Doing Business in South Africa

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in South Africa.

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Background

South Africa, officially the Republic of South Africa (RSA), is located on the southern tip of the African continent, bordered by Namibia, Botswana, Zimbabwe and Mozambique. It is one of the most advanced, broad-based industrial and productive economies in Africa.

South Africa covers approximately 1,200,000 square kilometres. The capital is Pretoria, located in the northeast central area of the country. Other major cities include Johannesburg, Soweto, and Bloemfontein in the interior of the country and Cape Town, Port Elizabeth, and Durban on the coast.

Its population is approximately 55 million, with population density of 45 per Km2. Per the 2011 Census data from Statistics South Africa, Africans are in the majority making up approximately 80% of the total population. The coloured and white populations are each about 9% while the Indian/Asian population stands at 3%.

South Africa is a constitutional democracy with a three-tier system of government and an independent judiciary. The national, provincial and local levels of government all have legislative and executive authority in their own spheres and are defined in the Constitution as “distinctive, interdependent and interrelated”. National government is further divided into three separate spheres: legislative, executive, and judicial.

South Africa is generally known as the “Rainbow Nation” for its multicultural diversity and features one of the world’s largest stock exchanges, the Johannesburg Stock Exchange. There are 11 officially recognised languages, most of them indigenous to South Africa. English is predominant used for business communication.

Its attractiveness as a business and investment location is based on the following:

- Democratic country with a disciplined fiscal framework which promotes domestic competitiveness, growth and employment and increases the economy’s outward orientation.
- The South African Reserve Bank, the central bank, maintains its independence from the government. Its programme of inflation targeting has shown good results in stabilising both interest and exchange rates.
- The investor-friendly policies welcoming foreign investment.
- Its world-class infrastructure includes a modern transport network, sophisticated telecommunications and excellent tourism facilities.
- Its location at the southern tip of the continent grants easy access to the 14 countries in the Southern African Development Community (SADC), whose combined market reaches over 250-million people.
- Trading relationships with more than 200 countries and territories.
- Sophisticated tax policy, which includes a wide network of double taxation agreements.
- Competitive merchant and investment banking system.

Economic overview

While much of the world was adversely affected by the global financial meltdown towards the end of 2010, South Africa managed alright, largely because of its prudent fiscal and monetary policies.

South Africa's growth is stuck in low gear with real GDP growth estimated at 1.3% in 2015/16 and projected at 0.8% for 2016/17, due to a combination of domestic and external constrains. Furthermore, the weak growth performance contributes negatively to the already high unemployment, inequality, and macro vulnerabilities.

As part of the Budget Law 2016/17, the government announced an adjustment package of expenditure savings and tax measures to reduce the budget deficit from 3.9% of GDP in 2015/16 to 3.0% of GDP in 2017/18 and stabilize the gross debt burden at about 51% of GDP, helping minimize pressures on the sovereign rating.

The high unemployment rate of 25% remains one of the most challenging hurdles, and a focus for South Africa's government.

The measures announced in Parliament during the 2016 Budget Speech were aimed at stopping the country falling into recession and to appease the rating agencies who have threatened to downgrade South Africa to junk status, which would raise borrowing costs for the country.

The country is politically stable and has a well-capitalized banking system, abundant natural resources, well developed regulatory systems as well as research and development capabilities, and an established manufacturing base.

The country remains rich with promise. It was admitted to the BRIC group of countries of Brazil, Russia, India and China (now known as BRICS) in 2011.

Transport infrastructure

South Africa's road, rail, sea, pipeline and air transport systems are the biggest and most efficient transport networks in Africa, and contribute to the country's economic growth, social development, and competitiveness in the global market.

South Africa has eight commercial ports, from which approximately 96% of the country's exports are conveyed up Africa, and to Europe, Asia and the US.

Choice of Legal Form

The Companies Act No. 71 of 2008 distinguishes between profit and non-profit companies. A non- profit organisation is incorporated for public benefit, and its income and assets are utilised to pursue the organisation's charitable goals. On the other hand, profit companies exist to generate a profit for its stakeholders. The most common forms of legal entities are:

Limited liability company – Inc.

Limited Liability Companies represent business entities in which both current and previous directors may be held jointly and severally liable for any debts and liabilities which occurred during their time in office. This form of business enterprise is most often used for firms of professionals, such as doctors, lawyers and accountants.

