

**DOING  
BUSINESS  
IN SOUTH  
AFRICA**



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## OVERVIEW

The South African gross domestic product (GDP) expanded by 1,9% in the first quarter of 2022, representing a second consecutive quarter of upward growth. The size of the economy is now at pre-pandemic levels, with real GDP slightly higher than what it was before the COVID-19 pandemic. The National State of Disaster was lifted as from 5 April 2022, and the rules on wearing masks indoors and the limitation on public events and gatherings were all repealed on the 23 June 2022.

However, South Africans are feeling the bite of fuel price increases as a result of Russia's war in Ukraine, the Rand/Dollar Exchange rate, fuel levies, and the rise in the Brent crude oil price. In addition, longstanding structural constraints, such as electricity shortages and loadshedding, continue to impact the South African economy negatively.

Commodity prices remain important for South Africa, a major net exporter of minerals and net importer of oil, however, strengthening investment, including foreign direct investment, will be critical to propelling growth and creating jobs.

President Cyril Ramaphosa's economic recovery plan envisages that infrastructure will play a leading role in developing the South African economy over the next 30 years. The National Infrastructure Plan 2050, published in the last quarter of 2021, sets out ambitious plans for various infrastructure sub-sectors, which, if given effect, has the aim of increasing investment flows into the economy, and a rapid acceleration of infrastructure development.

## KEY FACTS ON SOUTH AFRICA

<b>Languages:</b>	11 official languages of equal status: Afrikaans, English (language of commerce, banking, government and official documentation), isiNdebele, isiXhosa, isiZulu, Sesotho sa Leboa, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga. (In future, sign language will be the 12th official language of the country).
<b>Capital cities:</b>	Tshwane (Pretoria) – administrative, Cape Town – legislative, and Bloemfontein (to be renamed Mangaung) – judicial.
<b>Form of State:</b>	Federal state comprising a national government and nine provincial governments.
<b>Legal system:</b>	Based on Roman-Dutch Law and the 1996 Constitution.
<b>General:</b>	internet domain: .za, metric system, time zone: GMT+2

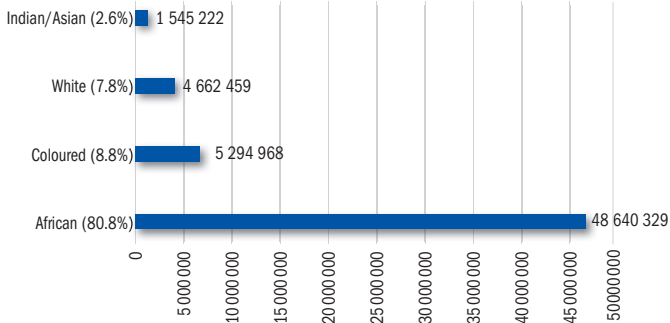
### The South African Economy

<b>Currency:</b>	One Rand (R) = 100 cents. International symbol : ZAR
<b>GDP:</b>	R1.15 Trillion Rand, or \$75 billion (Q1 2022)
<b>GDP Growth Rate:</b>	+1.9% q/q (Q1 2022)
<b>PPI :</b>	+13,1% y/y (at April 2022)
<b>CPI:</b>	6.5% y/y (at May 2022)
<b>Unemployment:</b>	63.9% for ages 15 to 24 years, and 42.1% for those aged 25-34 years, and the current official national rate stands at 34.5% (Q1 2022)
<b>Key industries:</b>	Mining (world's largest producer of platinum and chromium), automobile assembly, metal-working, machinery, textiles, iron, steel, chemicals, fertilizers, foodstuffs, commercial ship repair.
<b>Exports :</b>	Gold, minerals, diamonds, platinum, other metals and metal products, foods, automotive components, machinery.
<b>Imports:</b>	Machinery (including computers), transport equipment, manufactured goods, chemicals, mineral fuels including oil, scientific instruments, medical apparatus, pharmaceuticals.
<b>Main trading partners:</b>	Germany, USA, UK, China, Japan, France, Botswana and Namibia.

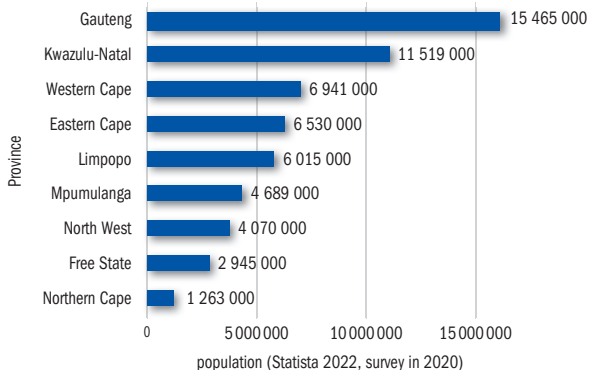
## Interesting Statistics about South Africa

### Population Groups in South Africa

(Total population: 60.1 million , Statista 2022, survey in 2021)

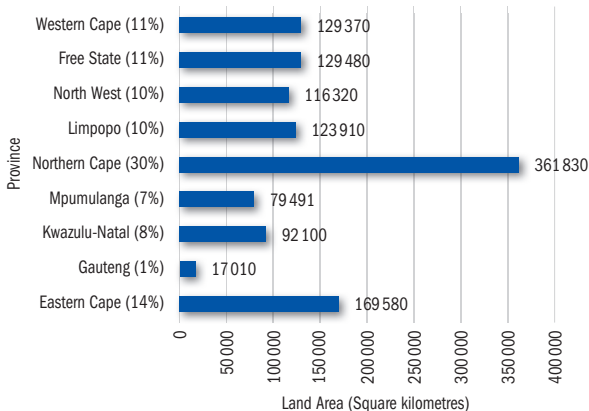


### Population by Provinces

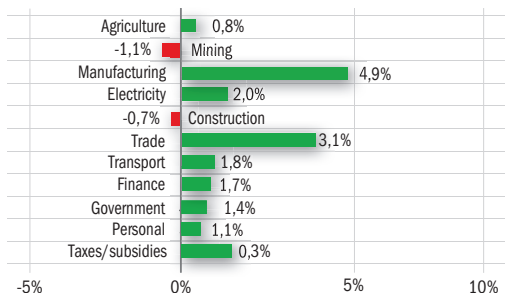


### Size of Provinces in South Africa

(Total land area: 1 219 090 sq km)



### South Africa's GDP Growth Rates by Sector: First Quarter 2022



Source: Statistics South Africa (contribution in % points)

## **SOUTH AFRICAN DEVELOPMENT COMMUNITY (SADC)**

The Southern African Development Community (SADC) was established in 1992. SADC is a regional economic community, comprising the following 15 member states: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

While the pandemic has impacted negatively on FDI in this region, and while there are continuing political, developmental, health and social challenges in most member countries, the outlook is positive in that member countries have resolved to use the crisis to build an even more resilient regional economy, underpinned by greater efforts towards supporting the creation of regional value chains. Entrepreneurs and potential investors need to weigh the challenges of investing in these regions against the potential profitability of an investment.

The SADC continues to be committed to promoting sustainable and equitable economic growth and socio-economic development, so that the region emerges as a competitive and effective player in international relations and the world economy. The vision of SADC is one of a Common Future, a future within a regional community that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the people of Southern Africa. In order to fulfil the SADC mission statement, member states are guided by the following principles, as stated in Article 4 of the SADC Treaty:

- Sovereign equality of all member states.
- Solidarity, peace and security.
- Human rights, democracy and the rule of law.
- Equity, balance and mutual benefit, and
- Peaceful settlement of disputes.

### **African Continental Free Trade Area Agreement (AfCFTA)**

SA signed a free trade agreement that has the objective of implementing free trade on the African continent.

### The Department of Trade and Industry (DTI)

The DTI provides financial support to qualifying companies in various sectors of the economy. Financial support is offered for various economic activities, including manufacturing, business competitiveness, export development and market access, as well as foreign direct investment (FDI). DTI Incentive Schemes include:

**Black Business Supplier Development Programme (BBSDP):** is an 80:20 cost-sharing, cash grant incentive scheme for black-owned businesses, with a maximum grant of R100 000. The scheme also provides business development services to help companies improve their skills and become more competitive. The scheme aims to fast track existing SMME's with good growth potential into the mainstream of the formal economy.

**12I Tax Allowance Incentive (12I TAI):** offers support for both capital investment and training for new industrial projects that utilise only new and unused manufacturing assets, as well as expansions or upgrades of existing industrial projects.

**Capital Projects Feasibility Programme (CPFP):** a cost-sharing grant that contributes to the cost of feasibility studies likely to lead to projects that will increase local exports and stimulate the market for S.A. capital goods and services.

**Critical Infrastructure Programme (CIP):** aims to leverage investment by supporting infrastructure that is deemed to be critical, thus lowering the cost of doing business and stimulating investment growth.

**Export Marketing and Investment Assistance (EMIA):** aims to develop the export market for SA products and services and encourages new FDI into SA, but partially compensates exporters for costs incurred in respect of activities aimed at developing export market.



**Film Incentives:** a package of incentives to promote the film production and post-production industry. These include:

- Foreign Film and Television Production and Post-Production incentive.
- South African Film and Television Production and Co-Production incentive.
- The South African Emerging Black Filmmakers incentive.

**Manufacturing Investment Programme (MIP):** a reimbursable cash grant for local and foreign-owned manufactures who wish to establish a new production facility; expand an existing production facility; or upgrade an existing facility in the clothing and textiles sector.

**Sector Specific Assistance Scheme (SSAS):** a reimbursable cost-sharing incentive scheme whereby financial support is granted to organisations supporting the development of industry sectors and those contributing to the growth of SA exports.

## **The National Youth Development Agency (NYDA)**

SA has a large population of youth (35% of the total population is aged between 14-35 years). The NYDA was established to address youth development issues, and plays an important role in ensuring that all major stakeholder's, including government, the private sector and civil society, prioritise youth development and contribute towards identifying and implementing lasting solutions, which address youth development challenges. The NYDA offers grant finance in the form of micro-finance grants (to encourage youth entrepreneurship) and co-operative grants (to stimulate greater participation of youth in the co-operatives sector).

## **The Small Enterprise Development Agency (SEDA)**

SEDA was formed to implement government's small business strategy by focusing on developing, supporting and promoting small enterprises in order to ensure their growth and sustainability. SEDA works together with various role players, including global partners, who make international best practices available to local entrepreneurs.

## BUSINESS VEHICLES

The main business vehicles used for doing business in SA are:

- Partnership.
- Sole proprietorship.
- Business Trust.
- Profit company.  
[includes public company, private company and personal liability company].
- Non-Profit company.
- External company (branch of a foreign company).

Tax and other considerations affect the choice of business vehicle. The most commonly adopted forms of doing business by foreign investors are private companies and branches of foreign companies.

South African law used to provide for a business entity type called Close Corporations (CC's) until the Companies Act, 71 of 2008 came into force on 1 May 2011. While CC's may no longer be created, existing CC's continue to operate.

