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Budget 2019/20 Tax Guide

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Income Tax: Individuals and Special Trusts

Tax Rates (year of assessment ending 29 February 2020)

Taxable income	Rates of tax
R	**R**
0 - 195 850	18% of each R1 of taxable income
195 851- 305 850	35 253 + 26% of the amount above 195 850
305 851- 423 300	63 853 + 31% of the amount above 305 850
423 301- 555 600	100 263 + 36% of the amount above 423 300
555 601 - 708 310	147 891 + 39% of the amount above 555 600
708 311 - 1 500 000	207 448 + 41% of the amount above 708 310
1 500 001 and above	532 041 + 45% of the amount above 1 500 000

Tax Thresholds

Age	Threshold (R)
Below age 65	79 000
Age 65 to below 75	122 300
Age 75 and older	136 750

Trusts, other than special trusts, will be taxed at a flat rate of 45%.

Tax Rebates (natural persons)

- Primary rebate – R14 220
- Secondary rebate (age 65 to below 75) – R7 794
- Tertiary rebate (age 75 and older) - R2 601

Individuals that must submit tax returns

The Commissioner gives annual public notice of the persons who are required to submit tax returns for normal tax purposes. A KPMG Tax Alert describing the persons who must submit an income tax return for the 2019/2020 tax year of assessment will be issued once the relevant Government Gazette has been published (expected to be in June 2019).

Capital Gains Tax (CGT): Individuals

Exemptions / Exclusions from CGT
Inclusion rate: 40%
Statutory rate: 0% - 45%
Effective rate: 0% - 18%

Exemptions / Exclusions from CGT

- Annual exclusion for individuals and special trusts: R40 000.
- Exclusion granted to individuals during the year of death: R300 000.
- Exclusion on disposal of a primary residence: R2 million.
- Exclusion on disposal of a small business for persons 55 years and older is R1.8 million provided that the market value of the business does not exceed R10 million.

Allowances and deductions

Subsistence Allowances and Advances

Where the recipient is obliged to spend at least one night away from his/her usual place of residence on business, and the accommodation to which that allowance or advance relates is in South Africa, and the allowance or advance is granted to pay for:

- Meals and incidental costs, an amount of R435 per day is deemed to have been expended.
- Incidental costs only, an amount of R134 for each day which falls within the period is deemed to have been expended.

Overseas costs: The applicable rate per country is available on the SARS website. Legal Counsel/Secondary Legislation/ Income Tax Notices/ 2019.

Travel Allowance

A log book confirming business kilometres travelled must be maintained in order to claim a deduction against the travel allowance.

PAYE must be withheld by the employer on 80% of the allowance granted to the employee. The withholding percentage may be reduced to 20% if the employer is satisfied that at least 80% of the use of the motor vehicle for the tax year will be for business purposes.

No fuel and/or maintenance costs may be claimed if the employee has not borne the full cost thereof (e.g. if the vehicle is covered by a maintenance plan).

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

Alternative simplified method:
Where an allowance or advance is based on the actual distance travelled by the employee for business purposes, no tax is payable on an allowance paid by an employer to an employee up to the rate of 361 cents per kilometre, regardless of the value of the vehicle. However, this alternative is not available if other compensation in the form of an allowance or reimbursement (other than for parking or toll fees) is received from the employer in respect of the vehicle.

Travel Table

Rates per kilometre, which may be used in determining the allowable deduction for business travel against an allowance or advance where actual costs are not claimed, are determined by using the following table:

Value of the vehicle (including VAT) R	Fixed cost (R/p.a)	Fuel cost (c/km)	Maintenance cost (c/km)
0 – 85 000	28 352	95.7	34.4
85 001 – 170 000	50 631	106.8	43.1
170 001 – 255 000	72 983	116.0	47.5
255 001 – 340 000	92 683	124.8	51.9
340 001 – 425 000	112 443	133.5	60.9
425 001 – 510 000	133 147	153.2	71.6
510 001 – 595 000	153 850	158.4	88.9
exceeding 595 000	153 850	158.4	88.9

Fringe benefits

Employer-provided vehicles

The taxable value is 3.5% of the determined value (the cash cost including VAT) per month of each vehicle.

However, where the vehicle is–

- the subject of a maintenance plan when the employer acquired the vehicle, the taxable value is 3,25% of the determined value; or
- acquired by the employer under an operating lease, the taxable value is the cost incurred by the employer under the operating lease plus the cost of fuel.

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

On assessment, the fringe benefit for the tax year is reduced by the ratio of the distance travelled for business purposes, substantiated by a logbook, divided by the actual distance travelled during the tax year.

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

Fringe Benefits

Employer-provided residential accommodation

In the case of employer-provided residential accommodation, the value of the fringe benefit to be included in gross income is the lower of the cost to the employer in providing the accommodation and the amount calculated with reference to the formula, where the employer-provided accommodation is leased by the employer from an unconnected third party.

