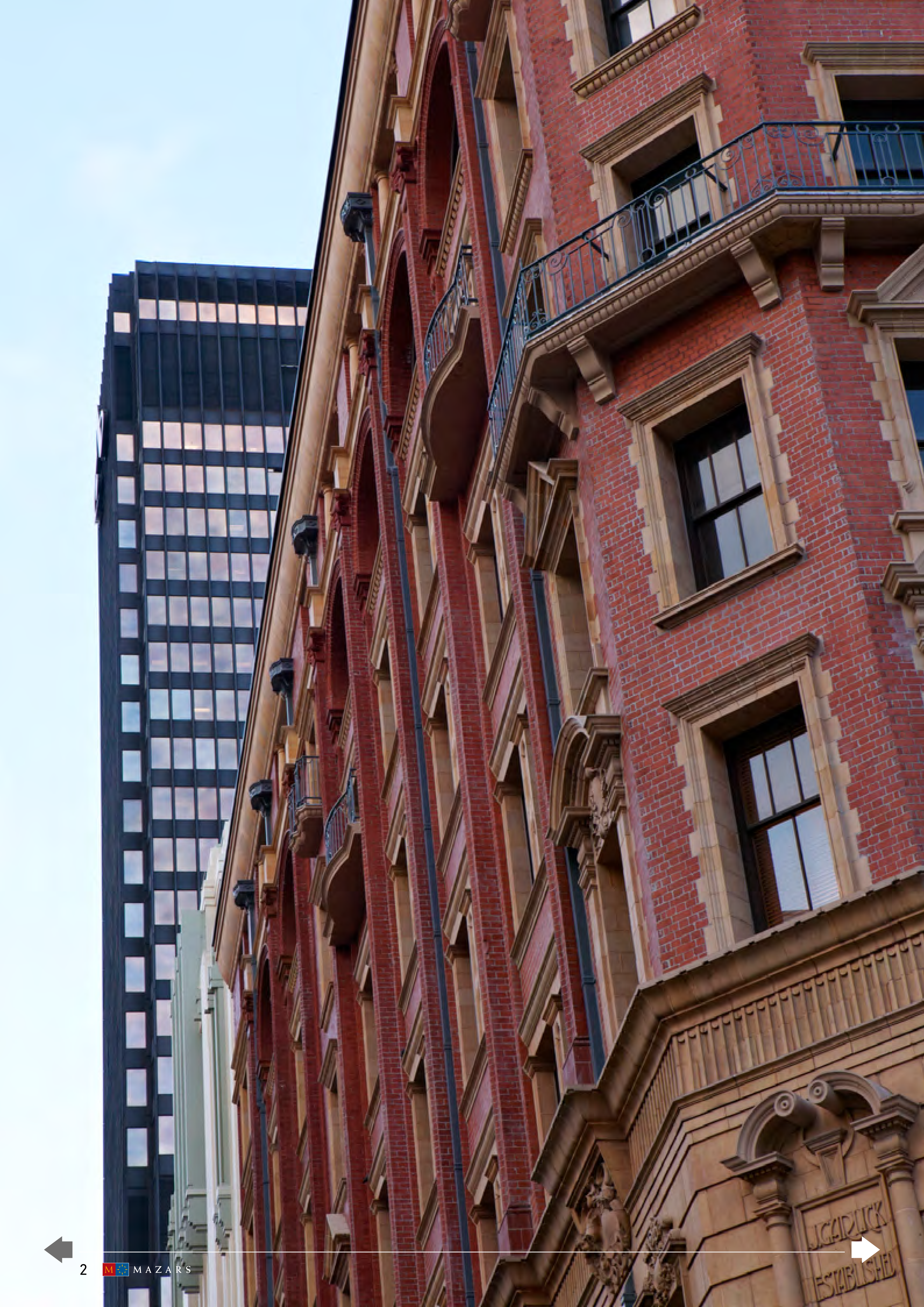
BUSINESS AND TAXATION GUIDE SOUTH AFRICA 2014

MAZARS


J.C.GARLICK
ESTABLISHED

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"Over the last 30 years, we have invested heavily in building our brand throughout Europe and the rest of the world. Mazars is one partnership, and we will remain independent, international and integrated."