All companies must register with the Companies and Intellectual Property Commission in SA (CIPC).

## COMPANIES ACT, 71 OF 2008

The Companies Act, 71 of 2008 (hereinafter referred to as “the Companies Act” or “the Act”) regulates the formation and registration, governance, winding up, deregistration and liquidation of all companies, and makes no distinction between locally owned or foreign-owned companies. The Companies Amendment Bill was published for public comment in 2018, but has not yet been signed into law. Its main purpose is to review and identify all the problematic areas arising from the Companies Act, and to align it with modern international corporate trends.

## CATEGORIES OF COMPANIES

The Companies Act provides for two categories of companies:

**Profit Company:** a company incorporated for the purpose of financial gain for its shareholders; can be:

- A state-owned company (SOC).
- A private company (Proprietary Limited/(Pty) Ltd) – not state-owned and the Memorandum of Incorporation (MOI) prohibits any offer to the public for the subscription of any shares or debentures of the company. A private company cannot, therefore, be listed on the stock exchange.
- A personal liability company (Incorporated/Inc.) – meets the criteria for a private company and the MOI states that it is a personal liability company. This type of company is registered by professionals such as Doctors, Lawyers and Engineers.
- A public company (Limited/Ltd) in any other case. Public companies are formed to raise funds by offering shares to the public.

### **Incorporation of a Profit Company**

- One or more persons may incorporate, except for a SOC Ltd, which may also be incorporated by an organ of state.
- One or more directors required, three or more for public (Ltd) companies.
- No limit on number of shareholders.
- A private company must have share capital, no minimum or maximum amount. Shares issued in accordance with the Companies Act do not have a nominal or par value.

### **Private Companies**

Private Companies are cheap and relatively easy to establish and there are no minimum or maximum share capital requirements. A foreign entity may be a shareholder.

SOC Ltd's and Public companies are statutorily subjected to enhanced accountability and transparency requirements, such as an audit, whereas private companies are not required to appoint an auditor unless the company passes a

public interest score, or meets any other requirements set out in Regulation 28 of the Companies Act.

A private company is also not required to appoint a company secretary or hold an Annual General Meeting.

## **Non-Profit Company (NPC)**

- Incorporated for a public benefit or an object relating to one or more cultural or social activities, or communal or group interests.
- Primary objective is to be a benefit to the public and not to make profit.
- Incorporated by at least 3 persons and must have a minimum of 3 directors.
- The income and property of a non-profit company must be applied solely to the promotion of the non-profit company's main object and may not be distributed to the incorporators, members, directors or officers.
- NPC without members can be incorporated and can have voting or non-voting members, and membership can be held by juristic persons, including profit companies.
- A special set of fundamental rules for NPC's is set out in Schedule 1 of the Act.
- On dissolution, NPC's are restricted in terms of the distribution of any residual assets.
- NPC can apply to the South African Revenue Service for a tax-exempt status, known as Public Benefit Organisation (PBO) status, provided it meets the criteria required for such registration.

## **A Domesticated Company**

A domesticated company is a foreign company whose registration has been transferred to SA from a foreign jurisdiction in which it was registered.

A foreign company may transfer its registration if the law of the jurisdiction in which the company is registered permits such a transfer, and the company has complied with all legal requirements relating to the transfer. Once the foreign registration is transferred, a domesticated company exists as a company in terms of the Companies Act as if it had been originally incorporated and registered in SA. Most foreign investors set up a private company, or an external company (branch of a foreign company).

## An External Company

An external company means a foreign company (for profit or not for profit), which has been incorporated outside of SA, that intends to, or is conducting business or non-profit activities within SA. Section 23 of the Companies Act lists a series of activities which will be regarded as “conducting business” as follows:

The foreign company:

- Is a party to one or more employment contracts within SA, or
- Is engaging in a course of conduct or has engaged in a course or pattern of activities within SA over a period of at least six months, such as would lead a person to reasonably conclude that the company intended to continually engage in business or non-profit activities within SA.

Such a company remains primarily regulated by its country of origin or registration, even though it does business in SA as an external company. It must register with the Commission within 20 business days after it first begins to conduct business or non-profit activities, as the case may be, within SA.

## DIRECTORS AND OFFICERS

### Directors

In terms of the Companies Act, the business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company.

Directors are ultimately responsible for acts committed in the name of the company even though the routine running of the company is often delegated to management.

Directors do not need to be South African residents or nationals. The Act requires that the register of directors reflects each directors' nationality and passport number if they are not South African. There are no restrictions on foreign managers.

The role of a director is a challenging one, accompanied by onerous duties and responsibilities. With improving standards of corporate governance, directors are required to be more and more accountable, transparent and responsive to

stakeholders and to society. Directors and officers are required to be cognisant of corporate legislation pertaining to their office, and have a duty to ensure that the company complies with all other applicable laws, industry or sector specific legislation. Directors are required to ensure that managers and employees are aware of the legislation, and that all within the company are committed to act honestly, with integrity, and with a high level of competence and knowledge. Adherence to non-binding rules, codes and standards of good corporate governance are considered to be key to the effective management and control of a company. The King IV™ Report and Code of Corporate Governance is a guideline for best practice and provides the main standard for corporate governance in SA.

- The King Report distinguishes between two types of directors:
- Executive director: a full time salaried employee and under a contract of service with the company who is involved in the daily running of the business.
- Non-executive director: a part time director who is not an employee of the company and is not involved in the day to day running of the business. A non-executive director is independent from management and can therefore offer objective judgement.

## **Prescribed Officers**

A prescribed officer is any person who fulfils the role of a director but who operates under a different designation, including anyone who:

- Exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company, or
- Regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the company.

A company secretary, may, for example, fall within the definition of a prescribed officer in terms of the Act, even although he may not be a director appointed to the board of the company. Prescribed officers are bound by the same codified duties and liabilities of directors which are referred to in numerous sections of the Act.

It is very important that the board is able to identify who the prescribed officers are. Equally important is that the prescribed officers know who they are, and that

they understand their responsibilities in terms of the Act. Not doing so puts both the board and the prescribed officer at risk of non-compliance with the Act, which in turn could lead to activities that may result in personal liability.

Directors and officers are subject to a codified standard of conduct set out in Section 76 of the Act, and a duty not to use company information in such a way as to act in conflict of interest with the company (Section 75).

### **Section 77: Liability of Directors and Prescribed Officers**

Section 77 codifies liability for directors and prescribed officers. It sets out civil liability (delict and breach of fiduciary duty), and then in sub-section 3, sets out specific statutory liabilities.

Section 77 is applicable to an extended definition of director. The liability that is incurred in terms of section 77 is joint and several with any other person who may be held liable for the same act. Any person with a claim can bring it against all the directors or any one particular director. A single director can therefore be held liable for the totality of damages suffered by a third party as a result of a breach of fiduciary duties. An action to recover loss, damages or costs may not commence more than three years after the act or omission.

### **Specific Statutory Liability**

Section 77(3) lists specific instances when a director is liable for loss, damages or costs sustained by the company as a direct or indirect consequence of him having acted in the name of the company despite knowing he did not have the authority to do so, or agreeing to the carrying on of company's business despite knowing that it was being conducted recklessly, or being party to an act or omission by the company despite knowing that it was calculated to defraud a creditor, employee or shareholder, or had another fraudulent purpose, or even for signing or consenting to the publication of any financial statements that were false or misleading in a material respect despite knowing that the statement was false or misleading or untrue (conditions apply). He can also be held liable for being present at a meeting of the board, and failing to vote against certain actions which in are contravention of the provisions of the Act [as listed in Section 77(3)(e)], such as voting in favour of providing financial assistance to a director despite knowing that

the providing of such financial assistance would have been inconsistent with the Act or the company's MOI.

### **Section 20 (4) and (5): Restraining Orders**

One or more shareholders, directors or prescribed officers or the trade union representing employees of the company may apply to the High Court for an appropriate order to restrain a company from doing anything inconsistent with the Act, or from doing anything that is inconsistent with any of the limits, restrictions or qualifications of the MOI.

Each shareholder may have a personal claim for damages against any person, including a director, who intentionally, fraudulently or due to gross negligence causes the company to do anything inconsistent with the Act, or to do anything that is inconsistent with any of the limits, restrictions or qualifications of the MOI (unless the action does not contravene the Act and has been ratified by shareholders).

### **Section 218: Civil Actions**

A shareholder (and any other stakeholder) can also have a claim against the directors or any person who contravenes the Act for damages for any loss or damaged suffered as a result of that contravention. The action does not need to be fraudulent or carried out with gross negligence for a valid claim in terms of this Section.

The Act does however provide some form of relief to directors – by way of Indemnity and Insurance for Directors.

In terms of the Act, a possible defence is open to a director who asserts that he/she had no financial conflict, was reasonably informed and made a rational business decision in the circumstances. This is known as “the business judgement rule”.

Sections 20 and 218 of the Act enable shareholders to sue directors/officers for civil damages, or any losses suffered by them.

If a company is a personal liability company, the directors (including past directors) are jointly and severally liable together with the company for any debts and liabilities of the company that contracted during their respective periods of office.



### Some Key Provisions of the Companies Act

#### Section 28: Accounting Records

All companies are legally required to keep, at their registered office, accurate and complete accounting records in one of the official languages of SA.

#### Section 29: Financial Statements

All financial statements must comply with the requirements of the Companies Act. (e.g. must not be false or misleading in any material respect or incomplete in any material, summaries must be in prescribed format).

#### Section 30: Annual Financial Statements (AFS)

All companies are required to produce AFS:

- Within 6 months after the end of their financial year.
- Must include an auditor's report if the statements are audited.
- Must include a report of directors in the prescribed format.
- Be approved by the board and signed by an authorised director.
- Be presented to the first shareholders meeting after the statements have been approved by the board.

The High Court has recently issued court orders in favour of CIPC empowering them to penalise companies that fail to prepare AFS within 6 months of year end. The penalty is 10% of turnover during the period which each company was non-compliant.

#### Annual General Meeting Requirement

The Companies Act only requires a public company and SOC Ltd to call an AGM within 18 months of its date of incorporation and thereafter once in every calendar year, but no more than 15 months of the date of the previous AGM to present the audited annual financial statements to the shareholders. The Act does not require a private company to have an AGM. However, the Board is required to approve the annual financial statements, and these are required to be presented to the first

shareholders meeting after they have been so approved (there is no time frame stipulated), unless exempted.

### **Regulation 28: Categories of Companies Required to be Audited in Terms of the Companies Act**

Unless exempted in terms of Section 30(2A), the following categories of companies are required to have an audit, conducted by a registered auditor:

- A public company (listed and unlisted).
- State owned companies (SOC Ltd).
- Any profit or non-profit company, if, in the ordinary course of its primary activities holds assets in a fiduciary capacity for persons who are not related to the company and the aggregate value of such assets held at any time during the financial year exceeds R5 million.
- Any non-profit company, if it meets the requirements test as per the Regulations of the Act (incorporated by or for the State).
- Any other company whose public interest score, for the particular financial year as calculated in accordance with Regulation 26(2) is:
  - ◆ 350 or more, or
  - ◆ at least 100, if its annual financial statements for that year were internally compiled.

