disposal of assets in the tax year are then added together for the aggregate capital gain or aggregate capital loss. An amount of R40 000 is deducted from this if the taxpayer is a natural person, irrespective of whether it is a gain or a loss.

Assessed capital losses cannot be deducted against taxable income. They must be carried forward to be deducted against future capital gains. Any previous assessed losses are therefore deducted from the total to determine the net capital gain or loss. If this results in a capital gain, it is multiplied by the taxpayer's inclusion rate. The resultant taxable capital gain is added to taxable income. If this results in a capital loss, this assessed capital loss is carried over to the next year.

The inclusion rate for individuals is 40.0% and the inclusion rate for legal persons and trusts is 80.0%.



TABLE A: MOTOR VEHICLE EXPENSES

Cost of vehicle (incl. VAT)	Fixed costs (rand/year)	Fuel costs (c/km)	Maintenance costs (c/km)
R0 - R85 000	R28 492	91.2c	32.9c
R85 001 - R170 000	R50 924	101.8c	41.2c
R170 001 - R255 000	R73 427	110.6c	45.4c
R255 001 - R340 000	R93 267	118.9c	49.6c
R340 001 - R425 000	R113 179	127.2c	58.2c
R425 001 - R510 000	R134 035	146.0c	68.4c
R510 001 - R595 000	R154 879	150.9c	84.9c
R595 000 plus	R154 879	150.9c	84.9c

TABLE B: COMPANY TAXES

Company taxes	Tax
Normal companies	28% of taxable income
Small business corporations	
R0 - R75 750	0%
R75 751 - R365 000	7% above R75 750
R365 001 - R550 000	R20 248 + 21% of amount above R365 000
R550 001 and more	R59 098 + 28% of amount above R550 000
Personal services companies	28% of taxable income
Turnover tax for micro businesses	
R0 - R335 000	0% of taxable turnover
R335 001 - R500 000	1% of taxable turnover above R335 000
R500 001 - R750 000	R1 650 + 2% of taxable turnover above R500 000
R750 001 and more	R6 650 + 3% of taxable turnover above R750 000

TABLE C: RATES AND REBATES CURRENT YEAR 2017/2018

All persons (including deceased estates) other than companies and trusts, but including special trusts³

Taxable income	Rate of tax
R0 – 189 880	R0 + 18% of each R above R0
R189 881 - R296 540	R34 178 + 26% of each R above R189 880
R296 541 – R410 460	R61 910 + 31% of each R above R296 540
R410 461 - R555 600	R97 225 + 36% of each R above R410 460
R555 601 - R708 310	R149 475 + 39% of each R above R555 600
R708 311 – R1 500 000	R209 032 + 41% of each R above R708 310
R1 500 000 +	R533 625 + 45% of each R above R1 500 000

Trusts other than special trusts

Taxable income	Rate of tax
All income	45% flat rate

Rebates

Primary	Secondary	Tertiary
R13 635	R7 479	R2 493

Tax thresholds

Age	Tax threshold
Below age 65	R75 750
Age 65 to below 75	R117 300
Age 75 and over	R131 150

³ A special trust is one created solely for the benefit of a person who suffers from a mental illness or serious physical disability which incapacitates such person from earning sufficient income to maintain themselves.



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