

**DOING
BUSINESS
IN**

South Africa



HLB South Africa

*doing business in
South Africa*

foreword

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HLB Barnett & Associates Incorporated
Registered Public Accountants and Auditors

about HLB International

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Location, Population and Climate

South Africa occupies the southern tip of Africa. Its long coastline stretches more than 2500km from the desert border with Namibia on the Atlantic coast southwards around the tip of Africa and then north to the border with subtropical Mozambique on the Indian Ocean coast. The country has a surface area of 1 219 080 km and is five times the size of Great Britain and almost as large as the combined areas of France, Italy, the Netherlands, Belgium and the former West Germany.

The estimated population of South Africa is 44.8 million people (per the 2001 census).

There are ten major ethnic groups making up the black population of South Africa. They are Xhosa, Zulu, Swazi, South Ndebele, North Ndebele, North Sotho, South Sotho, Tswana, Shangaan and Venda.

South Africa presently consists of nine provinces – Eastern Cape, Free State, Gauteng (being the most densely populated province with 8.8 million people occupying only 1.4% of the country's land area), KwaZulu-Natal (being the most populated province with 9.4 million people), Mpumalanga, Northern Cape, Northern Province, North West Province and Western Cape.

South Africa has a very healthy, varying and invigorating climate and is often considered to be one of the best in the world. Warm and temperate conditions prevail and the average number of hours of sunshine a day throughout the year ranges from 7,5 to 9,4.

Constitution and Government

A constitutional democracy with a 3-tier system of government governs the country; national, provincial and local, each with its own executive and legislative authority.

Languages and Currency

The currency unit of South Africa is the Rand (100c = R1). This is the currency of the Common Monetary Area which comprises South Africa, Namibia, Lesotho and Swaziland. South Africa is a multi-lingual country and there are eleven official languages in the new South Africa. These are English, Afrikaans, Zulu, Xhosa, Sesotho, Siswati, Tsonga, Venda, Pedi, Setswana and Ndebele. The most widely spoken language is Zulu, which is followed by Xhosa and then Afrikaans. Afrikaans is the most widely understood. English is the main language of business.

Legal System

The present legal system is referred to as Modern Roman-Dutch law which combines some of the best features of Roman Law in Europe, with the finest aspects of the common law of England.

South African courts are independent, subject only to the constitution and the law. The Constitutional Court, located in Johannesburg, rules on constitutional matters. It is composed of a president and ten justices, six of whom are appointed by the president on the advice of the Judicial Service Commission (an advisory body for national and provincial judicial matters). The other four justices are appointed by the president from among the judges of the Supreme Court in consultation with the chief justice.

The Supreme Court of Appeal (situated in Bloemfontein) is the highest court in all but constitutional matters. It is composed of a chief justice and a number of judges of appeal. Below the Supreme court of Appeals are High Courts and Magistrates' Courts.

Economy Overview

South Africa offers a stable political system, robust institutions, modern infrastructure, upward growth rate, strong investment ratings and opportunities for Africa!

South Africa's economy has been in an upward phase of the business cycle since September 1999 – the longest period of economic expansion in the country's recorded history. During this upswing – from September 1999 through to June 2005 – the annual economic growth rate averaged 3.5%. In the decade prior to 1994, economic growth averaged at less than 1% per year.

According to the South African Reserve bank, there is no sign of this period of expansion coming to an end. Gross domestic product (GDP) growth was running at an annualised 4.8% in the second quarter of 2005 compared to 3.7% in 2004 and 2.8% in 2003.

Consumer inflation has been on a downward trend since 2002, when the consumer prices increased to an average of 9.3% following the September 11 tragedy in New York. Consumer inflation averaged at 6.8% in 2003 and 4.3% in 2004 – compared to 9.8% in 1994.

At the same time, prudent fiscal management has seen South Africa's budget deficit come down from 5.1% of GDP in 1994 to 2.3% of GDP in 2004. In the first quarter of 2005, this figure fell to 1.6%, with the South African Revenue Service collecting nearly US\$3.5 billion more than expected.

The source of the revenue windfall was not due to higher individual or corporate tax rates – both have fallen since 1994 – but the performance of the economy, consumer confidence and a dramatic increase in the number of registered taxpayers, from 2 million in 1994 to more than 5 million in 2004. South Africa leads the continent in industrial output (40% of total output) and mineral production (45%). It also generates more than 50% of Africa's electricity.