AFS of private companies and personal liability companies may also be audited if required by that company's MOI, or by a shareholder's or director's resolution, or in terms of an agreement.

### **S30(2A) of the Amendment Act: Exemption of Owner-Managed Companies**

If, with respect to a particular company, every person who is a holder of, or has a beneficial interest in, any securities issued by that company is also a director of the company, that company is exempt from the requirements in this section to have its AFS audited or independently reviewed.

This exemption does not apply to the company if it falls into a class of company that is required to have its AFS audited (Regulation 28), nor does it relieve the company of any requirement to have its AFS audited or reviewed in terms of another law or in terms of any agreement to which the company is a party.

## ASSURANCE LEVELS AND THE PUBLIC INTEREST SCORE (PIS)

The PIS is intended to reflect how much responsibility the company (including a CC and NPC), has towards the public and determines whether the company will need a financial audit, independent review or nothing at all. Every company must calculate its public interest score for each financial year, and is required to disclose the same each year on its CIPC annual return.

A company's PIS is calculated using a standard formula based on the average number of employees during the financial year, the total third party liability at the financial year end, total turnover during the financial year, and the total number of individuals with a direct or indirect beneficial interest in the company e.g. shareholders.

### **If the company has a Public interest Score:**

#### **Over 350**

The company will need an audit. This applies even where the company is owner managed, non-owner managed, or is a CC or NPC.

#### **Between 100 and 349**

The company will need an independent review where the financial statements are independently compiled (externally), and it is not owner-managed – to be conducted by a registered auditor or a chartered accountant. The company will need an audit where the financial statements are internally compiled (applies even where the company is owner managed, non-owner managed, or is a CC or NPC). The company will not need an audit, or independent review where the financial statements are independently compiled (externally), and it is owner-managed.

#### **Lower than 100**

Independent review required where it is not an owner-managed company. In all other cases, there is no requirement for an independent review or an audit for owner-managed companies, or NPC's, unless required by the company's MOI, or if a board or shareholder resolution has been passed, opting for a voluntary audit.

Since 1994, there have been several versions of the King Report. Each version has been built on the underlying principles of the previous report, and recognises that good corporate governance and ethical leadership are essential in society today, irrespective of the size or nature of the entity. King IV™ takes the form of a report which includes the Code, and separate sector supplements for SME's, NPO's, State-Owned Entities, Municipalities and Retirement Funds. It is recommended that all organisations and governing bodies should follow the principles and practices laid down in this document.

Unlike the previous King reports, which were rules-based and followed a 'tick-box' approach, King IV™ is principles- and outcomes-based. King IV™ encourages organisations to have a more 'hands-on' approach to principles, so that practices can be clearly linked to outcomes in an "apply and explain" approach. This gives governing bodies more flexibility when implementing the recommended practices, but requires them to be transparent when disclosing how they achieved their goals.

As mentioned above, King IV™ sets out 17 principles, some of which have been legislated (and if a conflict occurs, the law prevails).

It also includes a large number of recommended practices, to help governing bodies and organisations achieve 'good corporate citizen' status and governance outcomes. It is voluntary (unless prescribed by law or by a Stock Exchange listings requirement).

The Companies Act, 2008 has many features which result in an alignment with inter-national best practices and the governance principles of the King Code and Reports.

**Source:**

The King IV Report on Corporate Governance for South Africa 2016, Institute of Directors S.A.

For more information, see <http://www.iodsa.co.za/?page=AboutKingIV>

## Key Concepts of King IV™

Because of the interdependence of organisations and wider society, board decisions should not be made in isolation. Integrated thinking, where the board of directors considers all issues affecting the organisation when making decisions (and not just the economic bottom line), is fundamental to the long-term sustainability of the organisation through the sustained creation of value for stakeholders. Integrated thinking reinforces the way the company operates as an integral part of society, underpins sustainable development, integrated reporting and the stakeholder inclusive approach.

**Sustainable Development** – an approach to development which balances the different, and often competing needs of the company against an awareness of the environmental, social and economic limitations of society. The board should develop a strategy which includes accounting for sustainability issues and reporting these to stakeholders.

**Corporate Citizenship** – the company should be a responsible “citizen”, involved with social, environmental and economic issues, respect for human rights, effective management of stakeholder relationships, resource management with an eye on future needs, and ensuring a positive impact on the community within which it operates.

**Stakeholder-Inclusive Approach** – the board should consider and balance the legitimate needs, interests and expectations of all stakeholders in making decisions in the best interests of the company. Active stakeholders play a crucial role in the governance process because they are entitled to hold the board and the company accountable for their actions and disclosures.

### Source:

The King IV Report on Corporate Governance for South Africa 2016, Institute of Directors S.A.

For more information, see <http://www.iodsa.co.za/?page=AboutKingIV>

## King IV™ : 17 Principles Principles of Good Governance

The board of directors should:

- Lead ethically and effectively.
- Govern ethics and establish an ethical culture.
- Ensure responsible corporate citizenship.
- Appreciate that the company's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable components of the value creation process.
- Ensure that reports allow stakeholders to make informed assessments about the organisation's performance and its short, medium and long-term prospects.
- Serve as the focal point and custodian of corporate governance.
- Have the appropriate balance of knowledge, skills, experience, diversity and independence.
- Delegate within the board to promote independent judgement, and assist with the balance of power and effective discharge of duties.
- Evaluate board's performance and support continued improvement and effectiveness.
- Appoint and delegate to management in a way that contributes to role clarity and the effective exercise of authority and responsibilities.
- Govern risk in line with strategic objectives.
- Govern information and technology in line with strategic objectives.
- Comply with applicable laws and adopted, non-binding rules, codes and standards.
- Remunerate fairly, responsibly and transparently.
- Use assurance services and functions to enable an effective control environment which supports the integrity of information.
- Adopt a stakeholder-inclusive approach.
- Practise responsible investment which promotes good governance and the creation of value (applies to institutional investor organisations).

**Source:**

The King IV Report on Corporate Governance for South Africa 2016, Institute of Directors S.A.

For more information, see <http://www.iodsa.co.za/?page=AboutKingIV>

### **Definition**

A copyright is an exclusive right granted by law for a limited period to an author, designer, etc. for original work that is reduced to material form.

### **Registration**

Generally a person who has written, printed, published, performed, sculpted, painted, filmed or recorded a work, is automatically the owner of the copyright to that work. Copyright is created by putting the words “copyright” or “copyright reserved” or “copyright ABC 2013” (i.e. copyright, followed by name and the year), or the copyright symbol, name and year e.g. © ABC 2013. You can obtain copyright protection in SA, if you are a South African or if your work was produced in SA. If you are not South African, you can obtain copyright protection provided the country you are a national of is part of the Berne Convention. Copyright for films / videos made for commercial use needs to be applied for formally, by way of the following documentation, obtainable free of charge, from the Copyright Office.

### **Length of Protection**

The lifespan of copyright depends on the type of work protected.

The copyright of literary works lasts for fifty years after death of the author. The copyright of computer programs lasts for fifty years after the first copies were made available to the public. For sound recordings, the copyright lasts for fifty years from the day the work was first broadcast and for films, it lasts for fifty years from the date the film was shown.

### **Rights of Holder**

Copyright affords the author the exclusive right to use, sell or license the copyright work, and to stop others from copying or using his work without his permission. The author can also conclude license agreements with the users for his copyright works and enjoy royalties payment from the licensees.

### **Enforcement and Remedies**

#### **Copyright Act, 98 of 1978**

It is the responsibility of the author to prove ownership and also to sue in case of infringement.

### **Definition**

A registered design is generally used to protect the physical appearance of an article. The design may be aesthetic or functional.

### **Registration**

Registered with the South African Registrar of Patents.

### **Length of Protection**

Registered aesthetic designs are protected for fifteen years. Registered functional designs are protected for ten years. Registered designs must be renewed annually before the expiration of the third year, as from the date of lodgement. To maintain a design in force a payment of an annual renewal fee is due starting from the expiring of the third year from the date of filing until the design expires.

### **Rights of Holder**

Registration of a design grants to the right holder the right to exclude other people from making, importing, using or disposing of any article included in the class in which the design is registered, so that the right holder enjoys all the benefits relating to the design.

### **Enforcement and Remedies**

#### **Designs Act, 195 of 1993**

Remedies include: interdict, delivery up of the infringing product, damages, a reasonable royalty.

## **Tax Implications of Intellectual Property Ownership**

Should income be generated or derived from patents and similar property, the owner may, over a period, deduct from taxable income, expenditure on:

- Devising and developing an invention.
- Generating or making a design, trademark, copyright or similar asset.
- Registering or obtaining a patent, design registration or trademark, and
- Acquiring a copyright, design, patent, trademark or similar property.

Since South African tax law is based on the residence principle, income in a South African resident's hands, from foreign sources is taxable.



## INTELLECTUAL PROPERTY: PATENTS

### Definition

An invention is patentable when it is a product or process that is new, involves an inventive step, or a new way of doing something, or offers a new technical solution to a problem.

It must be capable of being used or applied in trade and industry or agriculture, and must not be specifically excluded from protection as a patent.

### Registration

Registered with the South African Registrar of Patents.

SA is one of **148** countries that is a member of the Patent Co-operation Treaty (PCT). This Treaty allows an individual to file an international application as well as a national application.

The international application will designate countries in which the applicant seeks protection. Extra fees are payable for this type of registration.

### Length of Protection

A patent can last up to twenty years, provided that it is renewed annually before the expiration of the third year from the date of filing in SA.

To keep a patent in force, the annual renewal fee must be paid. The patent expires after twenty years from the date of application.

### Rights of Holder

A holder of a patent has the right to exclude others from making, using, exercising, disposing or importing the invention.

### Enforcement and Remedies

#### Patents Act, 57 of 1978

Remedies include: interdict, damages, delivery up of the infringing product. The Commissioner of Patents or the High Court deal with disputes.

### **Definition**

Trade marks must be capable of distinguishing the goods or services of one undertaking from those of other undertakings (a brand name, a slogan or a logo).

### **Registration**

A trade mark can only be protected as such and defended under the Trade Marks Act, 194 of 1993 if it is registered with the South African Registrar of Trade Marks. Unregistered marks can be defended in terms of the common law.

### **Length of Protection**

Trade marks are registered for ten years but can be renewed for an unlimited number of additional ten-year periods.

### **Rights of Holder**

The right holder is entitled to prevent unauthorised use of an identical or substantially similar mark used in the same type of industry as that in which the trademark has been registered.

### **Enforcement and Remedies**

#### **Trade Marks Act, 194 of 1993**

Where there has been an infringement, the High Court can grant interdicts, order the removal of the infringing mark or the delivery up of the products containing the mark, award damages.

The Commission administers the Register of Trade Marks, which is the record of all the trade marks that have been formally applied for and registered in SA.