The formula will apply if the accommodation is owned by the employee, but it does not apply to holiday accommodation hired by the employer from non-associated Institutions.

Interest-free or low-interest loans

The fringe benefit to be included in gross income is the difference between interest charged at the official rate and the actual amount of interest charged.

Exemptions

Interest and dividend income

Under 65 years of age – The first R23 800 of interest income is exempt.

65 years of age and over – The first R34 500 of interest income is exempt.

Interest is exempt where earned by non-residents who are physically absent from South Africa for at least 183 days during the 12 month period before the interest accrues and the debt from which the interest arises is not effectively connected to a fixed place of business in South Africa of that non-resident.

South African dividends are generally exempt after the withholding of dividends tax (except to the extent that anti-avoidance provisions have been triggered).

Foreign interest and dividends

There is no exemption in respect of foreign sourced interest income.

Where an individual holds less than 10% of the equity share capital of a foreign company, which distributes a dividend, the dividend will be taxed at a maximum effective rate of 20% as determined by a formula.

Foreign remuneration exemption

Where an employee works abroad for more than 183 days and more than 60 consecutive days in a 12-month rolling period, that foreign remuneration is exempt from tax in South Africa. However, for years of assessment commencing on or after 1 March 2020, only the first R1 million of foreign remuneration will be exempt.

To prevent monthly withholding of income tax both in South Africa and the host country, it is proposed that South African employers be allowed to reduce their monthly local pay-as-you-earn (PAYE) withholding by the amount of foreign taxes withheld on the employment income.

Fringe benefit exemption for employer provided bursaries

Employer-provided bursaries to employees are not subject to income eligibility thresholds or monetary limit criteria. However, there are other criteria that must be met in order for the bursary to be exempt entirely.

The income eligibility threshold applicable to employees, in respect of bursaries granted to their relatives, is R600 000. The monetary limits for bursaries are as follows:

- R20 000 for grade R to grade 12 or for qualifications below NQF level 4;
- R60 000 for qualifications at NQF level 5 and above.

The monetary limits for relatives with disabilities are as follows:

- R30 000 for grade R to grade 12 or for qualifications below NQF level 4; and
- R90 000 for qualifications at NQF level 5 and above.

Deductions from Income (individuals)

Contributions to Pension, Provident and Retirement Annuity Funds

Employer contributions to South African retirement funds for the benefit of employees are deemed to be a taxable fringe benefit in the hands of employees. Depending on the nature of the fund, the fringe benefit is either the actual cash value of the contribution or the result of a formula. The employee will be deemed to have made contributions to the value of the fringe benefit (which together with their own contributions, may be eligible for a deduction).

The tax deduction for contributions to all retirement funds is limited per annum to the lower of R350 000 or 27.5% of the greater of taxable income (excluding retirement and severance lump sums) or remuneration (excluding retirement and severance lump sums).

Any contributions in excess of the limitations will be rolled forward and will be available for deduction in future tax years, subject to the annual limitations applicable in those tax years. Any non-deductible contributions will be available for deduction against retirement lump sums or annuity income.

Donations to certain Public Benefit Organisations

Deductions in respect of donations to certain public benefit organisations are limited to 10% of taxable income (excluding retirement fund lump sums and severance benefits). The amount of donations exceeding 10% of the taxable income is treated as a donation to qualifying public benefit organisations in the following tax year.

Medical and disability expenses

Taxpayers may deduct from their tax liability a tax credit (i.e. a rebate) of R310 for the first two beneficiaries and R209 for each additional beneficiary, in respect of medical aid contributions.

Taxpayers 65 years and older and those with disabilities under the age of 65 years or with disabled dependents may deduct an additional tax credit (rebate) equal to 33.3% of the sum of:

1. qualifying medical expenses; and
2. an amount by which the contributions paid exceeds three times (3x) the medical tax credits for the year.

Taxpayers under the age of 65 years may deduct an additional tax credit (rebate) equal to 25% of the sum of:

1. qualifying medical expenses; and
2. an amount by which the contributions paid exceeds four times (4x) the medical tax credits for the year, but limited to the amount, which exceeds 7.5% of taxable income (excluding retirement lump sums and severance benefits).

Tax-Free Savings and Investment Accounts

All returns received from tax free savings and investment accounts, such as interest, dividends and capital gains are 100% tax free.

The annual contribution limit is R33 000, while the lifetime contribution limit is R500 000.

Taxation of lump sum benefits

Retirement fund lump sum benefits (retirement or death) and severance lump sum benefits

The tax-free lump sum benefit upon death, retirement, and in respect of severance benefits (as defined in the Income Tax Act), is R500 000. The rates follow below:

Taxable income	Rates of tax
R	R
0 - 500 000	0% of taxable income
500 001 - 700 000	18% of taxable income above 500 000
700 001 - 1 050 000	36 000 + 27% of taxable income above 700 000
1 050 001 and above	130 500 + 36% of taxable income above 1 050 000

Retirement fund lump sum withdrawal benefits

Retirement fund lump sum withdrawal benefits refer to lump sums from a pension, pension preservation, provident, provident preservation or retirement annuity fund upon withdrawal from the fund.