Its major strengths include its physical and economic infrastructure, natural mineral and metal resources, a growing manufacturing sector, and strong growth potential in the tourism, higher value-added manufacturing and services industries.

South African banking regulations rank among the best in the world. The sector has long been rated among the top 10 globally. There are 55 locally controlled banks, 12 foreign-controlled banks and five mutual banks. Some of the world's leading institutions have announced their intention to enter the local banking sector through mergers and acquisitions.

The Johannesburg Securities Exchange rules and their enforcement are based on the global best practice, while the JSE's automated trading, settlement, transfer and registration systems are equal to any in the world.

Black Economic Empowerment (BEE)

When the African National Congress (ANC) came to power in South Africa in 1994, it identified black economic empowerment as a major vehicle for addressing the economic injustices of apartheid. However, questions have been raised as to whether the current process has not resulted in the enrichment of an elite few rather than empowerment of the millions who still remain excluded from participating in the economy.

President Thabo Mbeki's government has repeatedly referred to South Africa's "two economies in one country"; on the one hand an advanced, sophisticated economy based on skilled labour, which is becoming more globally competitive; on the other a mainly informal, marginalised, unskilled economy populated by those unemployable by the formal sector.

In its policy document, "South Africa's Economic Transformation: A strategy for Broad-Based Black Economic Empowerment", the government noted that apartheid systematically and purposefully restricted the majority of South Africans from meaningful economic participation.

"The period since 1994 has seen the South African economy undergo profound restructuring", the report stated. "Ten years on consistent economic growth has been recorded. Macro-economic stabilisation has largely been achieved, providing a platform for accelerating the growth rate. The economy has become increasingly integrated into global markets, and has become a successful exporter of manufactured goods and value-added services".

This has been accompanied by various legislative steps to scrap the last vestiges of apartheid law, which reserved certain jobs for whites, and encouraged companies to diversify their ownership profile in order to tender for state business.

Black Economic Empowerment charters for the mining and financial sectors were recently announced and most big businesses have come to realise the importance of changing their ownership profile.

In recent years, a flurry of BEE equity deals have been concluded and one of the most recent and significant, being the sale of a 10% stake in one the country's big four banks, ABSA, to a BEE consortium.

investment factors

Special Features

South Africa was rated the most competitive economy in the sub-Saharan region and the most attractive country in Africa to invest in by the World Economic Forum's 2004 Annual Global Competitiveness Index.

A decade of comprehensive institutional reform and sound economic management has also been rewarded with solid credit ratings, implying less risk for investors and cutting the cost of capital for the country's public and private sector borrowers.

Now, more than ever before, South Africa has many attractions for the foreign investor:

- South Africa is the most advanced country both technologically and economically in Africa;
- It has between 60 and 70 percent of Africa's railway lines;
- It possesses seven superb deep water ports. These, together with its airports, contribute in no small measure to its claim to be the gateway to sub-Saharan Africa;
- The steady increase in the living standards of the black population, together with the massive urbanisation of that market, have resulted in its being recognised as possessing an enormous amount of disposable income and being responsible for the major share of consumer spending;
- The country has a highly sophisticated transport infrastructure, which is constantly being improved;
- Communications are efficient and improved technologies are continually being introduced to the system;
- Primary and secondary industries are both modern and competitive and the most advanced technologies are employed;
- The country is endowed with a fabulous store of natural mineral resources;
- South Africa's vast proven coal reserves have more than made up for its lack of oil;
- The country is acknowledged as a world leader in "oil from coal" technology with three huge plants presently in operation together with an "oil from off-shore natural gas" operation;

- The country's first nuclear power station came on stream in 1984;
- South Africa is today a net exporter of energy;
- The country's climate is probably one of the best in the world with mainly temperate conditions all year round;
- Situated as it is on the African continent, South Africa is ideally placed to export to any part of the world.

No government approval is required for foreign investors to establish a new business in South Africa apart from the approval required under the Exchange Control regulations. The investor will be required to appoint consultants/auditors/legal advisors to register a company on his/her behalf. The company should be registered within 21 days; it should also register for tax. In South Africa, there are no locations where a foreign-owned business is prohibited or investment is officially discouraged.