PHILIPPE CASTAGNAC

GENERAL INFORMATION

ATTRACTIONS AND CONSIDERATIONS FOR FOREIGN INVESTORS

As with other young and developing countries, the Republic of South Africa (RSA) welcomes foreign investment for its continued growth, and the Government therefore has a traditionally open policy with regards to foreign investors. South Africa's principal attractions are that:

- it is considered to be the most advanced country, both technologically and economically, in Africa
- it has a democratically elected government and a constitution based on democratic values, social justice and fundamental human rights
- it is endowed with an immense store of natural mineral sources, and is a significant producer of precious metals and other valuable minerals
- its people possess sufficient amounts of disposable income with high demands for consumer goods
- being at the southern tip of africa, it is ideally located for exports to and imports from any part of the world
- it has a highly developed infrastructure and communications network; and prices of most commodities are low.

Other foreign investor considerations:

- the relatively weak currency; the Rand (ZAR), offers excellent investment opportunities to investors and more so for manufacturing concerns with a strong export base
- there is a climate for innovation in the business community, both in the creation of export channels and the manufacture of capital goods by means of self-developed technology.

AREA AND POPULATION

The RSA forms the southern-most part of the African continent. It is situated entirely in the southern temperate zone between 22° and 35° south. Its surface area is 1 220 031 sq. km. (471 445 sq. miles). The country is roughly five times the size of the United Kingdom and is larger than the combined areas of France, Germany and Italy.

The RSA consists of nine provinces. The healthy and invigorating climate, with warm and temperate conditions prevailing almost throughout the year, is one of the best in the world.

According to Statistics South Africa, the 2013 mid-year estimate for the South African population was 52 982 000 people. 79.8% Black, 9% Coloured, 2.5% Indian/Asian and 8.7% White.

The Black population comprises ten ethnic groups. Besides, the Afrikaans speaking white population (mainly descended from the Dutch and French) and British, other major European communities include the Portuguese, Germans, Greeks and Italians.

CONSTITUTION AND POLITICAL STRUCTURE

The RSA adopted a new constitution in 1996, which provides for a proportionally represented parliament and nine provincial legislatures.

ECONOMIC SITUATION

Due to extreme pressures to improve the living standards of all population groups, specifically in education, housing, job opportunities and social welfare, the inflation rate is relatively high. Currently inflation is predicted to average 6% for several years.

The currency unit is the Rand (100 Cents = R1); South Africa, Namibia, Lesotho and Swaziland form a Common Monetary Area. Although Namibia, Lesotho and Swaziland have their own currencies they accept South African Rands.

As at the end of June 2013, the rate of unemployment was estimated by Statistics SA at 25.6%.

BANKING AND FINANCE

Banking is sophisticated and very tightly controlled by legislation to provide maximum protection to depositors. The Registrar of Financial Institutions polices the system under the Banks Act.

The South African Reserve Bank is the central bank. Amongst its powers, it controls the currency, holds the gold bullion, issues bank notes and coinage, lays down guidelines for monetary and credit policy and exercises exchange control. The financial institutions consist mainly of three types of banking institutions, namely commercial banks, general banks (instalment credit banking), and merchant banks (merchant banking). The major banks are, in no particular order: ABSA Bank Ltd, First National Bank Ltd, Standard Bank Ltd and Nedbank Ltd.

The RSA is a founder member of, and actively participates in, bodies such as the International Monetary Fund, the World Bank and the International Bank for Reconstruction and Development. It is a member and shareholder of the Bank for International Settlements and a member of the General Agreement on Tariffs and Trade.

BASIS OF LEGAL CODE

The legal code rests, first, on statute and second, on common law which is largely based on Roman Dutch Law. Certain branches of law including company law and trusts have their roots in English law. The Government is divided into legislative, judicial and executive branches. The judicial branch is totally independent and is not influenced by the Government. The judicial branch consists of lower courts (magistrates' courts) with jurisdiction over their particular districts, higher courts (High Courts) with jurisdiction over a number of districts, and the Supreme Court of Appeal, in Bloemfontein, which hears appeals from all the High Courts and certain appeals direct from lower courts. The Constitutional Court rules on constitutional matters.

REGULATION OF FOREIGN INVESTMENT

South Africa has a system of exchange controls, originally introduced in 1961 in order to prevent unrestricted outflows of capital and hence create stability in the markets.

Control is exercised through the Financial Surveillance Department ('FinSurv') of the South African Reserve Bank (previously known as the Exchange Control Department) and through Authorised Dealers in foreign exchange at commercial and merchant banks.

Over recent years there have been significant relaxations of these controls.

Non-residents temporarily in the RSA have practically no limitations on remitting earnings and savings, provided they make the prescribed declarations. Any dividends, royalties and interest paid from current earnings may be freely remitted.