Private company, or (Pty) Ltd

A private company may be founded and managed by just one director, which is known as a One-Man Company, and must have at least one shareholder, but no more than 50. The owner enjoys limited liability.

Public companies (Ltd)

Public companies issue shares to their shareholders, and are often listed on a stock exchange. Public companies are liable to shareholders and management is invested in a Board of Directors.

External companies, a branch / representative office

External companies are foreign companies engaging in business or non-profit activities in South Africa. They are considered to be doing this if they are:

- party to one or more employment contracts within South Africa; or
- engaging in a course or pattern of activities within South Africa over a period of at least six months.

Registration as an external company grants branches of foreign companies legal status, although they are not separate legal entities (other than for exchange control purposes).

An external company must register with the Companies and Intellectual Properties Commission within 20 business days after it begins to conduct business in South Africa.

Trust

A trust is established by an individual “the Settlor/Donor/Founder” and is a means whereby property referred to as “the Trust property” is held by one or more persons called “the Trustees” for the benefit of others referred to as “the Beneficiaries”, or for specified purposes.

In law, the Trustees must manage the Trust property in accordance with the provisions of the law relating to Trusts and the rights of the Beneficiaries as set out in the Trust Deed.

State owned company

State Owned Companies are business entities which are either state-owned, like South African Airways, Metrorail, or owned by a municipality, like eThekwini Electricity.

Close corporation

South African law used to allow Close Corporations to be incorporated as business entities, until the Companies Act 71 came into force on 1 May 2011. While Close Corporations may no longer be created, existing Close Corporations will continue to operate until they are converted into companies.

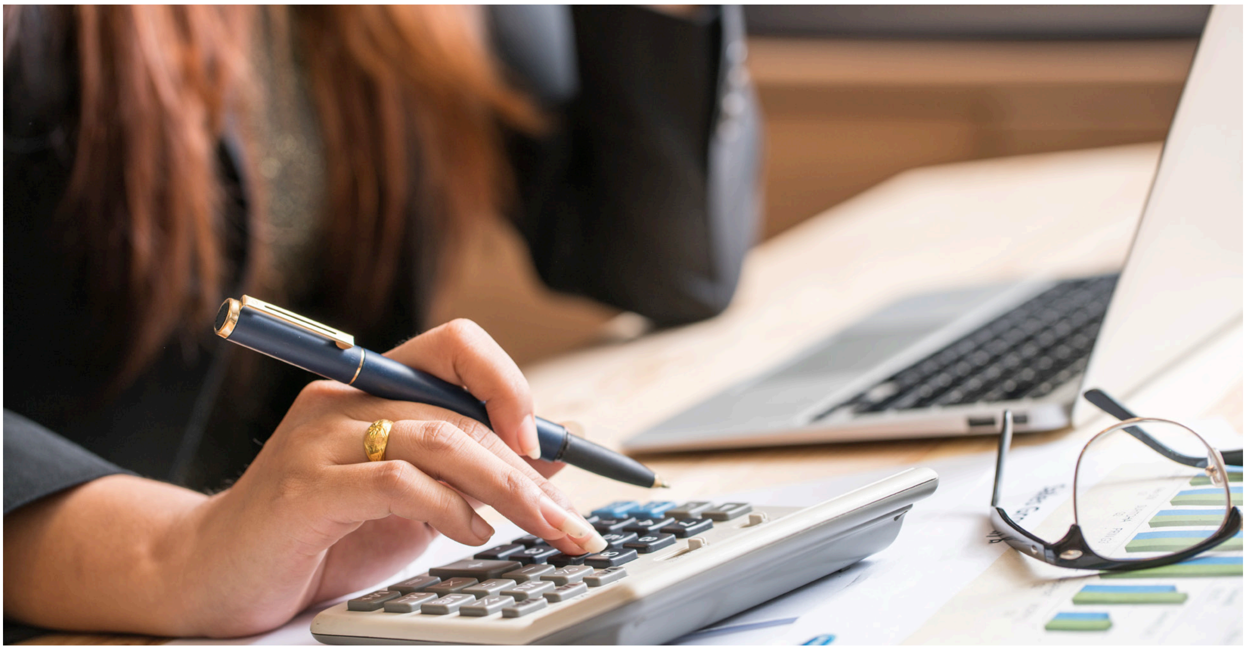
Audit Requirements

Requirement and thresholds

The following companies and close corporations are required to have their Annual Financial Statements audited:

- Every public company, namely profit companies that are not a state-owned company, private companies or personal liability companies;
- Every state-owned company (except if exempted therefrom by the Cabinet member responsible for companies);
- Companies or close corporations that have a public interest score above 350;
- Companies that have a public interest score between 100 and 350 and their financial statements are internally compiled; and
- Companies and close corporations that have included the audit requirement in their Memorandum of Incorporation or association agreement.