Taxable income	Rates of tax
R	R
0 - 25 000	0% of taxable income
25 001 - 660 000	18% of taxable income above 25 000
660 001 - 990 000	114 300 + 27% of taxable income above 660 000
990 001 and above	203 400 + 36% of taxable income above 990 000

These tax tables apply cumulatively to all lump sum benefits, and include–

- all other retirement fund lump sum withdrawal benefits accruing from March 2009;
- all retirement fund lump sum benefits accruing from October 2007; and
- all severance benefits accruing from March 2011.

Companies and Employers

Corporate Tax Rates

Type	Rates of Tax
Companies	**2019/20**
Resident Company	28%
Non-resident Company	28%
Personal Service Provider Company	28%
Gold mining, oil & gas, and long-term insurance companies are subject to special rules and tax rates	
Small Business Corporations 1	
R0 – R79 000	0% of taxable income
R79 001 – R365 000	7% of taxable income above R79 000
R365 001 – R550 000	R20 020 plus 21% of taxable income above R365 000
R550 001 and above	R58 870 plus 28% of taxable income above R550 000
Micro Businesses 2	
R 0 – R335 000	0% of taxable turnover
R335 001 – R500 000	1% of taxable turnover above R 335 000
R500 001 – R750 000	R1 650 plus 2% of taxable turnover above R500 000
R750 001 and above	R6 650 plus 3% of taxable turnover above R750 000
Withholding Taxes 3	
Dividends	20%
Interest paid to non-residents	15%
Royalties paid to non-residents	15%
Amounts paid to non-resident entertainers and sportspersons	15%
Disposal of fixed property by non-residents	Individuals: 7.5% Companies: 10% Trusts: 15%

1 Applicable for financial years ending on or after 1 April 2019.
2 Micro businesses have the option of making payments for turnover tax, VAT and employees' tax bi-annually. Applicable in respect of financial years commencing on or after 1 March 2019.
3 Most withholding taxes payable by non-residents are subject to DTA relief.

Withholding Taxes

The rates may be reduced by the provisions of a relevant Double Tax Agreement ("DTA"). The foreign recipient of the royalty, dividend or the interest should provide a declaration and/or an undertaking to the payor, confirming that the requirements to qualify for a reduced rate under a DTA have been met.

Which companies must submit returns

The Commissioner annually gives public notice of the persons who are required to furnish returns for the assessment of normal tax within the period prescribed in that notice (likely to be issued in June 2019).*

The following entities are currently required to submit annual income tax returns:

- every company, trust or other juristic person, which is a resident;
- every company, trust or other juristic person, which is not a resident, and
  - which carried on a trade through a permanent establishment in South Africa;
  - which derived income from a source in South Africa;
  - which derived any capital gain or loss from a source in South Africa; or
  - which derived any capital gain or capital loss from the disposal of an asset to which the Eighth Schedule to the Income Tax Act applies;
- every company incorporated, established or formed in South Africa, but which is not a resident as a result of the application of any agreement entered into with the Government of any other country for the avoidance of double taxation.

*A tax alert setting out the category of persons required to submit a return, and any changes in relation to the above requirements will be issued at the time of publication of the SARS notice.

Capital Gains Tax

Effective CGT rates

Type of taxpayer	Inclusion Rate	Statutory Rate	Effective Rate
Other Trusts	80%	45%	36%
Companies (including personal service provider companies and branches of non- resident companies)	80%	28%	22.4%
Small business corporations	80%	0% - 28%	0% - 22.4%

Pay-as-you-earn ("PAYE")

Employers are required to withhold PAYE from all remuneration paid to employees. The PAYE must be paid to SARS by the 7th day of the month following the month in which the remuneration is received. If the 7th falls on a weekend or public holiday, the payment must be made by the last business day before the 7th.

Unemployment Insurance Fund ("UIF")

UIF contributions are payable by employers to SARS on a monthly basis and are calculated at a rate of 2% of remuneration paid or payable to each employee during the month, up to a maximum remuneration threshold of R14 872 per month or R178 464 per annum.

Both the employer and the employee are required to make a contribution of 1% each based on the employee's remuneration (up to the threshold) on a monthly basis (i.e. a total contribution of 2%).

Employers (including non-resident employers) that are not registered for PAYE or SDL purposes must pay the contributions to the Unemployment Insurance Commissioner.

With effect from 1 March 2018, foreign nationals working in South Africa, and employees undergoing learnership training are included in the UIF net.

Skills Development Levy ("SDL")

Employers with a payroll of more than R500 000 per annum must account for SDL, at a rate of 1% of total remuneration paid to employees.