A South African company, foundation, trust or partnership, where 75% or more of the capital, assets, earnings, voting securities, voting power or power of control vest in or are controlled directly or indirectly by non-residents is defined as an affected person and may not avail themselves of local financial assistance without Authorised Dealer's authority.

An Authorised Dealer may freely grant or authorise local financial assistance to an affected person where the transaction does not relate to the acquisition of residential property and financial transactions.

Where an affected person wishes to purchase residential property and/or enter into financial transactions such as portfolio investments, securities lending, hedging, repurchase agreements etc., the local borrowings are restricted to 100% of the Rand value of funds introduced from abroad and invested locally.

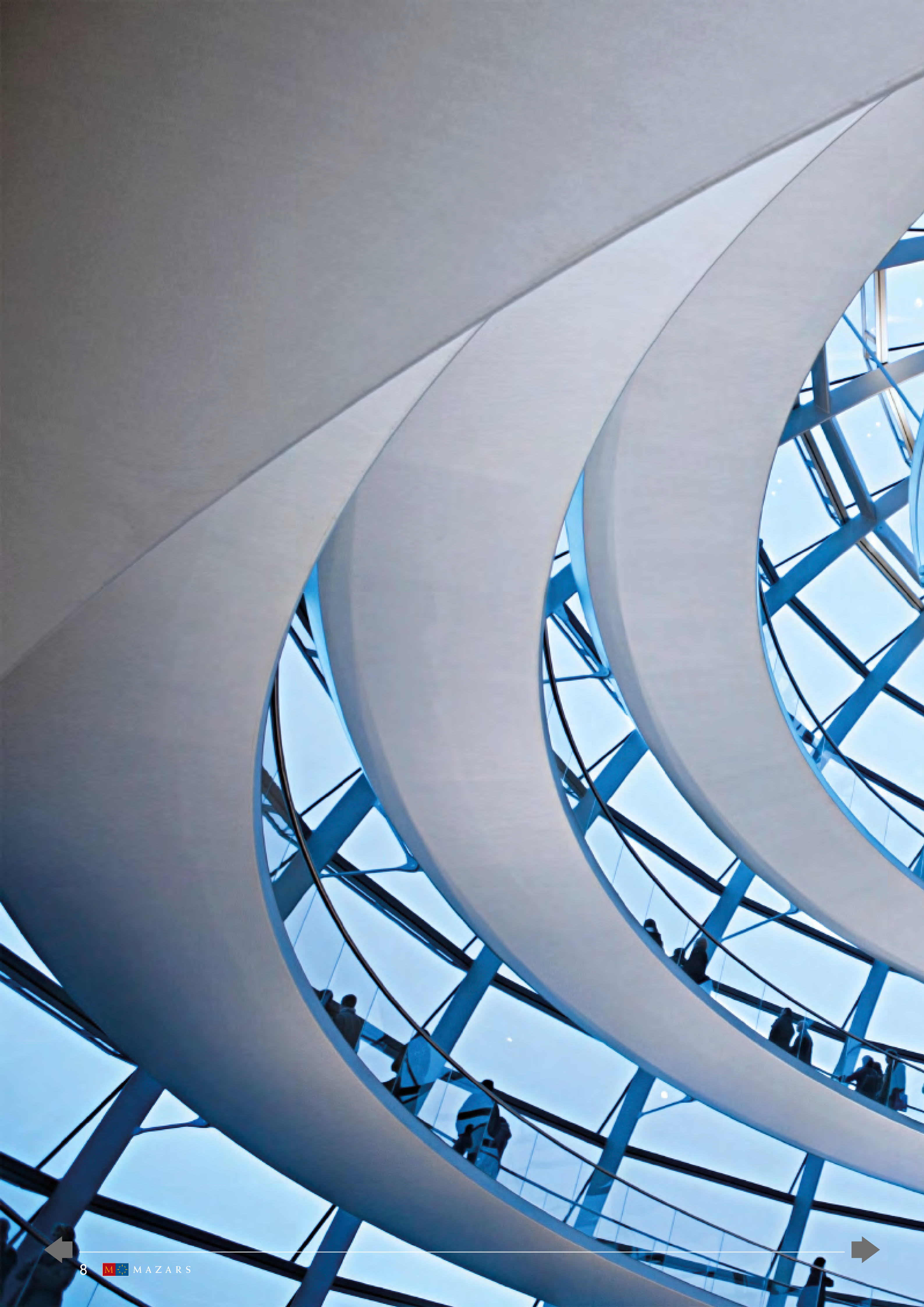
Where non-residents or emigrants wish to invest in a bona fide foreign direct investment in South Africa, they may do so without restriction unless the funds are required for financial transactions and or the acquisition of residential or commercial property in South Africa. In this case the 1:1 ratio will apply and permission will need to be sought from their Authorised Dealer.