The registration procedure results in a registration certificate which has legal status, allowing the owner of the registered trade mark the exclusive right to use that mark.

The Companies Act is administered and enforced by the Companies and Intellectual Property Commission (CIPC), which has jurisdiction throughout SA. Some of its main functions are the registration and deregistration of companies, director appointments, registration of business names, registration of intellectual property rights, disclosure of information on its business registers, promotion and compliance with relevant legislation, the monitoring and compliance with and contraventions of financial reporting standards and making recommendations to the Financial Reporting Standard Council.

A recent court case [CIPC vs Citiconnect 9503/18] confirmed CIPC's authority to issue administrative penalties for general non-compliance to the Companies Act, 2008.

### **CIPC Registration**

All companies must register with CIPC. The registration process is relatively simple but comes with certain responsibilities (such as filing and annual return and paying an annual fee), irrespective of whether the business is trading or not.

### **Annual Returns**

All categories of companies (including external companies) must file annual returns with CIPC within 30 business days after the anniversary date of incorporation. The purpose is to confirm whether the entity is still trading.

If annual returns are not filed within the prescribed time period, it is assumed that the company or CC is inactive, and CIPC will start the deregistration process to remove the entity from its active records. The legal effect of the deregistration process is that the juristic personality is withdrawn and the company or CC ceases to exist.

Each year, in its annual return, every entity must designate a director, employee or other person who is responsible for its compliance with the transparency and accountability provisions set out in the Companies Act.

Currently, where a company or CC is required by the Act, or its MOI, to prepare audited financial statements, it must then also file the latest approved audited financial statements with CIPC – at the same time as the filing of its annual return.

In an effort to enhance the filing efficiency of these audited AFS, and improve the quality and consistency of information submitted, CIPC has implemented a digital reporting system – whereby AFS are filed in XBRL format, rather than in PDF format.

## **The Compliance Checklist**

All companies (not CC's) whose AFS are either independently reviewed or audited are required to submit a compliance checklist to CIPC together with their Annual Return every year. The Checklist requires that the company declare its compliance status to certain Sections, Regulations and Schedules of the Act, and it is ultimately the responsibility of the directors to ensure compliance and completion of the Checklist. Any person who completes it incorrectly or fraudulently can be held responsible, and will be guilty of an offence, and liable to a fine or imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment. The period for which the company declares its compliance is to be known as its “Compliance Year”, and aligned to the anniversary date of its incorporation.

## **STATUTORY BUSINESS REGISTRATIONS IN SOUTH AFRICA**

### **Business Registration**

All companies must register with the Companies and Intellectual Property Commission (CIPC).

### **Income Tax Registration with the South African Revenue Services (SARS)**

- All businesses must register within 60 days of starting a business in order to obtain an income tax reference number. Companies which are registered with CIPC are automatically registered as tax payers with SARS.
- Provisional tax payer registration must be done where applicable (e.g. sole proprietors, partners, directors).

## Other Important Business Registrations

- VAT (Value Added Tax).
- PAYE (Employee Tax).
- Skills Development Levy (SDL).
- Unemployment Insurance Fund (UIF).
- Registration with Department of Labour in terms of Compensation for Occupational Injuries and Diseases Act (COIDA).
- An importer/exporter has to register with SARS to obtain a customs code number.
- As an Accountable and/or Reporting Institution with the Financial Intelligence Centre (FIC) in terms of the FIC Act, 38 of 2001 (where applicable).
- Appointment and Registration of an Information Officer with the Information Regulator in terms of the Protection of Personal Information Act, 4 of 2013.

## TAXATION IN SOUTH AFRICA

The SA Tax regime is set by the National Treasury and managed by the South African Revenue Service (SARS). The National Budget Speech is delivered in parliament on the last Wednesday in February each year, where announcements and proposals are made affecting taxation in SA, and how funds are planned to be spent by the Government.

### Double Taxation Agreements

The tax liability of a foreign company depends on the nature of the income derived by it, as well as the existence of a double taxation agreement. SA has agreements with most of its trading partners to prevent double taxation of income accruing to South African taxpayers from foreign sources, or of income accruing to foreign taxpayers from South African sources. In terms of these arrangements a foreign resident will be taxed in SA only if it conducts business through a permanent establishment in SA (there are a few exceptions such as withholding taxes). Any person who is deemed to be a resident of another state through the application of a double tax agreement will not be treated as a South African resident.

## Other Key Facts on Taxation in South Africa

Partnerships are not recognised as separate entities for income tax purposes. Each individual partner is taxed separately on his share of the partnership profits. There is no group taxation in SA – each company is taxed as a separate taxpayer. The financial year end for individuals is end of February every year. Companies may select their own financial year end. Companies who derive their income from mining, gold mining, oil and gas, and farming may receive special dispensations.

## Residence Based Tax

South Africans are taxed on their worldwide income, subject to certain exclusions. Foreign taxes on that income are allowed as a credit against South African tax payable. This is applicable to individuals, companies, CC's, trusts and estates.

## Definition of Resident

### Natural Person:

- Any natural person who is ordinarily resident in SA, or
- Any natural person who is not ordinarily resident in SA but who:
  - ◆ is physically present in SA for a period exceeding 91 days in aggregate during the current year of assessment and for a period exceeding 91 days in aggregate during each of the prior 5 years of assessment; and was physically present in SA for a period exceeding 915 days in aggregate during the previous 5 years of assessments.
  - ◆ where a person has been outside of SA for a continuous period of at least 330 full days after he ceases to be physically present in SA, he will be deemed to not have been resident from then.
  - ◆ South African resident employees who render services for any employer outside SA for a period which in aggregate exceeds 183 full days commencing on or ending during a period of assessment, and for a continuous period exceeding 60 full days during such 183 day period, will not be liable for income tax on their remuneration for that period. However, effective 1 March 2020, any such remuneration received in excess of R1.25 million will be subject to normal tax in South Africa, irrespective of whether tax is paid in another country.

## **Companies and Trusts**

A company and Trust will be considered to be resident for tax purposes if it is incorporated, established, formed or has its place of effective management in SA.

### **Controlled Foreign Companies (CFC)**

A Controlled Foreign Company (CFC) means any foreign company where more than 50% of the total participation rights or voting rights are directly or indirectly exercisable by one or more residents. South African residents must impute all income of a CFC in the same ratio as the participation rights of the resident in such a CFC, subject to a number of exclusions. Net income of the CFC is defined as the CFC's taxable income determined as if the CFC is a South African taxpayer.

### **Foreign dividends (including deemed dividends)**

Foreign Dividends received from a non-resident company are taxable.

Foreign dividends are, however, exempt as follows:

- If received by a resident who holds at least 10% of the equity shares in the foreign company.
- The shareholder is a company which is in the same country as the foreign company paying the dividend.
- If declared by a company listed on the SA stock exchange.
- If paid out of the profits of a foreign company if the profits of the foreign company have been included in the South African shareholder's income in terms of the CFC provisions.

Where a foreign dividend is not exempt in terms of the provisions above the following part of a foreign dividend will be exempt from tax:

- Individuals and trusts: 25/45 or 56% of the foreign dividend received.
- Companies: 8/28 or 29% of the foreign dividend received.

No deduction will be granted for any expenditure incurred in the production of income in the form of foreign dividends.

## **Foreign tax credits**

Residents are allowed to deduct all foreign taxes paid in respect of foreign source income from the tax payable in SA on such foreign income. Any excess credits may be carried forward. Where foreign tax is withheld on South African source income, the taxpayer can claim a deduction against income.

## **Non-Residents**

Non-residents are taxed on all income from a South African source. In other words, tax on the income of non-South African resident's is source-based, meaning that any income from a source within (or deemed to be within) SA is taxed, irrespective of the residence of the recipient of the income. Non-residents may invest in the Republic, provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arms-length, at fair market-related prices, and are financed in an approved manner subject to exchange control approval.

## **Capital Transactions**

Proceeds from the sale of assets in SA, may be remitted abroad. Proceeds on the sale of assets by emigrants will be subject to the blocked account provisions.

## **Dividend payments to non-residents**

Dividends declared by companies are remittable to non-resident shareholders in proportion to percentage shareholdings, subject to certain restrictions if the dividend is declared by an affected person who has local financial assistance. An emigrant shareholder will be entitled to dividends declared out of income earned from normal trading activities after the date of emigration. Non-listed companies have additional requirements to be met in order to transfer such dividends. Dividends declared out of capital gains, or out of income earned from normal trading activities prior to the date of emigration, remain subject to the blocked account provisions.

## **Director fee payments to non-residents**

Authorised dealers may transfer director's fees to non-resident directors permanently domiciled outside SA, provided the application is accompanied by a copy of the resolution of the board of the remitting company, confirming the amount to be paid to the beneficiary.



## WITHHOLDING TAX

- A withholding tax of 15% is payable when royalties from a South African source are paid to non-residents, subject to certain exemptions.
- A withholding tax of 15% is payable when interest from a South African source is paid to non-residents, subject to certain exemptions.
- A withholding tax of 15% on payments to foreign entertainers and sportpersons for activities in SA.

### Withholding tax on acquisition of property from non-resident

The purchaser must withhold CGT on the purchase price where assets are purchased from a non-resident except where the amount payable by the purchaser is less than R2 million. The amount withheld is an advance tax in respect of the sellers' liability for CGT.

The following withholding tax rates are applicable and are based on the proceeds on disposal:

NON-RESIDENT SELLER	2021	2022	2023
Natural person	7.5%	7.5%	7.5%
Company	10%	10%	10%
Trust	15%	15%	15%

## Comparative Tax Rates

CATEGORY	2021	2022	2023
<b>NATURAL PERSONS</b>			
■ Maximum marginal rate	45%	45%	45%
■ Reached at a taxable income	1 577 300	1 656 600	1 731 601
■ Minimum rate	18%	18%	18%
■ Up to taxable income of	205 900	216 200	226 000
■ CGT inclusion rate	40%	40%	40%
<b>COMPANIES &amp; CC's</b>			
■ Normal tax rate	28%	28%	28%*
■ Dividends Tax	20%	20%	20%
■ CGT inclusion rate	80%	80%	80%
<b>TRUSTS (other than special trusts)</b>			
■ Flat rate	45%	45%	45%
■ CGT inclusion rate	80%	80%	80%
<b>DONATION TAX</b>			
■ First R30m cumulative donations	20%	20%	20%
■ Cumulative donations in excess of R30m	25%	25%	25%
<b>ESTATE DUTY</b>			
■ Dutiable estate up to R30m	20%	20%	20%
■ Dutiable estate in excess of R30m	25%	25%	25%
<b>VAT</b>	15%	15%	15%
<b>SMALL BUSINESS CORPORATIONS</b>			
■ Maximum marginal rate	28%	28%	28%*
■ Reached at a taxable income	550 000	550 000	550 000
■ Minimum rate	0%	0%	0%
■ Up to a taxable income of	83 100	87 300	91 250
<b>MICRO BUSINESS - refer to page 41</b>			

\*For tax years ending on or after 31 March 2023 the tax rate is reduced to 27%

## Natural Person Tax Rates: 28 February 2023

TAXABLE INCOME	RATES OF TAX
R0 - R226 000	+18% of each R1
R226 001 - R353 100	R40 680 +26% of the amount above R226 000
R353 101 - R488 700	R73 726 +31% of the amount above R353 100
R488 701 - R641 400	R115 762 +36% of the amount above R488 700
R641 401 - R817 600	R170 734 +39% of the amount above R641 400
R817 601 - R1 731 600	R239 452 +41% of the amount above R817 600
R1 731 601 and above	R614 192 +45% of the amount above R1 731 600

Rebates: Natural persons	2021	2022	2023
Primary	R14 958	R15 714	R16 425
Secondary (Persons 65 and older)	R8 1994	R8 613	R9 000
Tertiary (Persons 75 and older)	R2 736	R2 871	R2 997

Thresholds: Natural persons	2021	2022	2023
Below age 65	R83 100	R 87 300	R91 250
Age 65 to below 75	R128 650	R135 150	R141 250
Age 75 and over	R143 850	R151 100	R157 900

Interest Exemption: Natural persons	2021	2022	2023
Below age 65	R23 800	R23 800	R23 800
Age 65 and above	R34 500	R34 500	R34 500

## Transfer Duty

- Is calculated on the value of the immovable property (purchase price or market value whichever is the highest), and is payable within six months after the transaction is entered into.
- Will be exempted when the seller is a registered VAT vendor.