Taxation



South African tax residents are subject to tax in South Africa on their worldwide income, whilst non-residents are subject to tax only on income that derived in South Africa. A non-resident is also subject to Capital Gains Tax on the disposal of fixed property (or an interest in such property) situated in South Africa.

A company, close corporation (i.e. a juristic person) or a trust is deemed to be a South African resident if:

- It is incorporated, formed or established in South Africa; or
- It has its place of effective management in South Africa.

The tax residency of a juristic person or a trust is also subject to Double Taxation Agreements South Africa has with various countries.

Corporation tax

The taxable profit of most business entities is taxed at 28%. These entities include:

- Private, public companies and close corporations;
- Personal Service company;
- South African income of a foreign company;
- Public Benefit Organisations;
- Recreational clubs;
- Companies carrying on long-term insurance business in respect of a company policyholder fund and corporate fund.

The taxable profit of Trusts (except for special Trusts) is taxed at 41%.

The assessed tax losses from prior years may be carried forward to the next year for set off against income from that year of assessment. The assessed loss may be carried forward as long as the taxpayer continues to carry on a trade.

Dividend payments

Dividends tax is levied at shareholder level at a rate of 20% of the amount of any dividend paid by any company other than a headquarter company.

Income tax on branches

Dividends tax is only payable on dividends received from South African resident companies. Tax is charged at 28% on the taxable income derived from a South African branch or agency of a foreign company, subject to the provisions of a Double Taxation Agreement.

Personal income tax (pay as you earn)

The resident individuals in South Africa are taxed by progressive tax rates, which are as follows:

Natural persons or special Trusts 2018 / 2019.

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

Natural persons or special Trusts 2017 / 2018.

Taxable Income	Rate of Tax (R)
R 0 - R 189,880	18% of each R 1
R 189,881 - R 296,540	R 34,178 + 26% of the amount above R 189,880
R 296,541 - R 410,460	R 61,910 + 31% of the amount above R 296,540
R 410,461 - R 555,600	R 97,225 + 36% of the amount above R 410,460
R 555,601- R 708,310	R 149,475 + 39% of the amount above R 555,600
R 708,311- R 1,500,000	R 209,032 + 41% of the amount above R 708,310
R 1,500,000 and above	R 533,625 + 45% of the amount above R 1,500,000

Tax rebates*

Tax Rebates for Individuals	2019	2018
Primary rebate	R 14,067	R 13,635
Secondary rebate: 65 years and older	R 7,713	R 7,479
Tertiary rebate: 75 years and older	R 2,574	R 2,493

*The rebate is reduced proportionately where the period of assessment is less than 12 months.

Capital gains tax

Capital Gains Tax is payable when a capital asset is sold or when there is a change in the ownership of the asset (actual or deemed disposal). Capital Gains Tax is included in the taxpayer's taxable income at either 40% or 80% respectively. If a capital asset is sold at a profit, the profit is subject to Capital Gains Tax, and if it is sold at a loss, the capital loss can be set-off against other capital profits realised in that year or the capital loss is carried forward to the next year.

All persons who are residents of South Africa for income tax purposes will be subject to Capital Gains Tax on the disposal of their world-wide assets.

Non-residents will only be subject to Capital Gains Tax on the disposal of the following:

- Immovable property or an interest in the property in South Africa;
- Assets of a permanent establishment in South Africa; and
- At least a 20% interest in the shares of a company where at least 80% of its net asset value is derived from immovable property, not held as trading stock, situated in South Africa.

The effective tax rates for capital gains for different classes of taxpayers are as follows:

Taxpayer	Inclusion Rate %	Statutory Rate %	Effective Tax Rate %
Individuals	40	0 – 45	0 – 18
Companies	80	28	22.4
Small Business Corporations	80	0 – 28	0 – 22.4
Employment Companies	80	28	22.4
Branches of Foreign Companies	80	28	22.4
Trusts (normal)	80	41	32.8
Trusts (special)	40	0 – 45	0 – 18
Public Benefit Organisations (if applicable)	80	28	22.4

Certain exclusions may apply with respect to assets disposed of.