Financial assistance includes the lending of currency, the granting of credit, the taking-up of securities, the conclusion of a hire-purchase contract or a lease, the financing of sales or stocks, discounting, factoring, the guaranteeing of acceptance credits, the guaranteeing or acceptance of any obligation, a suretyship, a buy-back and a lease-back. It, however, does not include the granting of credit by a seller in respect of any commercial transaction directly involving the passing of ownership of goods sold from seller to purchaser; and the granting of credit solely in respect of payment for services rendered.

All dividends from realised/earned profits may be remitted to non-resident shareholders against production of a board resolution. The declaration of a dividend in specie or a special dividend requires prior approval of FinSurv.

Where affected persons avail themselves of local borrowing facilities, the Authorised Dealer may allow the remittance of dividends/profit distributions, provided the affected person is not in an over-borrowed position.

Where local financial assistance exceeds the percentage permissible, FinSurv consent must be obtained.



GOVERNMENT INCENTIVES

Government incentives to promote secondary industry, exports, foreign investment, black economic empowerment and employment are mainly in the form of either cash grants or tax concessions. Declared policy generally, is to replace tax concessions with direct subsidies. Amongst these are:

INVESTMENT SUPPORT

Black Business Supplier Development Programme (BBSDP)

The BBSDP is a cost-sharing grant offering support to black-owned enterprises in South Africa. It is designed to improve the sustainability of black-owned enterprises thereby increasing employment. The programme provides grants to a maximum of R800 000 for tools, machinery and equipment on a 50:50 cost sharing basis and R200 000 for business development and training on an 80:20 cost sharing basis. The amended BBSDP is effective from 1 September 2010 until 31 July 2017.

Critical Infrastructure Programme (CIP)

The CIP is a cash grant incentive for projects that are designed to improve critical infrastructure in South Africa. Examples of infrastructure include roads and bridges, electricity transmission lines, water pipelines, sewers, and telephone lines, as well as their associated generation, storage, purification and other facilities that supply, protect or in any way facilitate the networks and systems. The incentive covers 10% to 30% of such development cost capped at R30 million.

Business Process Services Incentive (BPS)

The BPS, effective for the period 1 January 2011 to 31 July 2014, replaced the Business Process Outsourcing and Offshoring incentive which came to an end on 31 March 2011. The objective is to attract investment and create employment in South Africa through offshore activities. The 'base' incentive offers a three-year operational expenditure (OPEX) grant. In addition to this grant a 'graduated' bonus incentive is offered for greater job creation.

Film Industry Incentives

The South African Film and Television Production and Co-Production Incentive

This incentive is aimed at assisting local film producers in the production of local content. This incentive is only available to qualifying South African productions and official treaty co-productions where the total production budget is R2.5 million and above. The assistance is in the form of a rebate of up to 35% on the first R6 million of the Qualifying South African Production Expenditure (QSAPE) and thereafter 25%. This incentive terminated on 31 January 2014.

Foreign Film and Television Production and Post-Production Incentive

The incentives are aimed at attracting foreign-based film productions to shoot on location in South Africa and also conduct post-production activities locally. For shooting on location in SA, the QSAPE should be R12 million and above and the Qualifying South African Post Production Expenditure (QSAPPE) should be R1.5 million and above. At least 50% of the principal photography schedule with a minimum of four weeks must be filmed in South Africa and a minimum of two weeks post production must be carried out in South Africa. The two weeks is waived if 100% of the post production is conducted in South Africa. Minimum running times also apply. The incentive will be effective from 1 April 2012 and will be administered until 31 March 2017.

Co-Operative Incentive Scheme (CIS)

The CIS is a grant scheme that supports broadening economic participation by historically disadvantaged communities to enter the mainstream economy. The incentive is 100% of the total approved costs of project activities to the maximum of R350 000 per co-operative entity.

Enterprise Investment Programme (EIP)

The EIP is a programme directed at the manufacturing and tourism sectors. Grants under the programme are accessible to both local and foreign owned entities but the projects must be located or intended to be located in South Africa. This incentive applies to two programmes – the Manufacturing Investment Programme (MIP) and Tourism Support Programme (TSP). The objective of both MIP and TSP is to stimulate industrial and tourism investment in South Africa. The Foreign Investment Grant (FIG) is available to entities that qualify for the MIP and whose direct foreign shareholding is 50% or more. It provides a reimbursement of the transfer cost of machinery and equipment to South Africa from abroad (limited to the lesser of R10 million or 15% of the value of the imported goods or the actual transport costs). The programme is effective 21 July 2008 to 20 July 2014.