Transfer duty is calculated as follows:	
R0 - R1 000 000	0%
R1 000 001 - R1 375 000	3% of the value over R1 000 000
R1 375 001 - R1 925 000	R11 250 + 6% of the value over R1 375 000
R1 925 001 - R2 475 000	R44 250 + 8% of the value over R1 925 000
R2 475 001 - R11 000 000	R88 250 + 11% of the value over R2 475 000
R11 000 001 +	R1 026 000 + 13% of the value over R11 000 000

## Headquarter Company Regime

The headquarter company regime (HQC) aims to reduce the tax cost of operating a headquarter company in SA. For example, it exempts companies from withholding dividends tax and tax on interest and royalties on income flowing through them from foreign subsidiaries.

## Value Added Tax (VAT)

The VAT system comprises of three types of supplies:

- Standard-rated supplies – supplies of goods and services subject to the VAT rate in force at the time of supply. With effect 1 April 2018 the VAT rate was increased from 14% to 15%.
- Exempt supplies – supplies of certain services not subject to VAT. Vendors making exempt supplies are not entitled to input VAT credits.
- Zero-rated supplies – supplies of certain goods or services subject to VAT at zero percent. Vendors making zero-rated supplies are entitled to input VAT credits.

## Key Features

- Enterprises with a turnover of less than R1 000 000 in any period of 12 months are not obliged to register for VAT.
- Enterprises with a turnover of less than R50 000 in any period of 12 months are not permitted to register for VAT.
- VAT returns are generally submitted on a two monthly basis unless turnover in any period of 12 months exceeds R30 million, in which case returns are submitted monthly.
- Farmers may submit VAT returns on a six monthly basis as long as their turnover does not exceed R1.5 million and property letting companies and trusts may, subject to certain requirements, submit annual VAT returns.
- Vendors may reclaim the VAT element on expenditure incurred for the purpose of making taxable VAT supplies except on, entertainment, excluding qualifying subsistence, passenger vehicles (including hiring) and club subscriptions.
- Input tax credits may not be claimed on expenditure relating to exempt supplies.
- Input tax credits may only be claimed upon receipt of a valid tax invoice.
- In order to be a valid tax invoice the name, address and VAT registration number of the recipient and supplier must appear on tax invoices where the VAT inclusive total exceeds R5 000.

## Capital Gains Tax (CGT)

### Persons subject to CGT

CGT is payable on capital gains that arise by the following persons:

- Residents are subject to CGT on all assets including overseas assets.
- Non-residents are subject to CGT on immovable property or any right or interest in a property situated in SA and any asset of a permanent establishment through which a trade is carried on in SA.

**Note:** Any right or interest in a property includes a direct or indirect interest of at least 20% held alone or together with any connected person in the equity share capital of a company, where at least 80% of the value of the net assets of the company is, at the time of the disposal, attributable to immovable property in SA.

## Exclusions

The following are the main exclusions from CGT:

- Primary residences with capital gains up to R2 million.
- Personal use assets.
- Retirement benefits.
- Long-term assurance.
- Small business assets with capital gains up to R1.8 million (applicable when a person is over the age of 55 where the maximum market value of the small business assets does not exceed R10 million).
- Annual exclusion for natural persons: R40 000.
- Annual exclusion on death for natural persons: R300 000.

## Calculation and inclusion rates

A capital gain or loss is calculated separately in respect of each asset disposed. Once determined, gains or losses are combined for that year of assessment and if it is:

- an assessed capital loss, it is carried forward to the following year, or
- a net capital gain, it is multiplied by the inclusion rate and included in taxable income.

The inclusion rates are as follows:

PERSON	2021	2022	2023
Natural person and special trust	40%	40%	40%
Company	80%	80%	80%
Trust	80%	80%	80%

## Donations Tax

Donations Tax is payable by any individual living in the Republic of SA, or any South African company or one managed or controlled in the Republic, on the value of any gratuitous disposal of property including the disposal of property for inadequate consideration and the renunciation of rights. Donations tax is payable at the end of the month following the month in which the donation was made, at a flat rate of 20% on the first R30 million donation. Donations tax on donations in excess

of R30 million for the preceding 12 months will be 25%. Certain donations are exempt, and non-residents are not liable for donations tax.

## **Dividends Tax**

Dividends tax is a tax levied on the shareholder at a rate of 20% on dividends paid. However, where a dividend in specie is paid, dividends tax is levied on the company declaring the dividend. Dividends tax is normally withheld by the company paying the dividend, and is payable at the end of the month following the month in which the dividend was paid.

A dividend is exempt from dividends tax if the beneficial owner is:

- A SA company.
- The Government and various quasi government institutions.
- Public Benefit Organisations.
- Environmental rehabilitation trusts.
- Pension, provident and similar funds.
- Medical Schemes.
- A shareholder in a registered micro business (only the first R200 000 of dividends paid during a particular year of assessment).
- A non-resident and the dividend is paid by a South African Listed non-resident company.

## **Secondary Tax on Companies ('STC') Credits**

If a company has STC credits at the effective date of the Dividends Tax regime these STC credits must be used before or on 31 March 2015 (i.e. within 3 years from the effective date).

## **Securities Transfer Tax**

The tax is imposed at a rate of 0.25% on the transfer of listed or unlisted securities. Securities consist of shares in companies or member's interests in close corporations.

## **Capital Incentive Allowances**

The Capital Incentive Allowance is a reduction in the amount of tax payable, offered as an incentive for investment in large-scale projects. A certain percentage of the capital asset's cost is allowed as capital allowance during the accounting period in which it was purchased. This amount is greater than the depreciation charge on the asset during that period. Examples of capital incentive allowances include urban development zone allowances, learnership allowances and wear and tear allowances.

## **Employee Tax**

Where a subsidiary or branch of foreign-owned company hires employees in SA, it must register as an employer with SARS.

## **Green Taxes**

Examples of Green Taxes in SA include: the carbon dioxide vehicle emissions tax, plastic bag levy, tyre levy and incandescent light bulb levy. Environmental deductions/allowances as well as tax allowances for energy efficiency savings also apply. Carbon Tax was implemented wef 1 June 2019.

## **Customs Duties**

An importer/exporter has to register with SARS to obtain a customs code number. Goods imported into, or exported from, SA are liable for VAT and customs duty, subject to the availability of rebates and refunds. Direct exports (where the South African seller supplies the goods) are subject to VAT at 0% and indirect exports (where for example the client of a South African seller arranges for the delivery of goods to the client's customer in the country to which the goods are exported) are subject to VAT at 15%.

If goods are imported from one of the countries falling within the Common Customs Area (Namibia, Botswana, Lesotho and Swaziland) they are exempt from custom duty but not VAT.



## SMALL BUSINESS CORPORATIONS

### Year ending between 1 April 2022 and 31 March 2023

R0 - R91 250	0% of taxable income
R91 251 - R365 000	7% of taxable income above R91 250
R365 001 - R550 000	R19 163 + 21% of taxable income above R365 000
R550 001 and above	R58 013 + 28% of the amount above R550 000

### Year ending between 1 April 2021 and 31 March 2022

R0 - R87 300	0% of taxable income
R87 301 - R365 000	7% of taxable income above R87 300
R365 001 - R550 000	R19 439 + 21% of taxable income above R365 000
R550 001 and above	R58 289 + 28% of the amount above R550 000

A small business corporation is a close corporation, private company (other than a personal service provider) or personal liability company of which:

- the entire shareholding or membership is held by natural persons for the entire year of assessment
- the gross income does not exceed R20 million during the year of assessment
- none of the members/shareholders, at any time during the year of assessment, held shares in any other company other than listed companies, collective investment schemes, body corporates, shareblock companies, certain associations of persons, friendly societies, less than 5% interest in cooperatives, venture capital company, shares in private companies that are inactive and have assets of less than R5 000 or have taken steps to liquidate, wind-up or deregister
- not more than 20% of the sum of gross income and capital gains consists of investment income and income from the provision of personal services
- if engaged in the provision of personal services, maintains at least three
- full-time employees (none of whom may be a shareholder or a connected person in relation to the shareholder) for core operations.

## TURNOVER TAX FOR MICRO BUSINESSES

Financial years ending on any date between 1 March 2022 and 28 February 2023

TAXABLE TURNOVER	RATES OF TAX
R0 - R335 000	0%
R335 001 - R500 000	1% of taxable income above R335 000
R500 001 - R750 000	R1 650 + 2% of taxable income above R500 000
R750 001 and R1 000 000	R6 650 + 3% of the amount above R750 000

Financial years ending on any date between 1 March 2021 and 28 February 2022

TAXABLE TURNOVER	RATES OF TAX
R0 - R335 000	0%
R335 001 - R500 000	1% of taxable income above R335 000
R500 001 - R750 000	R1 650 + 2% of taxable income above R500 000
R750 001 and R1 000 000	R6 650 + 3% of the amount above R750 000

Turnover tax for micro businesses is a simplified turnover-based tax system substituting income tax and Capital Gains Tax. A micro business may voluntarily register for VAT. Turnover tax is an elective tax applicable to sole proprietors, partnerships and companies that meet certain criteria and have a turnover of less than R1 million per year.

A micro business may only voluntarily exit the turnover tax system before the beginning of a year of assessment.