The forms, which are to be filled in by an investor, are simple and user friendly. The whole process from beginning to end on average may take six months but if done through Trade and Investment South Africa it can be finalised within one month. Trade and Investment South Africa is a one-stop shop to help investors with issues relating to exports and investment

South Africa actively encourages direct and indirect investment by non-resident persons and companies. Virtually all business activities are open to foreign investors and there are generally no restrictions on foreign investment. Restrictions would usually relate to a particular industry and be applicable both to residents and non-residents.

Very few restrictions only apply to foreign companies. For example, a foreign bank establishing a branch in SA may be required to employ a certain minimum number of local residents in order to obtain a banking licence and may be obliged to have a minimum capital base. Restrictions also exist regarding the ownership of immovable property by foreign companies. Foreign companies are required to register as external companies before immovable property may be registered in their names.

Government Incentives

Foreign Investment Grants

The Foreign Investment Grant (FIG) is a cash grant to assist foreign investors with the cost of relocating new machinery and equipment from overseas to South Africa. The cash grant is paid out on a disbursive basis. New machinery and equipment qualify for the assistance. The scheme is available to foreign investors with a shareholding of at least 50%. Applicants will only be supported if they also qualify for the Small and Medium Enterprise Development Programme. Only new machinery will be supported.

The grant is the lower of 15% of the value of the new machinery and equipment or the actual relocation costs, up to a maximum of R3 million.

Other investment incentives available, are as follows:

- Strategic Investment Programme (SIP)
- Small Medium Enterprise Development Programme (SMEDP)
- Skills Support Programme

Sources of Finance

There is a restriction on the local borrowings of business entities, which are 75% or more owned or controlled by non-residents. Local borrowings include overdrafts, local discounting, financial leasing of capital equipment, mortgage bonds, preference shares and debentures not subscribed for by equity shareholders, and local shareholders' loans. To the extent that the local shareholders lend more than the foreign shareholders proportionate to their respective shareholdings, the excess would also be local borrowings. Excluded from the restriction is normal commercial credit for the sake of goods and services rendered.

The level of local borrowing is limited to a percentage of "total effective capital". "Effective capital" is essentially the net worth of the company, together with shareholders' loans (which are regarded as investment funds) and "hard-core" trade credit extended to the company by non-resident shareholders. Local shareholders' loans are excluded from effective capital, to the extent that they exceed the proportionate foreign shareholders' loans.

Although these local borrowing restrictions are for the most part strictly applied, the authorities adopt a more flexible approach for businesses that are established in decentralization areas, have a substantial import substitution or export potential, or have a large local employee component. The banking system in SA is highly developed and is closely regulated to protect the interests of investors. The banking system consists of a central bank, a few large financially strong institutions, a few smaller institutions, and branches or representative offices of foreign banks.

The Industrial Development Corporation (IDC) is a state-owned corporation that provides financial assistance to foreign and local entrepreneurs for industrial development.

The IDC is often prepared to make an equity investment or enter into joint ventures with foreign investors.

The Small Business Development Corporation (SBDC) is a joint venture between the government and the private sector, aimed at providing finance and support for the small local and foreign business.

In addition to the IDC and SBDC, the Development Bank of South Africa, Land Bank and various regional development corporations provides financial assistance for economic development.

Foreign Exchange Controls

Exchange controls have effectively been abolished in relation to non-residents, and the Government is pursuing a policy of gradually relaxing the remaining exchange controls applicable to residents. Exchange control was introduced in order to stem the outflow of capital from South Africa, and to ensure a measure of stability in current markets.

Generally, there are no restrictions on inward or outward transfer of funds of which non-residents are the beneficial owners. For exchange control purposes, non-residents are persons not resident in

South Africa and non-South African companies, excluding external companies registered in South Africa. Capital invested in South Africa can be freely returned abroad, as can capital and revenue profits, for example, dividends and branch profits.

There is generally no limit on the remittance of commissions, director's fees, technical service payment, management fees, or the purchase of technology, although certain restrictions may apply when these payments are made within group companies. Where management fees are paid to a non-resident group company, invoices based on time spent will be required. Non-residents are permitted to maintain foreign currency accounts with South African Banks. If a South African company is 100% owned by non-residents, there are certain requirements that need to be satisfied before a non-resident can transfer his/her profits without any restrictions.