SMALL BUSINESS DEVELOPMENT

Business to Business Programme (BTBP)

The objective of the BTBP is to develop and strengthen business opportunities and create jobs for eligible entrepreneurs from previously disadvantaged communities. This is achieved through support for the development of commercially viable businesses, based on the formation of business partnerships between South African and Danish companies.

The Land Reform Empowerment Facility (LREF)

The LREF promotes investment in the agricultural, agro-processing and eco-tourism sectors. The LREF's aim is to stimulate and encourage emerging agricultural Black South African entrepreneurs. The minimum black shareholding is 25.1%. It is biased towards empowerment of women. The LREF offers mortgage loans of up to R10 million per project and R800 000 per individual participant. Equity share loans of up to R600 000 per individual may be granted.

INNOVATION AND TECHNOLOGY

Technology and Human Resources for Industry Programme (THRIP)

The THRIP is a partnership programme which challenges companies to match government funding for innovative research and development in South Africa.

Seda Technology Programme (STP)

As part of the government's national strategy of consolidating small enterprise support interventions across different government departments and agencies, the Department of Trade and Industry (DTI) is streamlining its small enterprise support interventions.

Various Initiatives

Various initiatives are in place to address unemployment and to promote the acquisition of equity and skills. These initiatives encompass various industries, including the manufacturing, furniture, textile and technology industries.

EXPORT ASSISTANCE

Export Marketing and Investment Assistance Scheme (EMIA)

This scheme partially compensates exporters in respect of activities aimed at developing export markets and recruiting new foreign direct investment into South Africa. Assessment criteria include production, performance, capacity, types of exports, location, labour absorption, technology requirements etc.

The Sector Specific Assistance Scheme (SSAS)

SSAS targets non-profit business organisations in sectors and sub-sectors of industries prioritised by the DTI. The financial support takes the form of a reimbursable grant of 80% of the cost of the project/s up to a maximum contribution of R200 000 p.a. in relation to marketing materials and local exhibition assistance and R500 000 p.a. in relation to local advertising and publicity. A maximum allocation per project is R1.5 million.

Industrial Development Zones (IDZ)

An IDZ is a purpose-built industrial estate linked to an international airport or port, which contains a controlled Customs Secured Area (CSA). A CSA is exempt from duties and VAT on machinery and assets.

Automotive Investment Scheme (AIS)

AIS is an incentive designed to grow and develop the automotive sector through investment in technologically-advanced automotive production and investment. AIS provides for a taxable cash grant of 20% of the value of qualifying investment in productive assets, as approved by the DTI. An additional taxable cash grant of 5% to 10%

of the value of qualifying investment in productive assets may be available to 'strategic projects', which must achieve two economic benefit requirements, as outlined in the AIS Guidelines.

CAPITAL PROJECTS FEASIBILITY PROGRAMME (CPFP)

This is a cost sharing program providing a contribution to the cost of feasibility studies that are likely to lead to projects outside South Africa that will increase local exports and stimulate the market in South African capital goods and services. Maximum of 50% of total feasibility study costs of projects outside Africa. Maximum of 55% where projects are carried on inside Africa. The size of the grant is required to fall within the range of R100 000 and R5 million.

CUSTOMS DUTY RELATED OFFERINGS THROUGH INTERNATIONAL TRADE ADMINISTRATION COMMISSION

- Reduction in the customs duty on imported products to reduce the cost of production
- Rebate of customs duty on products that are not available in the SACU for manufacturing purposes
- 470.03 rebates of duty in respect of inputs used in exports
- 521.00 refunds of duties paid on inputs used in exports
- Motor Industry Development Programme (MIDP)
- Duty credit certificate scheme for textile and clothing industries

"There are substantial strengths on which to build – a well-established legal system, secure property rights, an effective tax system, world-class higher education institutions and science councils, established energy, transport, water and communications infrastructure networks, expertise and capacity in many areas - mining, construction, retail, finance, logistics and manufactured exports – and a sound macroeconomic and fiscal framework."

PRAVIN GORDHAN

TYPES OF INVESTMENT VEHICLES

Business can be transacted through various types of companies (including branches of external companies), partnerships, trusts and sole proprietorships.