### Average exchange rates for a year of assessment

Year of assessment for the 12 months ending:	Australian Dollar	Canadian Dollar	Euro	Hong Kong Dollar	Indian Rupee	Japanese Yen	Swiss Franc	UK Pound	US Dollar
June 2021	10.6384	11.3928	16.7702	1.7930	0.1892	0.1264	15.3252	19.5195	13.9167
July 2021	10.7879	11.6051	17.1798	1.8702	0.1950	0.1318	15.8253	20.0609	14.5329
August 2021	10.7955	11.7397	17.4096	1.9000	0.1994	0.1347	16.1813	20.4093	14.7890
September 2021	10.6455	11.4813	17.1126	1.8679	0.1975	0.1319	15.7591	19.9714	14.5323
October 2021	10.9904	11.9363	17.2398	1.9099	0.1983	0.1314	16.0887	20.3348	14.8587
November 2021	11.3285	12.3470	17.7016	1.9913	0.2083	0.1361	16.8252	20.8729	15.5126
December 2021	11.3566	12.4022	17.9323	2.0350	0.2107	0.1393	17.2310	21.1168	15.8695
January 2022	11.1242	12.2773	17.5419	1.9880	0.2080	0.1349	16.8637	21.0078	15.4912
February 2022	10.8973	11.9597	17.2535	1.9504	0.2029	0.1321	16.4899	20.6014	15.2134
March 2022	11.0392	11.8314	16.5106	1.9149	0.1965	0.1263	16.1131	19.7306	14.9786
April 2022	11.0595	11.8574	16.2068	1.9073	0.1965	0.1187	15.8836	19.3778	14.9538
May 2022	11.2181	12.3789	16.8161	2.0258	0.2056	0.1235	16.2286	19.7913	15.9011

## STANDARD FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS

In recent years, governments and financial institutions have become much more aware of the large amounts of undisclosed wealth held in offshore accounts.

The Standard for Automatic Exchange of Financial Account Information in Tax Matters (also referred to as the Common Reporting Standard or CRS) creates a globally co-ordinated and consistent approach to the disclosure of financial accounts held by account holders. The agreement requires sharing of information between the tax authorities regarding accounts and investments.

SA is one of the early adopters of the CRS and is committed to commence exchange of information automatically on a wider front from 2017, together with over one hundred other jurisdictions.

## PRIME BANK OVERDRAFT RATES

Effective Date	Rate
23.11.2018	10.25%
18.07.2019	10.00%
17.01.2020	9.75%
20.03.2020	8.75%
15.04.2020	7.75%
22.05.2020	7.25%
24.07.2020	7.00%
18.11.2021	7.25%
28.01.2022	7.50%
24.03.2022	7.75%
19.05.2022	8.25%

## IMPORTANT LAWS AFFECTING BUSINESSES IN SOUTH AFRICA

Knowledge of and compliance with legislation is essential for the good governance of a company. When doing business in SA, it is important to have a working knowledge of the guidance provided in The King Report and King Code.

While this list is not exhaustive, important legislation (and legislative amendments where applicable) to be aware of includes:

- The Companies Act.
- The Close Corporation's Act.
- The South African Income Tax Act.
- The Labour Relations Act.
- The Occupational Health and Safety Act.
- The Employment Equity Act.
- Promotion of Access to Information Act.
- Financial Intelligence Centre Act.
- Trade Marks Act.
- Business Names Act.
- Consumer Protection Act.
- The Competition Act.
- Electronic Communications and Transactions Act.
- The Protection of Personal Information Act.
- National Credit Act.
- Basic Conditions of Employment Act.
- Broad-Based Black Economic Empowerment Act.
- Industry or sector specific legislation.
- Listed companies must adhere to JSE regulations.
- On 1 December 2021, parts of the Cybercrimes Act, 19 of 2020, came into operation. The remainder of this Act is expected to become effective in 2022, including the sections that create reporting obligations for electronic communications service providers and financial institutions.

The National Credit Act (the NCA) became fully operative on 1 June 2007 and is designed to protect the consumer against unlawful credit provision. The National Credit Regulator is responsible for the registration of industry participants, research, public education, investigation of complaints and enforcing NCA compliance.

The NCA creates a responsibility on credit providers to refuse to give the consumer (borrower) credit if he cannot afford it. The NCA generally applies to every written credit agreement between parties dealing at arm's length and made in, or having effect in, SA. A credit agreement is defined as a credit facility, credit transaction, credit guarantee, or any combination of the three. The Regulations of the NCA specify the maximum interest rates and transaction fees that can be charged on credit agreements or loans.

### Registration of Industry Participants

All industry participants (credit providers, credit bureaux and debt counsellors) must be registered with the Regulator. If they have not registered as such, they cannot extend credit or trade as a credit provider.

### Further Consumer Rights

The right to apply for credit, to be protected against discrimination in the granting of credit, to be informed of the reason why the application for credit was refused (if requested), to receive a credit agreement in plain, understandable and an official language, and to receive a copy of the credit agreement and a replacement copy when requested.

The National Credit Amendment Act, 7 of 2019 has been signed into law, however a commencement date has not yet been fixed. The amendment will provide additional protection to low-income consumers from over-indebtedness by either re-arranging, suspending or extinguishing (partially or wholly) their unsecured credit debts during a period of four years from the commencement date, which can be extended.

## CONSUMER PROTECTION ACT, 68 OF 2008

The Consumer Protection Act and Regulations (the CPA) is intended to promote fair business practices by governing transactions and services that occur in SA between suppliers and consumers. It regulates the activities of suppliers and creates rights for consumers (in the event that they fall within the ambit and scope of the Act).

Where applicable, the CPA regulates the marketing of goods and services to consumers as well as the relationships, transactions, advertisements and agreements between the consumers, suppliers, producers, distributors, importers, retailers, service providers and intermediaries of those goods and services. A supplier may reside in or outside SA, or have its principal office in or outside of SA.

The CPA applies to:

- Every transaction occurring within SA, and covers both goods or services delivered or rendered “in the ordinary course of business” and it applies to transactions which suppliers enter into with consumers (a transaction refers to the supply of goods or services in return for payment). It therefore covers:
  - ◆ The promotion and advertising of goods or services that could lead to the transaction being entered into (unless exempted), the performance of the service and the supply of goods, the goods and services themselves after the transaction is completed, and the goods which form the subject of an exempted transaction. The Act does not apply to certain consumers, certain transactions, or in specific instances where exempted by the Minister, more specifically:

The CPA does not apply to the following consumers:

- Juristic Persons whose asset value or annual turnover equals or exceeds R2 million. Juristic persons, for purposes of the CPA include: a company, a close corporation, and also a body corporate, partnership or association, or a trust as defined in the Trust Property Control Act, 57 of 1988.
- The State.
- Credit Agreement Transactions (exclusions apply).
- Employment contracts.

- Collective bargaining and bargaining agreements.
- Specific exemption granted by the Minister.

Despite the exemptions above, certain provisions of the CPA apply to Franchise Agreements and in relation to Product Liability.

## **Eight Fundamental Consumer Rights**

The CPA introduces a formal set of consumer rights into law, based on internationally accepted and United Nations adopted consumer rights.

- Right to equality in the consumer market.
- Right to privacy.
- Right to choose.
- Right to fair and honest dealing.
- Right to disclosure and information.
- Right to fair value, good quality and safety.
- Right to fair and responsible marketing.
- Right to fair, just and reasonable terms and conditions.

## **Safety of Consumers and Informed Consent**

The CPA is designed to ensure the safety of consumers and to provide specifically for informed consent. A supplier is required to draw the consumer's attention in a conspicuous, clear and understandable way, to any risk that could result in serious injury or death.

## **Product Liability**

Product liability and safety law are both areas of law focused on unacceptable risks of death, injury or damage, prevention of the realisation of those risks and assuring compensation when or if the risks do realise.

The CPA, under the fundamental right to fair value, good quality and safety, establishes a form of modified strict liability of producers, importers, distributors or retailers (or all of them jointly and severally) for harm caused by or as a result of, the supply of goods which are unsafe, or failed products, or defects or hazards in any goods, and for inadequate instructions or warnings provided to the consumer.



B-BBEE, initiated by the SA government is aimed at empowering “black” people. It redresses the inequalities of the past. The Department of Trade and Industry (DTI) is the custodian of B-BBEE in terms of the B-BBEE Act, 53 of 2003 (as amended).

“Black” people in SA include Africans, Asians and persons of mixed race. Women of all races are also seen to be previously disadvantaged and B-BBEE encourages the empowerment of all women. Through its B-BBEE policy, the government aims to achieve some of the following objectives:

- Empower more black people to own and manage enterprises. Enterprises are regarded as black-owned if at least 51% of the enterprise is owned by black people, and black people have substantial management control of the business.
- Achieve a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.
- Promote access to finance for black economic empowerment.
- Increase the extent to which black women own and manage existing and new enterprises, and facilitate their access to economic activities, infrastructure and skills training.
- Ensure that black-owned enterprises benefit from the government’s preferential procurement policies.

The Codes set out guidelines for facilitating B-BBEE and scoring.

### How Compliance is Achieved

In terms of the amended Codes, B-BBEE compliance is achieved by a business by reference to its overall score achieved in respect of five specific B-BBEE elements and measured in accordance with a B-BBEE scorecard. The 5 elements are Ownership, Management Control, Skills Development, Enterprise and Supplier Development and Socio-Economic Development. Every entity subject to B-BBEE is required to maintain a scorecard prepared and verified by an accredited verification agency.

## Turnover Thresholds

	Amended Code	Previously
Large Enterprises (Generic)	Turnover greater than R50 million per year	Must comply with the full scorecard.
Qualifying Small Enterprises (QSE)	Turnover between R10 million and R50 million per year	Granted minor concessions on scoring but are measured against all 5 elements.
Exempt Micro Enterprises (EME)	Turnover less than R10 million per year	Exempt from B-BBEE and only need to present an affidavit on an annual basis confirming their level of black ownership and annual turnover in the preceding financial year.*

\*EME's with a 50%+ level of black ownership are automatically granted an enhanced level of recognition and are exempt from B-BBEE up to a turnover of R50 million.

### THE FINANCIAL INTELLIGENCE CENTRE ACT, 38 OF 2001

The Financial Intelligence Centre Act, as amended (FICA), is a comprehensive piece of legislation dealing with money laundering controls, with the aim of fighting organised crime and terrorism, both locally and internationally. Amendments proposed in 2021 to FICA may gain traction in 2022.

FICA identifies certain sectors within business as particularly vulnerable to money laundering and terror financing. These sectors are legally required to register with the Financial Intelligence Centre (FIC) as either an "Accountable Institution" (AI) or a "Reporting Institution" (RI). They are required to take steps regarding client identification, record-keeping, reporting of information and internal compliance structures. An AI includes, inter alia a person who carries on the business of a bank (as defined in the Banks Act, 1994 of 1990), an estate agent, attorney, a board of

executors or a trust company, a person who carries on the business of dealing in foreign exchange, and long-term insurance service providers. A RI includes dealers in motor vehicles or in Krugerrands.