Employment Tax Incentive ("ETI")

The ETI, which mainly benefits young workers, was reviewed and extended to February 2029. In order to partially offset the effect of inflation, the eligible income bands will be adjusted upwards with effect from 1 March 2019.

Therefore, as from 1 March 2019, employers will be able to claim the maximum value of R1 000 per month for employees earning up to R4 500 monthly (previously R4 000), with the incentive tapering to zero at the maximum monthly income of R6 500. The value of the incentive halves during the second twelve-month period during which the employer claims the ETI in respect of a specific employee.

The ETI is positioned to incentivised employers to:

- Employ workers from the ages of 18 to 29; and
- Employ workers that work mainly (50% or more) in a Special Economic Zone ("SEZ").

The ETI is available to eligible employers in respect of qualifying employees, and there are specific criteria applicable. For example, employers must abide by the relevant wage-regulating measures in order to be able to claim the ETI in respect of an employee.

It is anticipated that the Employment Tax Incentive Act (2013) will be revised in line with the recently promulgated National Minimum Wage Act (2018).

Value - Added Tax

- Standard rate:
  - 15% (from 1 April 2018)
  - 14% (until 31 March 2018)
- VAT registration threshold remains at R1 000 000
- VAT voluntary registration threshold remains at R50 000.
- VAT registration threshold for foreign suppliers of "electronic services":
  - R50 000 (until 31 March 2019)
  - R1 000 000 (from 1 April 2019)

Corporate Income Tax

Further amendment to the dividend stripping provisions effective 20 February 2019
The Income Tax Act currently contains anti-avoidance provisions which tax exempt extraordinary dividends which are declared within 18 months of the disposal of the share concerned. But for the provisions, taxpayers would be able to extract significant value from a company through a tax exempt dividend in anticipation of the sale of the shares to a new investor.

New avoidance schemes have emerged in terms of which the new investor subscribes for shares in the company declaring the extraordinary dividend, diluting the existing shareholder who received the dividend. As this shareholder does not dispose of the shares, the divided stripping provisions in their current form are not triggered.

The dividend stripping rules will be amended with effect from 20 February 2019 to curb this abuse.

Value shifting rules relating to asset for share transactions and the elimination of double taxation
Generally, where a company acquires an asset in exchange for the issue of shares, the tax cost of the asset acquired is determined with reference to the market value of the shares issued. However, anti-avoidance provisions are applicable where the market value of the asset differs from the market value of the shares issued.

These anti-avoidance provisions trigger an immediate capital gain in the hands of company acquiring the asset as well as a reduction in the tax cost of the shares where the market value of the asset exceeds the market value of the shares. Where the market value of the shares exceeds the market value of the asset acquired, the company is deemed to have declared a dividend *in specie* in respect of the shares issued.

The anti-avoidance provisions will be clarified to specifically exclude the impact any deferred tax liability on the determination of the market value of the shares issued. In addition, the provisions relating to asset for share transactions will be amended to ensure that taxpayers are not subject to double taxation on the subsequent disposal of the assets.

Interest incurred in acquiring shares in a start-up company

The Income Tax Act allows for a deduction of interest in respect of loan funding used to acquire equity shares in an operating company provided amongst others the taxpayer holds at least 70% of the equity shares in the operating company following the acquisition. These provisions are being used to claim an income tax deduction in respect of interest incurred on loans used to subscribe for shares in start-up companies. The provisions will be amended to exclude transactions of this nature.

Exclusion of section 24I and section 24J instruments from the corporate roll-over relief provisions

The corporate roll-over provisions are silent on the application of the provisions to exchange items and interest bearing instruments which are transferred. It is proposed that these instruments are specifically excluded from the ambit of the roll-over relief provisions.

Study on the tax treatment of amounts received by a portfolio of collective investment schemes (CIS's)

Government intends engaging with industry in relation to the 2018 tax proposal to tax certain profits on the disposal by of underlying investments by CIS's as revenue.

Real Estate Investment Trusts (REITs)

It is proposed that the regulation and tax treatment of unlisted REITs which are widely held or held by institutions, be considered.
In addition, anomalies in relation to the impact of foreign exchange differences and the interaction with the corporate roll-over relief will be reviewed.

Further refinement of the venture capital company rules

Further amendments to the venture capital company rules will be introduced to prevent excessive tax deductions in relation to the regime.

Other Incentives

Special economic zones

An additional incentive for Special Economic Zones came into effect from 01 August 2018, whereby the age limitation which normally applies to the Employment Tax incentive was removed. Six SEZs were approved by the Minister of Finance during 2018.

Energy-efficiency savings tax expenditure

The section 12L energy-efficiency savings tax incentive complements government's proposed carbon tax by supporting low-carbon technologies. This incentive also offsets the tax burden on industry from the introduction of the carbon tax. Taxpayers are entitled to a tax deduction of 95 cents per kilowatt hour or kilowatt hour equivalent of verified energy efficiency savings.
This deduction, which has been extended until 31 December 2022, only applies to non-renewable energy sources, and may not be claimed if the taxpayer receives any concurrent benefit in respect of energy savings.