COMPANY

All types of companies are subject to the Companies Act, 2008. The main types of companies are:

- limited company – shareholders' liability is limited by the company's memorandum of incorporation
- unlimited company – the memorandum may provide for unlimited liability of its shareholders and directors; these include professional partnerships, which are required to have the word 'Incorporated' at the end of their names.

A limited company can be either:

- private company – identified by the words 'proprietary limited' or '(Pty) Ltd' behind its name. The company is a separate legal entity from its members, its right to transfer its shares is limited, the number of members is not limited, the offer of its shares and debentures to the public is prohibited and it has to have at least one director
- public company – identified by the words 'Limited' or 'Ltd' behind its name. It generally raises capital from the public, for example by means of a listing on the Stock Exchange, has at least two directors and must have at least seven members.

CLOSE CORPORATION

A close corporation is a business entity regulated by the Close Corporations Act 1984:

- only individuals and trusts (subject to certain requirements) may be members. The number of members may not exceed ten and, where an inter-vivos trust is a member each beneficiary counts as a member for this limitation
- a Close Corporation has no share capital but has a members' contribution and each members' interest is expressed as a percentage. It is a separate legal entity from its members whose liability is limited to their members' contributions. It is taxed at company rates. It is a simple business entity and displays its status with the letters CC or BK (Beslote Korporasie) behind its name, together with its registration number. Following the introduction of the Companies Act, 2008 no new close corporations may be formed.

BRANCH OF EXTERNAL COMPANY

A branch of a foreign company has to be registered as an external company if it is to conduct business in the RSA.

NON-PROFIT COMPANY

A Non Profit company is a company incorporated for a public benefit or an object related to one or more cultural or social activities, or communal or group interests. Its name must end with the expression 'NPC'.

PARTNERSHIP

A partnership is a contractual agreement between the parties. The parties may be individuals or corporate entities:

- the essence of a partnership is co-ownership and the sharing of profits
- each partner is the agent of the other
- great flexibility exists as to its nature and formation, for example one partner may contribute capital, whereas another partner may only contribute services
- generally partners are jointly and several liable for the debts of the partnership although the partnership agreement may provide for the limited liability of a partner
- a limited partner (en commandite), even if he does not disclose to outsiders the fact that he is a partner and may not take any part in the running of the partnership business, is deemed to be carrying on the trade or business of the partnership, and is taxed as if he were a general partner
- partners are taxed separately at the rates applicable to individuals (maximum 40%).

TRUST

South Africa recognises various forms of trusts, such as family trusts, business trusts, unit trusts, indemnity and pension funds.

- Although the legal status of trusts is not entirely clear-cut, a trust is essentially an agreement whereby a donor or settlor divests himself/herself of the ownership and control of an asset to be administered by trustees for the benefit of a beneficiary/beneficiaries.
- It is generally accepted that a trust provides limited liability for the trustees and the beneficiaries.

Note: See Part 11 (page 33)

SOLE PROPRIETORSHIP

Operated by a single individual, the liability of the owner is unlimited. The owner is taxed at the rates applicable to individuals.

JOINT VENTURE

A Joint Venture is a contractual agreement between business entities. The business entities will join together for a specific project. The business entities will be taxed separately at the rate applicable to such entity.

SETTING UP AND RUNNING BUSINESS ORGANISATIONS

SET-UP

Companies

All companies are set up under the Companies Act 2008. A company is formed by filing the memorandum of incorporation (MOI) with the Companies and Intellectual Property Commission (CIPC), and paying the applicable fee. The formation costs are about R6 000 plus VAT and CIPC disbursements. The MOI must state the name of the company (or CIPC can allocate a name based on the registration number of the company), its main object, ancillary objects (unlimited), and the amount of authorised share capital. The directors and auditors (where required) must consent in writing to act. No minimum capital is required, provided that the directors declare that sufficient trade capital is available.

Only no-par-value shares are permitted in respect of companies formed under the Companies Act 2008 (for companies in existence prior to the Companies Act 2008 which had par value shares these may be retained). There is no minimum subscribed share capital. No share capital duty is payable on incorporation or on the issue of shares. Upon transfer of marketable securities, securities transfer tax at the rate of 2.5 cents on every R10 of consideration (0.25%) is payable.

External Companies (branches)

A company incorporated outside the RSA must register with CIPC within 20 business days of commencing business in RSA. In most respects external companies are subject to the same regulations as RSA companies.

Partnerships

A partnership is normally evidenced by a written partnership agreement, which states the names of the partners, the partnership's name, partners' contributions, distribution of profits and losses and the business activities. The partnership agreement need not be in writing, but it is recommended.