The Remaining Exchange Control Restriction

The Reserve Bank of South Africa, assisted by authorised dealers in foreign exchange, administers the remaining exchange control restrictions.

Restrictions still exist with regard to local borrowing by foreign-held companies, but these are not onerous and are intended merely to ensure that local borrowings are not exploited so as to permit large-scale remittances of profits on minimal capital investments. If a non-resident grants a loan to a South African resident, the South African debtor is required to obtain approval for the amount and the interest rate, to ensure that the interest is freely remittable.

Employment Regulations

Non-residents entering SA for business purposes require a business visa, which is issued at a South African Representative Office in the applicant's country of residence or at the airport on arrival in South Africa. A business visa is issued for relatively short periods. Work permit matters relating to residence in general are administered by the Department of Home Affairs.

Non-residents must apply for work permits prior to commencing employment in South Africa. It is generally not difficult to obtain a work permit provided employment of a non-resident as opposed to a South African resident can be justified. A work permit will be issued for a twelve-month period after which it must be renewed at the nearest office of the Department of Home Affairs.

There are a number of statutes which govern labour relations in South Africa. In the main, they are based on certain international models. These statutes provide for the regulation of employment conditions and the resolution of labour disputes. They govern the organisational rights of trade unions, collective bargaining, employee participation, strikes, lockouts, termination of employment as well as reinstatement, if applicable.

Some of the specific acts that govern employment in South Africa are The Unemployment Insurance Fund no.63 of 2001, The Basic Conditions of Employment Act 1997 as amended, Occupational Health and Safety Act no.85 of 1993 and the Employment Equity Act no.55 of 1998. These labour laws reduce the level of worker disputes and strikes.

The Congress of South African Trade Unions (COSATU) was founded in 1985. Since then COSATU has been in the forefront of the struggle for democracy and workers' rights. COSATU is a partner in the Tripartite Alliance together with the African National Congress and the South African Communist Party. It is a major trade union in the country with membership of just over 1.8 million.

Employment Equity Act

The Act applies to all employers, workers and job applicants with the exception of the National Defence Force, the National Intelligence Agency and the South African Secret Service.

The provisions for affirmative action apply to the following:

- Employers with 50 or more workers or whose annual income is more than R5 million.
- Municipalities and organisations of the State.

The main purpose of the Act is firstly to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination and secondly, to implement affirmative action measures to readdress the disadvantages in employment experience by designation groups, in order to ensure their equitable representation in all occupation categories and levels in the workforce.

types of business organisation

Principle Forms of Business

Individuals, partnerships of individuals, trusts, close corporations, South African companies or branches of foreign companies may conduct business enterprises in South Africa. Factors such as, the duration of business activities, the type of business capital requirements, income tax requirements, accounting requirements and number of members, etc., will all be taken into account in determining the cost effective method of operation.

The most common vehicle for conduct of business operations in South Africa is the limited company and there is no minimum equity capital requirement for companies.

Formation Procedures

Companies

All companies are subject to the provisions of the Companies Act 1973, as amended, which follows closely on British company legislation. Various types of companies are contemplated by the Act:

Limited companies

- with a share capital
- without a share capital and having the liability of its members limited by its Memorandum of Association.

Unlimited companies

- A company's memorandum may provide for unlimited liability of its directors
- Incorporated professional partnerships fall into this category and are required to have the "Incorporated" at the end of their names. This type of company can only be formed where the professional body allows it.

Public and Private Companies

Companies having a share capital are either "Private" – (Proprietary) Limited or "Public" – Limited. A "private" company is a company, which by its Articles of Association:

- restricts the right to transfer its shares
- prohibits any offer to the public of its shares and debentures.

A "public" company is generally one which wishes to raise capital from the public, and therefore the above restrictions applicable to a private company are absent.

Establishment of a South African Company

The Registrar of Companies (whose office is situated in Pretoria) administers the Companies Act. Incorporation is achieved by:

- Reserving the company's name with the Registrar of Companies. It is advisable to put forward alternative names, in order of preference, when making application. Stamp duty for reserving a name is R50. The name of the company must be in line with its main object.