Immovable property tax (transfer duty tax)

Transfer duty is a tax paid on the acquisition of fixed property situated in South Africa. The transfer duty is payable by the purchaser, and has to be settled within six months from the date of acquisition.

In respect of acquisition of property on or after 1 March 2016:

Value of the Property	Rate of Transfer Duty
R 0 – R 900,000	0%
R 900,001 – R 1,250,000	3% of the value above R 900,000
R 1,250,000 – R 1,750,000	R 10,500 + 6% of the value above R 1,250,000
R 1,750,001 – R 2,250,000	R 40,500 + 8% of the value above R 1,750,000
R 2,250,001 – R 10,000,000	R 80,500 + 11% of the value above R 2,250,000
R 10,000,001 and above	R 933,000 + 13% of the value above R 10,000,000

No transfer duty is payable if the transaction is subject to VAT at either the standard or the zero rate.

Where the ownership of a Trust, or the shares, or members interest of a company or close corporation, which owns residential property, comprising more than 50% of all assets (excluding any liabilities), is transferred, transfer duty will be chargeable on the market value of the property.

Transfers of property between spouses on divorce/death, or to heirs from a deceased estate are exempt from transfer duty.

Securities transfer tax

Securities Transfer Tax is an indirect tax imposed on the transfer of any security issued by:

- A close corporation;
- A listed or unlisted company incorporated, established or formed inside South Africa; or
- A company incorporated, established or formed outside South Africa and listed on the South African stock exchange.

Securities Transfer Tax is levied at a rate of 0.25% of the taxable amount of that security. No Securities Transfer Tax is payable on the original issue of shares.

Value added tax (VAT)

VAT is a tax on general consumption of goods and services. The standard VAT rate is currently 15%.

All supplies which take place in South Africa are subject to VAT at the standard rate, however, there are also supplies which are subject to VAT at the zero rate. Zero rating applies to certain supplies identified in section 11 of the VAT Act No. 89 of 1991 (the VAT Act), as well as, exempt supplies per section 12 of the VAT Act.

Tax treaties

The South African government has signed an extensive number of Double Taxation Agreements with other countries. Each Double Taxation Agreement has its own withholding tax rate applicable to their country.

Refer to Appendix I for a table which shows the double taxation agreements between South Africa and other countries in relation to withholding tax.

Transfer pricing

South Africa has a self-assessment transfer pricing system (including thin capitalisation) that is based on the arm's-length principle. Currently the non-arm's length portion is reclassified as a deemed loan (secondary adjustment). The deemed loan constitutes an affected transaction which implies that arm's length interest is to be calculated on the deemed loan. The accrued interest on the deemed loan is capitalised annually for the purposes of calculating the balance of the deemed loan. The deemed loan and the interest calculated on it is deemed to be payable until the amount is regarded as having been repaid to the taxpayer.

With effect from 1 January 2015 the secondary adjustment will be the following:

- Where the South African resident, in respect of whom the transfer pricing adjustment has been made is a company, the adjustment will be deemed to be a dividend consisting of a distribution of an asset in specie, thereby triggering dividends tax at the rate of 15% or a lower rate if a double taxation agreement is in place; and
- Where the resident is a person other than a company, the adjustment is deemed to be a donation, which will trigger donations tax at the rate of 20%.

Allowances

Depreciation

South African tax legislation includes many different allowances. The most commen being wear and tear.

Depreciation is provided on all fixed assets in order to write off the value of the asset over its useful economic life for accounting purposes.

Depreciation is not an allowable expense for tax computation purposes. However, capital allowances (wear and tear) are provided using the rates defined by legislation for each category of asset and are tax deductible.

If the cost price of an item is less than R7,000 it can be written off immediately.

Tax credits

Tax credits are available to the extent that the amount is not recoverable from the foreign government to whom it was paid. In addition, this tax credit may not be claimed in addition to any relief to which the resident is entitled under any agreement between the governments of South Africa and the said other country in terms of the Double Taxation Agreements.