Trusts

All trusts in the RSA must comply with the Trust Property Control Act, but there are no statutory requirements for their creation. In the RSA a trust is usually regarded as a conduit pipe, so its beneficiaries are normally liable to tax, but with certain important exceptions in the case of a family trust.

Note: See Part 11 (page 33)

General

Where applicable, every company, close corporation, external company, partnership, trust or sole proprietor must register for value-added tax and income tax and for regional services council levies. Further costs include unemployment insurance fund contributions and contributions under the Workmen's Compensation Act 1941 (accident insurance) for certain employees.

RUNNING OF BUSINESS OPERATIONS

General

Every company or close corporation (including an external company) must have a registered address in the RSA. It may choose any month end to close its financial year. It must submit a tax return after the year-end, and it is liable to pay provisional tax twice a year with an optional third 'top up' payment. Proper financial records must be kept. The Companies Act prescribes where the annual financial statements are subject to audit.

The powers and duties of officials regarding meetings, running a company or close corporation (CC), representation of a company or close corporation etc. are prescribed by the Companies Act 2008 and the Close Corporations Act 1984.

A public officer must be appointed who is a RSA resident. The public officer must take responsibility for the tax affairs of the company or CC.

Running of companies

A public company must have at least two directors and a private company one director. Directors need not be resident in the RSA, but every company must appoint an RSA resident to be its public officer who will accept responsibility for all the company's tax matters.

A public company must submit six-monthly financial statements to CIPC.

Running of close corporations (CC)

A close corporation is run through its members. Adequate and proper books of account must be kept. The financial year may change from time to time.

Members need not be residents in the Republic, but a public officer must be appointed who is a RSA resident. The public officer must take responsibility for the tax affairs of the CC.

Running of external companies (branches)

Every external company must appoint a person resident in the RSA to assume responsibility for accepting service of notices (both tax and otherwise) on the company.

An external company must lodge its annual financial statements, including foreign head office assets and results, with CIPC for public inspection. Exception may be applied for where such disclosure would be harmful.

An external company cannot usually obtain Government contracts: an RSA company is required. The legal liabilities of an external company are not limited to its local assets.

Debt/equity ratio

There are no minimum or maximum debt/equity ratios for either RSA companies or external companies doing business in the RSA.

A business may be financed by equity capital or by debt capital or a combination of debt and equity and is generally said to be 'thinly capitalised' when its equity capital is small in comparison to its debt capital.

The South African income tax legislation in so far as it relates to thin capitalisation and transfer pricing was recently substantially amended. The South African Revenue Service (SARS) has yet to issue a final Interpretation Note. The previous parameters in relation to the deductibility of interest were essentially based on a ratio of debt to equity. This is likely to be replaced by a percentage of Earnings before Interest, Taxes, Depreciation and Amortisation (EBITDA).

Any interest payable to a foreign investor for financial assistance granted will be disallowed as a deduction if such financial assistance exceeds the parameters as finally determined.

Local participation requirement

There is no local participation requirement for any of the business vehicles mentioned above. A foreign company can either set up a RSA company of which it is the sole or major shareholder, or it can register an external company or a branch thereof in the RSA. A foreign company with a foreign major shareholding may borrow in the RSA subject to a prescribed formula.

Note: See Part 2 (page 7).

An external company must have a RSA resident as a public officer.

Labour law

All employment contracts must comply with the Basic Conditions of Employment Act. The Labour Relations Act 1995 contains restrictive provisions for both the employer and employee regarding unfair labour practices and unfair labour dismissals. The Commission for Conciliation, Mediation and Arbitration (CCMA) arbitrates collective bargaining and settles disputes between trade unions, employees and employers. The Labour Court is the final body to hear all disputes, which could not be settled by the CCMA.

COMPANY TAXES, SOCIAL SECURITY AND OTHER BUSINESS TAXES

RESIDENT COMPANIES

A 'resident company' is a company incorporated, established or formed in the Republic; or which has its place of effective management in the Republic

The term 'resident in the Republic' is used in most double taxation agreements with the RSA and in that context it means 'any company managed and controlled in the Republic'. It could therefore commonly include foreign-owned subsidiaries.

A resident company is taxed on its worldwide income.