Lodging the memorandum and articles with the Registrar of Companies. The memorandum must state, inter alia:

- the name of the company;
- the company's main object. It can, however, contain unlimited ancillary objects;
- the amount of share capital (authorised capital). It is not necessary to issue shares to the full amount of the authorised capital.

Lodging the written consent of the auditors. Lodging a return of directors and officers, i.e. secretary (if applicable) and all directors. A standard form of memorandum and articles, which can be adapted to the company's individual needs if necessary, is available. Registration takes approximately a month from date of lodging.

External Companies (Branch of a Foreign Company)

As an alternative to the registration of a South African company, a branch of a company incorporated outside South Africa can establish a place of business in South Africa and become registered as an external company.

In order to achieve the registration of an external company as a branch of a foreign company, the following is required:

Three notarially certified copies (each page to be certified) of the company's memorandum and articles of association (the company's legal constitution) must be lodged with the Registrar of Companies in Pretoria.

If the memorandum and articles of association are not in one of the official languages of South Africa, three notarially certified translations thereof (each page to be certified) must be lodged with the Registrar.

A certificate from the translator certifying that he is a qualified translator (if applicable).

A certificate from the notary certifying that he is a qualified notary.

Names and personal details of the directors of the company.

The consent of the auditor of the company's branch in South Africa.

The name and personal details of a South African resident who is authorized to accept service on behalf of the company.

The year end of the foreign company.

The issued share capital of the foreign company.

A South African resident Public Officer, who will be responsible for all tax affairs of the company (submitting returns, VAT, PAYE, etc.), is also required.

Shareholders

The minimum number of shareholders for a private company is one and the maximum is fifty. The minimum number of shareholders for a public company is seven. It is not necessary for any shares to be held by a South African resident.

Share Capital

Par value shares can be of any denomination and no par value shares are permitted. Different classes of shares are permitted with different rights. There is no minimum amount of share capital, which must be subscribed for by the shareholders. Foreign investors should take note of the exchange control restrictions relating to local financial assistance which apply to foreign controlled South African resident companies. Shares may be issued at par value or at a premium.

Directors

Minimum number of directors for a public company is two.

Minimum number of directors for a private company is one.

Directors need not be resident in South Africa.

For ease of administration, a South African resident director is desirable if only for the signing of returns, etc.

A director may, depending on the articles of association, appoint an alternate director to act in his place and stead.

Company Secretary

A public company must appoint a company secretary who is responsible for the company secretarial duties of the company. The Companies Act does not require an appointed secretary for a private company.

Public Officer

Every company must appoint a South African resident to be its Public Officer who will be responsible under the Income Tax Act for all the company's tax affairs.

Registered Office and Postal Address

Every company and external company must have a "registered office" in South Africa which is a street location.

The Registrar of Companies must also be notified of the postal address of every company and external company.

The statutory registers etc. of the company must be kept at the registered office of the company unless, the Registrar of Companies is otherwise notified.

Financial Statements

All companies, including external companies, must keep proper financial records and prepare annual financial statements that comply with South African Statements of General Accepted Accounting

Practices or International Financial Reporting Statements.

Their annual financial statements must be subject to independent audit.

Only public companies and external companies are required to lodge their annual financial statements with the Registrar of Companies to lie open for public inspection.

External companies must also lodge the financial statements of the foreign company as a whole. Exemption from lodging annual financial statements for an external company can be applied for on various grounds – the fact that disclosure would be harmful to the company may be an acceptable reason.

Financial Year

On incorporation, a company must choose a date on which to close its financial year. A subsidiary must have the same financial year-end as its holding company. Changes can, however, be effected subsequently, provided the Registrar is notified before the current year-end.

Annual general Meetings

Every company (except an external company) must hold an Annual General Meeting. The first Annual General Meeting must be held within eighteen months of the date of incorporation.

Subsequently Annual General Meetings must be held within nine months (depending on the articles of association) of the year-end of the company and within fifteen months of the preceding Annual General Meeting.