Urban Development Zone tax incentive

A review of the Urban Development Zone tax incentive will be performed during 2019 to determine whether it should be extended. It is due to expire on 31 March 2020.

Provisional Tax

Provisional tax – individuals / companies

1st Payment: To be made within 6 months after previous tax year end.

2nd Payment: To be made on tax year end.

3rd Payment: Voluntary payment to be made within 7 months after tax year end (if tax year end is 28/29 February), or voluntary payment to be made within 6 months after year end (if tax year end falls on any other date).

A provisional taxpayer is any person who earns income by way of remuneration from an unregistered employer, or income that is not remuneration or an allowance or advance payable by the person's principal. An individual is not required to pay provisional tax if the individual does not carry on any business and the individual's taxable income:

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

Provisional tax returns showing an estimation of total taxable income for the year of assessment are required from provisional taxpayers.

Deceased estates are not provisional taxpayers

Provisional tax – penalties on late payment, late submission and underestimation

The following penalties may be imposed:

— A 10% penalty for the late payment of the amount of provisional tax due.

— A 20% penalty for the late submission of the provisional tax return, or for the underestimation of the amount of provisional tax due.

— The 20% underestimation penalty is reduced by the amount of any late payment penalty imposed. Both of these penalties constitute percentage based penalties in terms of section 213 of the Tax Administration Act.

The 20% underestimation penalty will only be triggered in the following scenarios:

— Taxable income of less than R1 million: if the taxable income per the second provisional tax return is less than 90% of the taxable income upon assessment **and** is less than the "basic amount" i.e. the taxable income per the most recent previous assessment issued.

— Taxable income equal to or more than R1 million: if the taxable income per the second provisional tax return is less than 80% of the taxable income per the assessment.

Combating base erosion and profit shifting

South Africa has taken steps to protect its tax base by closing loopholes exploited by multinationals to artificially shift profits and avoid paying tax. South Africa has played an active role in these efforts through the 20/OECD (including framework) and intends to expand the work already underway to combat base erosion and profit shifting.

Domestic legislation is already aligned with some measures recommended by the framework such as limiting double deductions. Although South Africa has measures in place to curb excessive debt financing, which erodes the tax base, government is reviewing these rules against best practice.

Transfer pricing

The “affected transaction” definition relating to arm’s length transfer pricing rules in the Income Tax Act applies to transactions between connected persons as defined in the Income Tax Act. However, in the OECD Model Tax Convention, the transfer pricing rules apply to transactions between associated enterprises. Government proposes to review the scope of these rules to determine the definition in the Income Tax Act should be changed in line with the OECD definition.

According to the OECD Glossary of Tax Terms, enterprises are associated where the same persons participate directly or indirectly in the management, control or capital of both enterprises, i.e. both enterprises are under common control.

This could result in the position where transactions between the foreign head office and its branch could get covered by the South African transfer pricing rules.

Controlled foreign companies

Reviewing the comparable tax exemption (high-tax exemption)

It is proposed that the exemption threshold be reduced from the current percentage (i.e. 75%), taking into account the sustainability of the tax base.

Addressing circumvention of anti-diversionary rules

The rules for controlled foreign companies aim to prevent South African taxpayers from shifting income that should be taxed in South Africa to an offshore jurisdiction with a beneficial taxation regime. These rules are inadequate for multi-layered transactions. It is proposed that additional measures be introduced to prevent this scenario where controlled foreign controlled companies are introduced in the supply chain between South African connected parties and independent non-resident parties or suppliers.

Permanent establishment

The current definition of permanent establishment in the Income Tax Act is based on the definition developed by the OECD. In November 2017, the OECD expanded this definition. When South Africa signed the OECD multilateral convention, it did not expand the permanent establishment definition. As a result, South African tax treaties use the narrow definition of permanent establishment. However, the definition in the Income Tax Act uses the expanded OECD definition. It is proposed that permanent establishment definition in the Income Tax Act be reviewed to determined whether a limitation is warranted.

Tax relief for blocked foreign funds

The Income Tax Act provides tax relief for a South Africa tax resident when funds are blocked in a foreign fund due to currency restrictions or foreign legal limitations. The resident can claim foreign tax credits for foreign taxes paid on foreign income. These credits are lost if the blocked funds are released more that seven years from the year in which the foreign income accrued. It is proposed this seven year limitation be reconsidered.

Domestic treasury management companies

The domestic treasury management company regime allows qualifying companies to expand into other African countries. Within this regime, a company is so defined if it is incorporated in South Africa, deemed to be incorporated in South Africa, or effectively managed from South Africa and is not subject to exchange control restrictions. In 2017, the Income Tax Act was amended to remove the incorporation requirement. However, the Reserve Bank definition still includes this requirement. It is proposed that the definition of "domestic treasury management company" is changed in the Income Tax Act to reintroduce the incorporation requirement.