Employment

Social security / Unemployment taxes

Unemployment insurance contributions to the Unemployment Insurance Fund (UIF) are based on remuneration (gross) as defined in the Income Tax Act, with the following exclusions:

- Non-employment related payments for example pensions and annuities and payment to a labour broker on possession of an exemption certificate;
- Retrenchment pay;
- Lump sum payments from pension, provident or retirement annuity funds;
- Restraint of trade payments;
- Commission;
- Payment to juristic persons;
- Payments to juristic persons;
- Payments to independent contractors.

The UIF monthly limit is currently R14,872. It is proposed that this amount is reduced to R1,000 per month for the 2015/2016 year. In effect employees will pay only R10 in monthly UIF contributions and employer the same amount per employee.

Workmen's compensation fund

The aim of the Act is to provide for compensation in the case of disablement caused by occupational injuries or diseases, sustained or contracted by employees in the course of their employment, or death resulting from such injuries or diseases, and to provide for matters connected therewith.

Withholding Taxes

Interest

South African source interest, which is received by / or accrued to a non-resident is exempt from tax. The exemption does not apply:

- If the person is a natural person who was physically present in South Africa for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the interest is received by/or accrued to, that person;
- Or the person is a natural person, or a legal person, who or which, at any time during the 12-month period preceding the date on which the interest is received or accrued, carried on business through a permanent establishment in South Africa, and the interest is received on or after 1 January 2015.

From 1 March 2015 a withholding tax is levied, calculated at a rate of 15% of the amount of any interest that is paid by any person, to or for the benefit of any foreign person, to the extent that the amount is regarded as having been received or accrued from a source within South Africa. The interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable.

The withholding tax is a final tax.

Interest received by/or accruing to a non-resident will be exempt from the withholding tax if the interest is paid by:

- The government of South Africa in the national, provincial or local sphere;
- Any bank, the South African Reserve Bank, the Development Bank of Southern Africa or the Industrial Development Corporation; or
- A headquarter company in respect of it granting financial assistance to which the transfer pricing rules do not apply.

The interest will also be exempt from the withholding tax if it is paid in respect of any:

- Listed debt instrument; or
- Interest payable as contemplated in section 21(6) of the Financial Markets Act to any foreign person that is a client as defined.

Royalties

A withholding tax is levied, calculated at a rate of 15% of the amount of any royalty that is paid by any person to or for the benefit of any foreign person, to the extent that the amount is regarded as having been received or accrued from a source within South Africa.

A royalty is deemed to be paid on the earlier of the date on which the royalty is paid or becomes due and payable.

The withholding tax on royalties is a final tax.

Dividends

Dividends paid to non-residents are subject to a final withholding tax of 20%. That rate of tax may be altered by the provisions of an agreement for the avoidance of double taxation in place between South Africa and the other country.

Appendix I, Double Taxation Treaties

	Royalties %	Dividends %	Interest %
Non-treaty Countries	**15**	**15**	**15**
Algeria	10	10/15	10
Australia	10	0/15	10
Austria	0	5/15	0
Belarus	5/10	5/15	5/10
Belgium	0	5/15	10
Botswana	10	10/15	10
Brazil	10/15	10/15	15
Bulgaria 5/10 5/15 5	5/10	5/15	5
Canada	6/10	5/15	10
Croatia	5	5/10	0
Cyprus	0	5/10	0
Czech Republic	10	5/15	0
Democratic Republic of Congo	10	5/15	10
Denmark	0	5/15	0
Egypt	15	15	12
Ethiopia	15	10	8
Finland	0	5/15	0
France	0	5/15	0
Germany	0	7,5/15	10
Ghana	10	5/15	5/10
Greece	5/7	5/15	8
Hong Kong	5	5/10	10
Hungary	0	5/15	0
India	10	10	10
Indonesia	10	10/15	10
Iran	10	10	5
Ireland	0	5/10	0
Israel	0/15	15	15

	Royalties %	Dividends %	Interest %
Italy	6	5/15	10
Japan	10	5/15	10
Kenya	10	10	10
Korea	10	5/15	10
Kuwait	10	0	0
Lesotho	10	15	10
Luxembourg	0	5/15	0
Malawi	15	15	15
Malaysia	5	5/10	10
Malta	10	5/10	10
Mauritius	5	5/10	10
Mexico	10	5/10	10
Mozambique	5	8/15	8
Namibia	10	5/15	10
Netherlands	0	5/10	0
New Zealand	10	5/15	10
Nigeria	7,5	7,5/10	7,5
Norway	0	5/15	0
Oman	8	5/10	0
Pakistan	10	10/15	10
Peoples Republic of China	7/10	5	10
Poland	10	5/15	10
Portugal	10	10/15	10
Qatar	5	5/10	10
Romania	15	15	15
Russian Federation	0	10/15	10
Rwanda	10	10/15	10
Saudi Arabia	10	5/10	5
Seychelles	0	5/10	0