Annual returns

The lodging of an annual return for public and external companies registered in South Africa came into effect in 2003 and has now been amended, to include private companies registered in South Africa, as from May 2005. The duty, payable to the Registrar of Companies, is based on the type of entity and the annual turnover. It is payable by the end of the month following the company's incorporation anniversary and calculated as follows:

- Public and External companies – R4000.00
- Private companies with an annual turnover under R10 million – R450.00
- Private companies with an annual turnover of more than R10 million but under R50 million – R2500.00
- Private companies with an annual turnover exceeding R50 million – R4000.00

Stamp Duty - Shares

On incorporation, stamp duty is payable on the authorized share capital. Further duty is payable on any increase of authorized share capital. The rate is R5.00 per R1000 created or increased.

Issued Share Capital

Stamp duty on the issue of shares (subscribed for or fresh issue) is payable at a rate of 5c per R20.00 or part thereof, (0.25%) on the par value plus premium (if any) within a month of issue of share certificate.

On no par value shares, the duty is payable on the value attributed to the shares.

Transfer of Shares

Transfer duty is payable at a rate of R0.025 per R10.00, (0.25%) on the consideration paid or market value of the shares. This is payable within 6 months of the date of transfer or a penalty of 3 times the amount is incurred.

Costs

The cost of incorporating a South African company in December 2001 was approximately R4,000. This amount does not include stamp duty.

Shelf Companies

HLB Barnett & Associates Inc. forms and holds shelf companies for the convenience of their clients. The advantage of this, is that the company is already registered, has a registration number and is available immediately. The relevant details can be changed accordingly.

Registration Number

A company must display its registration number on all official stationery and documentation.

Close Corporations

Close corporations are a form of business enterprise designed for ease of operation. The Close Corporation Act of 1984, as amended, the provisions of which commenced on 1 January 1985, regulates them.

Nature of Close Corporation

A close corporation is a simple business entity with a separate legal status from its members or owners. It indicates its status by displaying the letters CC or BK after its name. Close corporations must display their registration numbers on all official stationery and documentation.

The Act and Regulations

The Registrar of Close Corporations, whose offices are in Tswane, administers the Act. The Close Corporation Act and its regulations are expressly designed to be relatively simple to administer for ease of operation.

Membership

Only natural persons may be members of a close corporation. The maximum number of members is 10. No company or other juristic person can directly or indirectly (whether through a nominee or otherwise) hold a member's interest in the corporation. The names and initials of all members must appear on all official stationery of the corporation.

Interest of Members

Close corporations do not have share capital. Members hold an interest in the corporation.

A member's interest is expressed as a percentage of the total members' interest.

A certificate of membership is issued to each member showing that member's interest. A member acquires his interest by either making a contribution in cash, or by way of property (both corporeal and incorporeal), or for services rendered or by purchase from an existing member.

The Founding Statement and Incorporation

Incorporation is simple:

The name must be reserved with the Registrar of Close Corporations. It is advisable to put forward alternative names, in order of preference, when making application. Stamp duty for reserving a name is R50. The close corporation's name must be in line with its main object. The founding statement must be lodged with the Registrar of Close Corporations. Stamp duty for this is R100. A Certificate of Incorporation is returned. This Certificate of Incorporation must be kept at the registered office and be available for inspection during office hours.

Association Agreement

A close corporation having more than one member, may, if it so desires, have an association agreement. The agreement would regulate the internal affairs of the corporation. Such an agreement does not imply that outsiders have constructive knowledge thereof. It is of no force and effect on third parties.

Meetings and Minutes

The corporation must keep minutes of all meetings. The rules for meetings are similar to those of companies or other like bodies.

Accounting Requirements

A close corporation is required to keep adequate and proper books and records of account. A close corporation must have a financial year-end. Annual financial statements must be drawn up within nine months of the year-end.

Accounting Officer

Close corporations are not subject to any independent audit provisions. An accounting officer who is responsible for the accounting functions of the corporation and for drawing up the annual financial statements, must be appointed.

Liability of Members

Under certain circumstances, members of a close corporation may become liable to both the corporation, its members and third parties, either individually or jointly and severally. The liability would arise mainly from:

- omissions by the member;

- his deliberate acts in contravention of the law governing close corporations.

Taxation

The main points concerning the taxation of a close corporation are:

- A close corporation is taxed exactly as if it were a company.
- Tax is levied at the corporate rate, which is 29%;
- Distributions are subject to the Secondary Tax on Companies which was 12,5% in September 2005.