Interaction of capital gains tax and foreign exchange transaction rules

Assets disposed of or acquired in foreign currency are subject to taxation under both the foreign exchange transaction rules and capital gains tax rules. To prevent double taxation of assets, foreign debt is currently excluded from the specific capital gains tax rules. However, it is unclear how the general rules apply if foreign bonds are disposed of at a capital gain or loss. It is proposed that these rules be reviewed to prevent potential double taxation.

Tax administration

Model mandatory rules and non-compliance penalties

It has emerged internationally that offshore structures are being designed in an attempt to avoid financial account reporting under the OECD's Common Reporting Standard. The standard is used for the exchange of information between countries. It is proposed that the OECD's model mandatory disclosure rules be implemented in South Africa to identify and encounter such structures and arrangements, and that similar penalties to those currently in force for non-compliance with the reportable arrangement legislation be imposed for non-compliance with the rules.

Customs and Excise

Customs and Excise rates increases

- Specific excise duties: With effect from 20 February 2019, specific customs and excise duties are increased. On most alcoholic beverages the rate increased by between 7.4% and 9%, (excluding traditional African beer and beer powder which remain unchanged). The rate of duty on cigarettes and cigarette tobacco increased by 7.4% and pipe tobacco and cigars increased by 9%). The rate of duty on tobacco products and cigars also increased by between 7.4% and 9%.
- General Fuel Levy and Road Accident Fund Levy: The General Fuel Levy for 2019/2020 is increased by 15c/li on petrol and diesel to 352c/li and 337c/li respectively. The Road Accident Fund Levy will increase by 5c/li to 198c/li. These increases will take effect on 3 April 2019.
- Carbon Tax: A carbon tax on fuel of 9 c/li on petrol and 10 c/li on diesel will be introduced with effect from 5 June 2019

Customs and Excise Proposals

- RAF levy diesel refunds: Government proposes that the RAF levy diesel refund benefit for primary production industries within farming, forestry and mining be limited to ensure that diesel users in these sectors equitably contribute towards their RAF indemnity.
- Ad valorem excise duty on motor vehicles: Government proposes to align the tax treatment of locally manufactured vehicles and imported vehicles. This proposal seeks to remove the anomaly where vehicles produced locally are taxed at a higher rate than imported vehicles.
- Taxation of electronic cigarettes and tobacco heating products: The use of electronic cigarettes and tobacco heating products has increased in recent years. Government intends to start taxing these products. The National Treasury and the Department of Health will consult on the appropriate mechanisms, structure and timing of the tax.
- Definition of fuel levy goods: Government proposes to review the scope and definition of fuel levy goods in the Customs and Excise Act (1964) to include additional fossil fuels such as mineral ethanol, illuminating paraffin, aviation kerosene, liquefied petroleum gas, compressed natural gas – as well as biofuels such as bioethanol and biogas.
- Excise legislation: SARS has compiled an excise rewrite discussion document that will be published for public comment as part of redrafting the excise duty legislative framework. The paper outlines the internationally recognised requirements of an excise duty administration. The current duty-at-source system is being reviewed to identify possible reforms.
- Duty-free shops: Concerns regarding duty-free shops operating within the country have been noted. The legislative framework governing duty-free shops will be reviewed to minimise any abuse and risks that may be occurring.

- Bulk wine movements: Manufacturers and importers of alcoholic beverages must obtain compulsory tariff determinations before these beverages can be removed from the excise manufacturing warehouse or cleared for home consumption upon the first importation. Bulk wine that is removed from one excise manufacturing warehouse to another, is used as an input for further manufacturing and is not the final alcoholic beverage that should be subject to the tariff determination requirement. These bulk wine removals between warehouses will therefore be exempted from the obligation.
- "Fiscal markers": Government proposed in 2018 to introduce amendments to extend the use of "fiscal markers", which are required under the tracking and tracing obligations of the World Health Organisation's Protocol to Eliminate Illicit Trade in Tobacco Products. Government is seeking to expand this intervention over time to include other excise duties and levy products.
- Diesel refund system: During August 2018, the National Treasury and SARS jointly held extensive consultations on the published discussion paper, "Review of the Diesel Fuel Tax Refund System". These intensive consultations revealed the need for developing industry-specific provisions for each sector for a focused and effective diesel refund administration system. The proposed system will shift the basis from eligible users to eligible activities. The design of the new standalone diesel refund administration will be outlined in draft rules and notes that will be developed and published for public comment during the course of the year.
- Information sharing – carbon tax: Implementing the carbon tax requires SARS, the Department of Environmental Affairs and the Department of Energy to share client-specific information. Provisions in the Customs and Excise Act that permit information sharing with strict confidentiality will be enhanced for the purposes of carbon taxation and the associated regulation of greenhouse gas emissions and energy efficiency.
- Ad valorem proposals: Government proposes to expand the computer category to include any apparatus with a screen larger than 45cm. Government is also proposing to expand the gaming category to include any external screen or surface on which gaming console images can be reproduced.
- Vis major refunds: Government will review provisions relating to duty rebates and refunds in circumstances of vis major (an unpreventable incident caused by a superior external force) in the Customs and Excise Act and its schedules to align them with international best practice.
- Curbing smuggling and illicit financial flows: Government will consider amendments enabling the confidential disclosure of names and associated reference numbers of customs clients, as well as other information necessary to verify legitimate financial flows. The proposed amendment will align the Customs and Excise Act with the similar approach adopted in the Tax Administration Act (2011).