## **FICA and Financial institutions**

In order to comply with FICA, South African banks have implemented customer identification measures to enable them to know who their customers are and to prevent criminals from using false or stolen identities to gain access to services. The information and documents required when new customers open a banking account depends on whether the customer is a natural person, part of an entity, or whether he or she is a South African citizen or a foreign national permanently resident in SA, a private company, trust or other legal entity.

## **Cash transactions and FICA**

AI's are required to file a "cash threshold report" with FIC in regard to any cash transactions involving domestic and foreign notes and coins, and travellers cheques above R25 000 or an aggregate thereof. Note that the South African Reserve Bank announced that cheques will not be supported by the country's national payment system from 1 January 2021.

SA is a member of the Financial Action Task Force, the international body which sets standards and policy on anti-money laundering and for combating the financing of terrorism.

## **THE PROTECTION OF PERSONAL INFORMATION ACT, 4 OF 2013**

The Protection of Personal Information Act (POPIA), is aimed at bringing SA in line with international standards of protection of personal data. It applies to any person or organisation who keeps any type of records relating to the personal information of anyone, (unless those records are subject to other legislation which protects such information more stringently). It regulates the "processing" of personal information. "Processing" includes collecting, receiving, recording, organising, retrieving, or using such information; or disseminating, distributing or making such personal information of the data subject, available.

“Personal information” includes a wide range of information that can be used to identify a data subject. It relates to information pertaining to an identifiable, living natural person, and where it is applicable, an identifiable existing juristic person, including and not limited to information relating to race, gender, marital status, pregnancy, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth. It also includes information relating to the education, or the medical, financial, employment or criminal history of the person, any identifying number, all contact details, biometric information, personal opinion, private or confidential correspondence of that person, the views or opinions of another individual about the person, and the name of the person.

The Act commenced on 1 July 2020. All organisations were required to have been fully compliant with POPIA by the 30 June 2021.

In order to comply with POPIA, public and private bodies or ‘organisations’ will need to implement a ‘POPI’ programme to ensure that the safety and privacy of the personal information for their ‘data subjects’ is protected. This applies to their information capturing, storage and usage systems. The Act requires that businesses in SA identify and appoint an Information Officer within their organisation. He is responsible for encouraging compliance to the conditions for the lawful processing of personal information as set out in POPIA, within the organisation, and is also required to work with the Information Regulator, with regards to any investigations it may conduct in terms of the Act.

The Information Regulator (IR) is responsible for the enforcement of POPIA’s provisions, as well as handling of complaints, performing research and facilitating cross-border co-operation. Should a business be in violation of any of POPIA’s provisions, the IR may issue an enforcement notice. If the enforcement notice is not complied with, the penalty that may be imposed is a fine or imprisonment, or both. Up to twelve months imprisonment may be imposed for lesser offences, and up to ten years for more serious offences. The maximum fine that may be imposed is R10-million.

A company may transfer personal information to recipients in locations outside SA if the recipient country has data protection laws similar to POPIA.

## EMPLOYMENT LAW

Employment in SA is regulated by statute, common law and contract. SA employment law applies to employees working in SA. In most instances, where an employee performs work in SA and is paid there, SA law will apply.

### Sources of Labour Law In South Africa

#### Basic Conditions of Employment Act, 75 of 1997 (BCEA)

Imposes minimum conditions of employment for employees, mainly in relation to working hours, leave, the prohibition of child and forced labour, the payment of remuneration and notice and payments on termination of employment. Start-ups may be exempt for up to 12 months from the national minimum wage.

#### Labour Relations Act, 66 of 1995 (LRA)

Governs all employers and employees in SA except for those excluded. Grants employees protection against unfair dismissal and unfair labour practices. Encourages collective bargaining and settlement of disputes, codifies guidelines re Trade Unions, bargaining councils and the Commission for Conciliation Mediation and Arbitration (CCMA).

#### The Occupational Health and Safety Act, 85 of 1993 (OHSA)

Imposes a general duty on employers to ensure that a reasonably safe and healthy environment is provided to workers and to provide protective equipment.

#### Skills Development Act, 97 of 1998 (SDA)

SETA's (Sector Education and Training Authorities) are established for sectors to establish "learnerships", approve workplace skills plans, allocate grants, monitor education and training, to collect and disburse SDL levies, (training is financed by a levy equivalent of 1% of each employer's payroll).

**The Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA)**

Ensures that employees and their dependants who have suffered injury, illness or death occurring in the workplace and during the course of the employee's duties are compensated (excluding policemen, soldiers, domestic and contract workers).

**Skills Development Levies Act, 9 of 1999 (SDLA)**

This imposes a compulsory levy on most employers of an amount equal to 1 % of the employer's total payroll amount, the proceeds of which are used to fund the various SETA's. In certain circumstances, employers are allowed to claim rebates for the levies paid to a SETA.

**The Unemployment Insurance Act, 63 of 2001 (UIA)**

Provides for payment of benefits to employees who have lost their employment due to pregnancy, or other circumstances beyond their control (i.e. not by resignation). Applies to domestic workers. A recent amendment to maternity benefits sees payment made at a rate of 66% of the earnings of the beneficiary at the time of the application.

**The Employment Equity Act, 55 of 1998 (EEA)**

To eliminate discrimination in the workplace, on grounds such as race, gender, sex, age and religion and promotes affirmative action.

**The National Minimum Wage Act, 9 of 2018**

As of 1 March 2022, the national minimum wage in SA is R23,19 per hour.

**The Labour Laws Amendment Act, 10 of 2018**

Provides, inter alia, that all fathers, adopting parents, and surrogates - are now entitled to 10 days unpaid parental leave when their children are born.

### **International Labour Organisation (ILO)**

International labour standards, conventions and recommendations.

### **Codes of Good Practice**

Various labour statutes empower the Minister of Labour to issue “codes of good practice” which are intended as guidelines for employers when formulating policies and procedures.

*All references to the abbreviations used above under this section of this guide refers to the applicable Act as per this table.*

## **The Employment Contract**

There is no legal requirement that a contract of employment needs to be in writing. An oral employment is as binding and valid as a written one.

However, the BCEA requires that “written particulars of employment” be given to the employee, which imposes a duty on the employer to provide the employee with certain information in writing, and the BCEA requires that these written particulars be retained for 3 years after termination of the employment. Terms and conditions cannot be changed unilaterally by one party, however they may change by operation of law.

## **Notice Periods**

The employer or employee may give notice to terminate the employment relationship by giving the written statutory, agreed or reasonable notice to the other party. Where an employee is illiterate, the notice must be given verbally as well. Any employee who works for more than 24 hours per month for the employer is entitled to notice in terms of his/her contract, or if no contract exists, then to the legal minimum as follows:

Period of Service	Written Notice Requirement
6 Months or less	1 Week*
6 to 12 Months	2 Weeks*
12 Months +	4 Weeks**
<p>*cannot be reduced by agreement</p> <p>**A collective agreement may reduce the 4 week notice period to not less than 2 weeks</p>	

If the employer complies with these statutory minimum periods or agreed notice period (contained in a contract), the notice given will be lawful. The employee may nevertheless challenge the fairness of the dismissal in terms of the LRA. Notice cannot run concurrently with any period of annual, maternity or family responsibility leave. Fixed term contracts do not need notice to be given when they expire – unless the employee has a reasonable expectation that the contract will be renewed. Employers may decide to waive the notice period, but the worker must still be paid for the notice period. Workers who live on the premises of the employer may stay in the accommodation for 1 month if the employer ends the contract of employment prematurely.

## Dismissal

The LRA grants employees protection against unfair dismissal. A dismissal must be both substantively and procedurally fair. The three main grounds for dismissal are misconduct, incapacity (ill health or poor work performance) and operational requirements of the employer. Payment on dismissal includes accrued annual leave pay, payment in lieu of notice – unless summarily dismissed or if the employee is required to work the notice period. If dismissal is due to operational requirements, severance pay of a minimum of one week's salary for every completed year of service, and any other amount that the employee is contractually entitled to.



## Administrative Consequences of Hiring Employee(s)

	Compliance	Requirement
<b>P A Y E</b>	Registration as Employer with SARS for P.A.Y.E (EMP101 form)	Deduct tax from employees each month and pay to South African Revenue Service (SARS) by 7th day of following month. At end of each year issue each employee with an IRP5 certificate (which must reconcile with total P.A.Y.E paid). Also payable by members of CC's and directors of companies.
<b>U I F</b>	Register with the UIF and with SARS	Pay over monthly contributions on basis of 1% contribution by employee and 1% by employer based on the employees remuneration being below a certain amount (R17 712 per month). For employees who earn more than this amount, the contribution is calculated using the maximum earnings ceiling amount (R177.12).
<b>S D L</b>	Registration with SARS	1% of total remuneration paid to employees. Employers paying annual remuneration of less than R500 000 are exempt from payment of these levies.
<b>Workman's Compen- sation</b>	Register and provide annual reports re wages	Basis of assessment to be paid by employers annually.

PAYE should be withheld from remuneration paid to labour brokers unless an exemption certificate is obtained.

## Unemployment Insurance Fund (UIF)

The Unemployment Insurance Act and Unemployment Insurance Contributions Act applies to all employers and workers, with the following exceptions: workers working less than 24 hours a month for an employer, learners, public servants, foreigners working on contract, workers who earn only commission.

## Employment Tax Incentive (ETI)

The employment tax incentive was instituted in order to encourage employment creation for the youth (i.e. employees between the ages of 18 and 29 years) and the incentive will come to an end on 28 February 2029.

If an employer is eligible to receive the employment tax incentive in respect of a qualifying employee in respect of a month, that employer may reduce the employees' tax payable by that employer with the amount of the incentive.

The main requirements to qualify for this incentive are as follows:

- The taxpayer must be registered for the purposes of the withholding and payment of employees' tax
- The wage paid to an employee may not be less than the amount payable by virtue of a wage regulating measure applicable to that employer (i.e. a minimum wage) or if the amount of the wage payable to an employee is not subject to any wage regulating measure, the amount of R2 000 per month if the employee is employed for more than 160 hours in the month (if the employee is employed for less than 160 hours in a month and is paid remuneration in respect of those hours a percentage of R2 000 must be used)
- An employee is a qualifying employee if the employee:
  - ◆ is not an independent contractor
  - ◆ is not less than 18 years old and not more than 29 years old at the end of any month in respect of which the employment tax incentive is claimed
  - ◆ was not employed by the employer before 1 October 2013
  - ◆ is in possession of an identity card or is in possession of an asylum seeker permit
  - ◆ in relation to the employer, is not a connected person
  - ◆ is not a domestic worker

- ◆ performs actual work in terms of a documented employment contract
- ◆ is not mainly involved in studying
- ◆ does not earn more than R6 500 (R6 000 before 1 March 2019) per month

The Minister of Finance designated special economic zones and industries in respect which an employer will also qualify for the incentive.