Costs

The cost of forming a close corporation is approximately R2,000.

taxation

Fiscal Year

Income tax is an annual tax; therefore it is one's income over each twelve-month period that is subjected to (or assessed for) tax.

Most individuals have a 'year of assessment' running from 1 March to the last day of February. Certain farmers, fishermen and diamond diggers who have so elected, have a year of assessment ending on 30 June.

The 'year of assessment' of a company coincides with its financial year. So that if a company draws up its financial statements to 30 June each year, its year of assessment, or tax year, will run from 1 July to 30 June.

In the year in which the company is formed, its tax year will run from the date of incorporation to the last day of the following February, unless permission has been granted for the financial statements of the company to be drawn up to a different date.

General Structure

In South Africa, every natural person or business entity deriving taxable income is liable to pay tax. Therefore individuals, companies, close corporations, estates of insolvent persons, estates of deceased persons, clubs, associations, trusts and other legal entities with a taxable income will pay income tax.

The distinction between residents and non-residents lies in the different ways in which gross income is arrived at.

- The gross income of a resident is the total amount, in cash or otherwise, derived by the resident. The word 'derived' is used here as meaning 'received by or accrued to or in favour of'.
- The gross income of a non-resident is the total amount, in cash or otherwise, derived by the non-resident from a source within or deemed to be within South Africa.

In other words, while residents pay tax on their worldwide taxable income, non-residents pay only on that part of their income having either an actual or deemed source in South Africa. It follows that the definition of a resident is central to the tax system.

For legal entities such as companies and trusts, the definition is simple, since such a person will be resident here when it is incorporated, established or formed in South Africa or when it has its place of effective management here.

In order for a natural person to be a 'resident', he or she must be ordinarily resident in South Africa. What this requirement is taken to mean, is that the person has his or her principal residence here, and that this is the residence to which he or she returns from his or her wanderings. It does not matter who actually owns such residence.

Capital Gains Tax (CGT)

Capital gains Tax was introduced from 1 October 2001. Residents will be subjected to the tax on disposal of their assets held worldwide, while non-residents will be taxed on the disposal of certain assets in South Africa. 'Assets' include property of whatever nature, whether movable or immovable, corporeal or incorporeal.

Only gains incurring after 1 October 2001 will be subject to the tax, which will be levied on a realisation basis. Realisation occurs on disposal of an asset. Death, emigration and donation of an asset are deemed to be disposals.

The first R10 000 a year of capital gain or loss realised by individuals, will be excluded from CGT. Certain exemptions will apply to primary residences, personal use assets, assurance and retirement benefits, assets of a small business disposed of for retirement, compensation for personal injury, lottery receipts, foreign currency converted for personal use, diplomats and diplomatic missions and gains arising on assets donated to certain public-benefit organisations.

Capital gains will be taxed with other income, with a portion of the net capital gain being included in taxable income, depending on the nature of the taxpayer.

Personal Tax

All income you receive or to which you become entitled to during the tax year, is taxable, whether it is derived in cash or in kind. Income derived other than in cash is generally valued at market value on the day you became entitled to it.

Once you have calculated your taxable income, the next step is to calculate the tax on your taxable income in accordance with the table below.

TAXABLE INCOME		RATES OF TAX
R 0 - R 80 000		+ 18% of each R1
R 80001 – R130 000	R14 400	+ 25% of the amount over R80 000
R130 001 – R180 000	R26 900	+ 30% of the amount over R130 000
R180 001 – R230 000	R41 900	+ 35% of the amount over R180 000
R230 001 – R300 000	R59 400	+ 38% of the amount over R230 000
R300 001 and above	R86 000	+ 40% of the amount over R300 000

Taxpayers who are natural persons calculate their liability for tax by deducting the rebates to which they are entitled from the tax according to the table below.