Environmental Taxes

Carbon Tax: The Minister confirmed that the Carbon Tax will be implemented on 01 June 2019. With South Africa's commitment to tackling climate change, the tax engenders the "polluter-pays" principle. Government's aim with the tax is to ensure that businesses and households take into account the price of greenhouse gas emissions in their production, consumption and investment decisions. The tax will also enable South Africa to meet its nationally-determined contribution commitments as required by the 2015 Paris Agreement on client change. It was confirmed that the tax will be reviewed after three years.
The initial carbon tax rate is R120 per tonne of carbon dioxide equivalent ("CO2e") above the stipulated tax-free allowances. Taking into account the various tax-free allowances as set out in the Carbon Tax Bill, this could translate into an initial effective carbon tax rate range as low as R6 – R48 per tonne of CO2e.

It was again confirmed that SARS and the Department of Environmental Affairs will jointly administer the tax. Understanding the complexities involved in the introduction of this tax, SARS will publish draft rules for public consultation by March 2019. The draft rules will complement three sets of regulations pertaining to certain of the tax-free allowances catered for in the Carbon Tax Bill; namely draft regulations on the Carbon Offsets (published after consultation in 2018); trade exposure regulations, which will be published before the end of this month; and benchmarking regulations, which will be published in March for further consultation.

In February 2009, a tax exemption for income generated from the sale of certified emission reduction credits was introduced in section 12K of the Income Tax Act. With the introduction of the Carbon Tax, emission reduction credits could be used to reduce a taxpayer's carbon tax liabilities. This income tax exemption will be repealed from 01 June 2019 to avoid a "double-benefit" scenario, whereby the same emission reduction leads to both an income tax exemption and a reduced carbon tax liability.

Carbon Dioxide Emissions Tax: From 1 April 2018, the carbon dioxide emissions tax is R110.00 for every gram above 120gCO^2/km for passenger vehicles and R150.00 for every gram above 175gCO^2/km for double cabs.

Plastic Bag Levy: With effect from 1 April 2018, the environmental levy payable in respect of plastic bags (shopping bags) is 12 cents per bag.

Electric Filament Lamps Levy: From 1 April 2018, the environmental levy payable in respect of electric filament lamps is R8.00 per globe.

Environmental fiscal reform policy: A draft environmental fiscal reform policy examining fiscal and regulatory options to improve water resource management, mitigate the emission of pollutants and reduce waste will be published in 2019.

Health Promotion Levy: From 1 April 2019, the rate of health promotion levy will increase to 2.21c per gram in excess of 4 grams sugar per 100ml.

Transfer Duty and Securities Transfer Tax

Transfer Duty
Payable on transactions that are not subject to VAT (including zero-rated VAT)

Value of Property	Rates payable
R0 – R900 000	0%
R900 001 – R1 250 000	3% of the value above R900 000
R1 250 001 – R1 750 000	R10 500 plus 6% of the value above R1 250 000
R1 750 001 – R2 250 000	R40 500 plus 8% of the value above R1 750 000
R2 250 001 - R10 000 000	R80 500 plus 11% of the value above R2 250 000
R10 000 001 and above	R933 000 plus 13% of the value above R10 000 000

Securities Transfer Tax (STT)

This tax is imposed at a rate of 0.25% on the transfer of listed or unlisted securities.

Estate Duty And Donations Tax

Estate Duty

Estate duty is payable on property of residents and South African property of non-residents (less allowable deductions). Estate duty will be levied on the 'dutiable value' of an estate at a rate of 20% on the first R30 million; and a rate of 25% will be applicable where the dutiable value of an estate is above R30 million.

A basic deduction of R3.5 million is allowed in the determination of an estate's liability for Estate Duty as well as deductions for liabilities, bequests to Public Benefit Organisations ("PBO") and property accruing to surviving spouses.

Donations Tax

A rate of 20% will be payable on the value of property donated; and donations exceeding R30 million in value will be taxed at a rate of 25%.