The amount of the employment tax incentive in respect of a qualifying employee is determined as follows:

- During each month of the first 12 months, 75% of the monthly remuneration of the employee if the employee's remuneration is less than R2 000, R1 500 (R1 000 before 1 March 2022) if the employee's remuneration is R2 000 or more but less than R4 500 and according to a formula if the employee's remuneration is R4 500 or more but less than R6 500.
- During each of the 12 months after the first 12 months that the same employer employs the qualifying employee, 37.5% of the monthly remuneration of the employee if the employee's remuneration is less than R2 000, R750 (R500 before 1 March 2022) if the employee's remuneration is R2 000 or more but less than R4 500 and according to a formula if the employee's remuneration is R4 500 or more but less than R6 500.

## **Learnership Allowances**

An annual and completion allowance of R40 000 may be claimed by the taxpayer for learnerships NQF qualifications from levels 1 to 6, and R20 000 for learnerships NQF qualifications from levels 7 to 10. The deduction claimable for disabled learners is R60 000 or R50 000 for both annual and completion allowances.

Where a learnership is terminated before a period of 12 full months the employer will be entitled to a pro rata portion of the annual allowance, regardless of the reason for the termination of the learnership. The completion allowance for a learnership of 24 months or more will be based on the number of consecutive 12 month periods completed × the above annual allowance amount.

## FOREIGN EMPLOYEES: PERMANENT RESIDENCE VISAS

<b>Permanent Offer of Employment</b>	Issued to a person who has received a permanent offer of employment in SA and is holder of a work visa for continuous 5 years.
<b>Critical Skills</b>	Issued to a person who is a foreign national and has demonstrated and meets the criteria in terms of the critical skills list, and holds a permanent contract of employment in SA.
<b>Direct Residence</b>	Issued to a foreign national who is the holder of a work permit for a number of years, and has received an offer of employment on a permanent basis (or is the spouse of a SA citizen or permanent resident).
<b>Child of a South African or Permanent Resident or Citizen</b>	Full birth certificate of the child.
<b>Exceptional Skills Category</b>	The applicant must demonstrate critical skills and also demonstrate over and above these, that he has extraordinary skills or qualifications. No need for a permanent contract of employment.
<b>Business Category (Establishing a Business in SA)</b>	Issued to a foreign national who intends to establish or invest in an established business in SA. The applicant will be required to invest a prescribed financial capital contribution.
<b>Relative Category</b>	Issued to a foreign national who is a member of the immediate family of a South African citizen or permanent resident, provided the latter provides the 'prescribed' financial assurances.
<b>Spousal Category</b>	Issued to a foreigner who has been married to or the life partner of a South African spouse for at least five years before applying for permanent residence.
<b>Retirement Category</b>	Issued to a retired person provided that person can prove that he has the right to a pension or irrevocable retirement annuity with a minimum value of R37 000 per month, or a net worth of R37 000 per month.

## FOREIGN EMPLOYEES: TEMPORARY RESIDENCE VISAS

<b>General Work Visa</b>	Issued to specific applicant, in possession of a written and time specific work offer, in line with his skills and qualifications, provided it has been proven beyond reasonable doubt that SA citizens and permanent residents with the relevant skills are not available for appointment.
<b>Critical Skills Visa</b>	Issued to an individual who has critical skills as listed in the Government Gazette published by the Minister of Home Affairs, provided requirements met.
<b>Intra-company Transfer Work Visas</b>	Issued to an employee employed abroad by a business operating in SA as a branch, subsidiary or affiliate relationship. Issued for a maximum period of four years and are not renewable or extendable.
<b>Study Visa</b>	Issued to a person wishing to study in SA, provided admission to the tertiary institution has been confirmed, and it does not prejudice a South African student.
<b>Business Visa</b>	Issued to an applicant intending to establish business or invest in an existing business in SA. Required to obtain a Certificate issued by a registered accountant that has at least R5 million available in cash, or at least R5 million in cash and capital to be invested in SA, plus other requirements.
<b>Relative's Visa</b>	Issued to a foreign national who is a member of the immediate family of a South African citizen or permanent resident, provided the latter is able to financially support the applicant in an amount of R8 500 per month per person.
<b>Exchange Visa</b>	Issued to persons participating in programmes of cultural, economic, or social exchange organised by an organ of state or a public higher educational institution, in conjunction with an organ of a foreign state.
<b>Retired Person's Visa</b>	Issued to a retired person provided that person can prove that he has the right to a pension or irrevocable retirement annuity with a minimum value of R37 000 per month, or a net worth of R37 000 per month.

A knowledge of competition law is essential for any successful business operating in SA, especially when creating a business strategy, launching a new product or challenging competitors.

The Competition Act, 89 of 1998, as amended, (CA) aims to maintain and promote competition in the South African market in order to, inter alia, provide South Africans with an equal opportunity to participate fairly in the national economy, to achieve a more effective and efficient economy and provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire, to restrain particular trade practices which undermine competitive economy, to promote a greater spread of ownership within the economy, in particular by increasing the ownership of historically disadvantaged individuals, and to ensure that small businesses have an equitable opportunity to participate in the economy.

The CA applies to all economic activity within, or having an effect within SA and regulates relationships between competitors and relationships in the supply chain. Agreements or practices by parties in either type of relationship are prohibited if they have the effect of substantially preventing or lessening competition in a market (subject to certain defences).

### **Restrictive Practices and Anti-competitive Conduct**

Examples of ‘restrictive practices’ and ‘anti-competitive conduct’ are price fixing, predatory pricing and collusive tendering, all of which are prohibited. The CA also prohibits “abuses” by “dominant” firms (firms with a market share of 35% or more).

### **Control of Mergers and Acquisitions**

Mergers and acquisitions are controlled, in that the CA requires a notification and prior approval procedure for certain mergers and acquisitions, carries significant penalties for contraventions – and reaches beyond SA, applying to economic activity both in and having an effect in the country. Public interest plays a significant role in merger assessments. The South African Competition Commission (SACC) is mainly focused on the potential dilution of B-BBEE / historically disadvantaged persons

ownership structures due to merger transactions. In addition, a recent Constitutional Court decision emphasised that competition law must be interpreted and applied with regard to the Constitution, thus the scope of public interest considerations may be broadened to include constitutional issues.

## **Cartel Conduct**

Cartel conduct applies to parties in a 'horizontal relationship' (relationships between competitors), where three categories of conduct are prohibited. These are:

- Directly or indirectly fixing a purchase or selling price or any other trading condition.
- Dividing markets by allocating customers, suppliers, territories or specific types of goods or services.
- Collusive tendering.

Three independent competition regulatory authorities are in place terms of the Act:

- The Competition Commission – investigative and enforcement agency.
- Competition Tribunal – adjudicates competition matters.
- Competition Appeal Court (formerly, the Competition Board) – considers appeals against decisions of the Tribunal.

## **ENVIRONMENTAL LAW**

There is increasing awareness in SA towards environmental issues and planning, both the in private and public sectors.

The overarching legislative foundation for environmental management in SA is The Constitution of the Republic of South Africa Act, 108 of 1996. Section 24 of this Act provides that everyone has the right to:

- An environment that is not harmful to their health or well-being.
- To have the environment protected, for the benefit of present and future generations.

The National Environmental Management Act, 107 of 1998 is the primary environmental framework Act in SA which provides for co-operative environmental governance.

This Act is based on the principle that everyone has the right to an environment that is not harmful to his or her health or well-being, and enabling the administration and enforcement of other environmental management laws.

### **Some Other Relevant Environmental Legislation Includes**

- National Water Act, 36 of 1998.
- National Energy Act, 34 of 2008.
- National Forests Act, 84 of 1998.
- National Environmental Management: Biodiversity Act, 10 of 2004.
- National Environmental Management: Air Quality Act, 39 of 2004.
- National Environmental Management: Waste Act, 59 of 2008.
- National Environmental Management: Waste Amendment Act, 26 of 2014.
- National Environmental Management: Protected Areas Act, 57 of 2004.
- National Environmental Management: Integrated Coastal Management Act, 24 of 2008.

**The National Environmental Management Laws Amendment Bill IV** or NEMLAA4 Bill is expected to finally be enacted into law during 2022. The Bill seeks to amend almost every Environmental Management Act in the country, including Waste, Air, Biodiversity and Water.

### **Environmental, Social, and Governance (ESG)**

There is a growing acceptance and integration of ESG principles among South African corporates, who recognise that this is essential to attracting investment and aligning with global expectations of corporate responsibility and sustainable impact. This trend is likely to speed up in 2022. Coupled with this, the demand for sustainability-linked loans is surging, with banks competing to offer this new form of finance in South Africa. These loans could be used for any purpose, such as making an acquisition. However, the interest rate applicable is informed by the achievement of specific targets by the borrower on key ESG indicators.

**Climate Change Bill:** The Climate Change Bill, published for comment in 2018, was adopted by Cabinet in September 2021 and tabled in Parliament in October 2021. The Bill, which aims to formalise South Africa's carbon budget market, amongst other things, is expected to be enacted during 2022.



## TRENDS IN BUSINESS IN SOUTH AFRICA 2022 AND BEYOND

- A steady increase in regulatory and compliance requirements and reporting (for example, as is required by the Companies Act, POPIA and FICA).
- The pandemic has changed working expectations in SA, with more employees working remotely and from home but from time to time working in office as the need arises (the hybrid work environment).
- The use of electronic means for meetings and consultations. In other words, a general trend towards a virtual world, incorporating electronic signatures, and electronic communication for meetings. A migration to a collaborative digital ecosystem, which allows all employees to connect to, and service client requests. Automated, digital workflows, with reduced manual processes. Digital platforms may also allow customers to serve themselves without the need to interact with staff.
- A trend where businesses incorporate purpose beyond profits to a more meaningful level. Over the next few years, millennials and new technologies will be driving forces in the wider adoption of sustainable buildings, homes and office spaces.
- A trend toward relocating to remoter locations from which to work, resulting in cities being less dominated by business districts and commuters, having the knock-on effect of the possibility of more green spaces and affordable housing in the city centres.

### **Disclaimer:**

The information contained in this guide is of a general nature and is not intended as legal advice. The reader is advised to consult a professional adviser for further assistance and information, and for guidance on new and existing legislation which may affect the business owner, directors and officers of companies. All references to the masculine gender shall include the feminine (and vice versa). While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions.

## CONTACT US

### DURBAN

Rydallviews Building, 5A Rydall Vale Office Park, 38 Douglas Saunders Drive, La Lucia Ridge, 4051  
PO Box 47, la Lucia, 4153  
T: +27 (0) 11 488 1888

### CAPE TOWN

2nd Floor, Block D, The Boulevard, Searle Street, Woodstock, 7925  
PO Box 3883, Cape Town, 8000  
T: +27 (0) 11 488 1888

### JOHANNESBURG

Wanderers Office Park  
52 Corlett Drive, Illovo 2196  
Private Bag X60500 Houghton, 2041  
T: +27 (0) 11 488 1888

### PRETORIA

Summit Place Office Park, 221 Garsfontein Road, Building 5, 2nd floor, Menlyn, Pretoria  
PO Box 95436, Waterkloof, 0145  
T: +27 (0) 11 488 1888



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