	Royalties %	Dividends %	Interest %
Singapore	5	5/15	0
Slovak Republic	10	5/15	0
Spain	5	5/15	5
Swaziland	10	10/15	10
Sweden	0	5/15	0
Switzerland	0	5/15	5
Taiwan	10	5/15	10
Tanzania	10	10/15	10
Thailand	15	10/15	10/15
Tunisia	10	10	5/12
Turkey	10	10/15	10
Uganda	10	10/15	10
Ukraine	10	5/15	10
United Kingdom	0	5/10/15	0
USA	0	5/15	0
Zambia	15	15	15
Zimbabwe	15	15	15

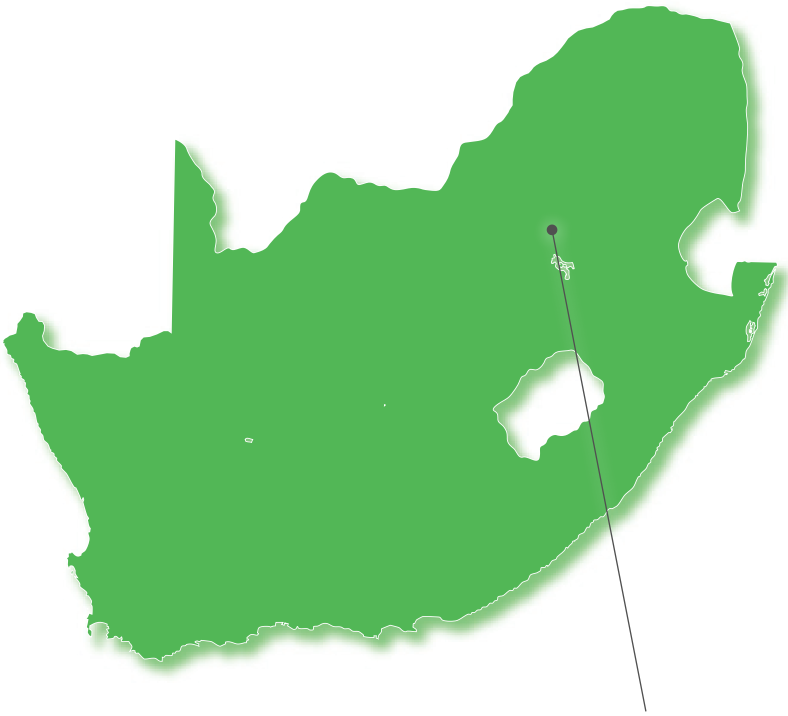
Notes

- 1 A number of double taxation agreements with South Africa provide for alternative rates, including zero, to be applied in specific circumstances. The double tax agreements with each country are available on www.sars.gov.za.
- As from 1 January 2015, the withholding tax on royalties changed from 12% to 15%.
- As from 1 March 2015, a withholding tax on interest paid to non-residents is imposed at a rate of 15%.
- New comprehensive double taxation agreements are in the process of negotiation with Cameroon, Chile, Cuba, Gabon, Isle of Man, Morocco, Senegal, Sudan, Syria, United Arab Emirates and Vietnam.
- Existing comprehensive double taxation agreements are in the process of renegotiation with Germany, Lesotho, Malawi, Namibia, Singapore, Zambia and Zimbabwe.
- Tax information exchange agreements are currently in place with Argentina, Bahamas, Barbados, Belize, Bermuda, Cayman Islands, Cook Islands, Gibraltar, Guernsey, Jersey, Liberia, Liechtenstein, and San Marino.
- New tax information exchange agreements are in the process of negotiation with Andorra, Brunei Darussalam, Costa Rica, Dominica, Grenada, Isle of Man, Jamaica, Macao SAR, Marshall Islands, Monaco, Samoa, St. Lucia, St Kitts and Nevis, Turks and Caicos Islands and Uruguay.

This document is provided by Levitt Kirson Chartered Accountants (S.A) as a general overview of matters to be considered when setting up an overseas business in South Africa. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in South Africa, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

For further information on the services available from the DFK member firms in South Africa please contact:



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