The first R100 000 of property donated in each year, by a natural person, is exempt from donations tax. For taxpayers who are not natural persons, exempt donations are limited to casual gifts not exceeding a total of R10 000 per annum. Donations between spouses, South African group companies and donations to certain PBOs are exempt from donations tax.

Tax Administration

Requirement to submit dividend tax returns on receipt of exempt dividends
Recipients of exempt and partially exempt dividends will no longer be required to submit dividend tax returns.

Incidence subject to fixed amount penalty

Administrative Non-Compliance Penalties

Taxable income for preceding year	Monthly Penalty
Assessed Loss	R 250
R 0 – R 250 000	R 250
R 250 001 – R 500 000	R 500
R 500 001 – R 1 000 000	R 1 000
R 1 000 001 – R 5 000 000	R 2 000
R 5 000 001 – R 10 000 000	R 4 000
R 10 000 001 – R 50 000 000	R 8 000
Above R 50 000 000	R 16 000
Maximum successive penalties: 36 months (SARS in possession of address) or 48 months (SARS not in possession of address)	

Administrative non-compliance is the failure to comply with an obligation imposed by or under a tax Act and is listed in a public notice by the Commissioner. The failure by a natural person to submit an income tax return (subject to further conditions), and the failure by a reporting financial institution to submit returns in relation to the intergovernmental agreement to implement the United States of America's Foreign Account Tax Compliance Act, were listed. In addition, certain incidences of non-compliance with the Common Reporting Standard (CRS) Regulations will also be subject to administrative penalties (e.g. failure by a reporting financial institution to submit a return as required, or to remedy the partial or non-implementation of a due diligence required under the CRS Regulations within 60 days etc.).

In terms of Government Gazette No. 42100 (issued on 14 December 2018), failure by a company to submit an income tax return as required under the Income Tax Act for years of assessment ending during the 2009 and subsequent calendar years will be subject to a fixed amount penalty where SARS has issued the company with a final demand and such company has failed to submit the return within 21 business days of the date of issue of the final demand.

Understatement Percentage-Based Penalties

Behaviour	Standard case	Obstructive or repeat case	Voluntary disclosure after notification of audit	Voluntary disclosure before notification of audit
Substantial understatement	10%	20%	5%	0%
Reasonable care not taken in completing return	25%	50%	15%	0%
No reasonable grounds for tax position	50%	75%	25%	0%
Impermissible avoidance arrangement	75%	100%	35%	0%
Gross negligence	100%	125%	50%	5%
Intentional tax evasion	150%	200%	75%	10%

Understatement means any prejudice to SARS or the *fiscus* as a result of:

- A failure to submit a return
- An omission from rendering a return
- An incorrect statement in a return
- Failure to pay correct amount of tax if no return is required
- An impermissible avoidance arrangement

The burden of proving the facts on which SARS based the imposition of the understatement penalty, is upon SARS.

Voluntary Disclosure Programme

A general Voluntary Disclosure Programme ("VDP") is provided for in the Tax Administration Act, in terms of which taxpayers (corporate entities, individuals, etc.), can approach SARS with a view to regularise their tax affairs with the prospect of remittance of certain penalties.

SARS Interest Rates

Effective 1 December 2018	
Fringe benefits – interest free or low interest loans	7.75%[1] p.a.
Effective 1 March 2019	
Late or underpayments of tax	10.25% p.a.
Refund of overpayments of provisional and employees' tax	6.25% p.a.
Refund of tax on successful appeal, or where the appeal was conceded by SARS	10.25% p.a.
Refund of VAT after prescribed period	10.25% p.a.
Late payments of VAT	10.25% p.a.
Customs and Excise Duties	10.25% p.a.

[1]Based on the current official repurchase rate plus 100 basis points.

Tax@KPMG

KPMG Tax and Legal department is looking for graduates that are passionate about effecting change in the tax Industry.

Our experts will assist with moulding the right calibre of talent in the order to help inform future policy and enable proper business sustainability leading to economic growth.

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KPMG Legal Services

The KPMG Legal Services business unit in South Africa is a member of KPMG's Global Legal Services Network (which is 2,250 legal professionals strong and present in 75 jurisdictions).

We offer numerous legal services to business with a multi-disciplinary approach, including:

- Corporate and Company law services which include mergers and acquisitions, drafting and reviewing of commercial contracts, legal due diligences, advising on inward investment, structuring of business entities, structuring of employee incentive schemes and group rationalisations.

- Competition Law services which include Competition Commission merger filings, compliance reviews, training and advice on mergers and restrictive practices.

- Financial sector legal and regulatory services which include advice and support in relation to all financial services legislation and regulations (i.e. Market Conduct, Financial Advisory and Intermediary Services Act, Financial Markets Act, Insurance Act, FATCA & the Common Reporting Standard and National Credit Act).

- Privacy services which include conducting gap analyses, implementation support and training both in respect of Protection of Personal Information Act (POPIA) and the EU General Data Protection Regulation (GDPR).

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