REBATES

NATURAL PERSONS

	2005	2006
Primary rebate	R 5 800	R 6 300
Additional rebate (applicable to taxpayers 65 years and older)	R 3 200	R 4 500

TAX THRESHOLD

TAXABLE INCOMES ON WHICH NO TAX IS PAYABLE

	2005	2006
Natural persons under 65	R32 222	R35 000
Natural persons 65 years and older	R50 000	R60 000

Corporation Tax

Companies pay both income tax on their taxable income and secondary tax on companies on certain dividends or deemed dividends declared by them on or after 17 March 1993. In general, the taxable income of a company is arrived at in the same way as that of an individual, namely, 'gross income' of a company less its exempt income is its 'income', and the balance remaining after the deduction from its income of all the deductions to which it is entitled is its 'taxable income'. The taxable income of a company includes all the business profits, rents, interests, royalties and other income it derives elsewhere.

Companies pay income tax at the rate of 29c in R1 of their taxable income. Also payable is Secondary Tax on companies, at the rate of 12,5% of the net amount of dividends declared, or deemed to be declared. Special rules apply to gold-mining companies and long-term insurance companies.

Other Taxes

Withholding Taxes

Royalties paid to non-residents are subjected to a withholding tax of 12% unless a double taxation agreement applies. In other words, the person paying the royalty is obliged to withhold tax at the rate of 12% of the royalty. The tax becomes payable 14 days after the end of the month in which the liability to pay the royalty was incurred. This is not a final tax and an adjustment may be required on assessment.

Double Taxation Agreements

As a consequence of the change to a residence basis of tax, together with the fact that many of South Africa's trading partners are countries which have a residence basis of tax, the problem of international double tax has to be addressed.

International double taxation can generally be defined as the imposition of comparable taxes in two or more States on the same taxpayer in respect of the same subject matter.

South Africa has entered into double taxation agreements with most of its trading partners, including:

Austria, Belgium, Canada, Cyprus, Denmark, France, Germany, India, Ireland, Israel, Italy, Japan,

Korea, Malta, Mauritius, The Netherlands, Norway, Singapore, Sweden, Switzerland, Taiwan, Thailand, the United Kingdom and the United States of America.

Stamp Duty

And Transfer Duties

There are numerous rates of stamp duties that apply to various transactions, the most important being :

Immovable Property

Transfer duty is payable if property is purchased by natural persons on or after 1 March 2004 as follows:

- on the first R150,000 of purchase consideration = 0%
- between R150,000 and R320,000 = 5%
- Thereafter R8,500 plus 8%

Transfer duty is payable if property is purchased by Companies, Close Corporations and Trusts after August 1996 at a flat rate on full purchase consideration at 10%.

With effect from 13 December 2001, transfer duty on the sale of shares of a legal entity owning residential property will be payable at the prevailing rate on the sale of a residential property

Shares and Debentures

ORIGINAL ISSUE:

R0.05 for every R20 or part thereof of the nominal value plus any premium

INCREASE IN AUTHORISED SHARE CAPITAL :

R5.00 for every R1,000 or part thereof of the nominal value.

REGISTRATION OF TRANSFER

R0.025 for every R10 or part thereof of the consideration (if transfer is delayed for more than 6 months, duty payable is at 3 times normal duty)

REGISTRATION OF TRANSFER THROUGH STOCK BROKERS :

- Marketable securities tax on consideration paid 0,25%

Value Added Tax (VAT)

VAT is an indirect tax, which is largely directed at the domestic consumption of goods and services and at goods imported into South Africa. The tax is designed to be paid mainly by the ultimate consumer or purchaser in South Africa. It is levied at two rates, namely a standard rate (currently 14 percent) and a zero rate (0 percent).

Supplies which are charged with tax at a zero rate are primarily supplies of goods or services which are exported from South Africa. Standard rated and zero rated supplies are known as taxable supplies. Other supplies are known as exempt and non-supplies.

Very few business transactions carried out in South Africa are not subject to VAT. The tax is collected by businesses which are registered as vendors with the South African Revenue Service, on all taxable supplies throughout the production and distribution chain. Sales or supplies by non-

vendors are not subject to VAT. Under the VAT system, vendors normally pay VAT on expenses (input tax) and charge VAT on supplies made (output tax).

This mechanism, therefore, ensures that only the so-called 'added-value' is taxed. Due to VAT being a self-assessment system, the output tax collected may be reduced by input tax paid. Thereafter, the net amount is payable to, or refundable by, the South African Revenue Service. The self-assessment returns are due regularly within prescribed periods (tax periods).