A headquarter company (HQ Co) is a South African resident company which elects headquarter company status in a tax year. In order to elect HQ Co status the following must apply:

- for the whole year of election each shareholder must hold 10% or more of the equity shares and voting rights in the HQ Co
- at least 80% of the cost of the total assets of the HQ Co must be attributable to one or more of, equity shares in, loans or advances to, or intellectual property licensed to a foreign company in which the HQ Co holds 10% or more of the equity shares and voting rights ('qualifying foreign investment')
- in calculating the 80% rule, cash or bank deposits payable on demand are not taken into account and the rule is not applied where the total market value of the assets is R 50 000 or less
- where the gross income of a HQ Co exceeds R5 000 000 in a tax year at least 50% of the gross income must consist of rental, dividends, interest, royalties or service fees from a qualifying foreign investment or the proceeds from the disposal of equity shares in or intellectual property licensed to a qualifying foreign investment.

Where a company has elected to be a HQ Co:

- dividends paid by an HQ Co are exempt from normal tax in the shareholders hands
- dividends paid by a HQ Co are not subject to Dividends Tax
- the capital gain or loss that a HQ Co makes on the disposal of a qualifying investment must be disregarded
- a HQ Co is subject to normal tax on its taxable income. Dividends from qualifying investments will be exempt due to the participation exemption.

PERSONAL SERVICE COMPANIES, PERSONAL SERVICE TRUSTS AND LABOUR BROKERS

Any company, close corporation or trust that fits the definition of a 'personal service provider' or 'personal service trust' and receives remuneration will be subject to the deduction of PAYE.

Note: See Part 7 (page 25) Employees Tax

A company that fits the definition of a 'labour broker' and complies with certain conditions will not be subject to PAYE.

TAXES IN GENERAL

The major forms of other taxes are as follows:

- Capital Gains Tax has been in effect since 1 October 2001 – 66.6% of the realised gain is included in taxable income of companies, close corporations and trusts and 33.3% for individuals

Note: See Part 7 (page 25)

- normal income tax - levied at a fixed rate of 28% on most corporate entities – some exceptions are certain mining companies and long-term insurance companies where a different restructure applies.
- Value added tax.

Note: See Part 9 (page 29)

Transfer duty applies to the transfer of immovable property. The following rates apply to all entities:

	Rate of Tax
R0 – R600 000	0%
R600 001 – R1 000 000	3% on value above R600 000
R1 000 001 – R1 500 000	R12 000 plus 5% on value above R1 000,000
R1 500 001 and above	R37 000 plus 8% on value above R1 500 000

- donations tax at 20%, payable on donations, disposals of assets for inadequate consideration and surrenders of rights. This tax is not applicable to public companies and non-residents.
- estate Duty at 20%, levied on the dutiable amount of the estate, after deducting a primary abatement of R3.5 million from the gross value of the estate together with certain other allowable deductions.

ASSESSED LOSSES

Losses suffered in one year may be carried forward to a following year and be set off against the income in that year. No group relief is, however, available. The Revenue authorities are very strict about the purchase or takeover of companies with losses, unless the take-over company can prove that the take-over was not part of a tax avoidance scheme, but was entered into for bona fide business reasons.

All assessed capital losses may be set off against capital gains. The first R30 000 of a net loss, in respect of a natural person, will fall outside the capital gains tax regime.

INTEREST

Certain restrictions are placed on the payment of interest to entities outside the RSA; for example, if such a payment is excessive it will not be allowed as a deduction against income.

Note: See Part 5 (page 15) Debt/equity ratio.

PENSION FUND CONTRIBUTIONS

It is not a statutory requirement that employers contribute to retirement funds for the welfare of their employees, nor is it a statutory requirement that they deduct pension fund contributions from their employees.

DIVIDENDS

Local dividends received are subject to a withholding tax at the rate of 15%.

DATES OF FINANCIAL AND TAX YEAR ENDS

The company's financial year-end is also its tax year-end. Corporate entities are required to pay provisional tax. Provisional tax is an advanced payment of the company's normal tax liability. Provisional tax is paid twice a year with a voluntary third payment. These payments normally take place six months before year-end, on year-end and six months after year-end.

DOUBLE TAXATION RELIEF

South African residents are taxed on worldwide income. Non-residents are taxed on South African source income. Relief for foreign tax is granted through double taxation agreements. Relief by way of tax rebate may also be granted on foreign taxes paid on income derived from a source outside the RSA by a resident or domestic company. The relief is limited to the normal tax payable in the RSA on such income. This relief may only be granted instead of relief under a double taxation agreement and not in addition thereto.

WITHHOLDING TAXES

Withholding tax on interest

With effect from 1 January 2015 interest paid to non-residents, to the extent that the amount is regarded as having been received or accrued from a source in the Republic, subject to certain exemptions (e.g. any bank, national, provincial or local government; or in respect of listed debt), will be subject to a final withholding tax at a rate of 15%.

A non-resident will be exempt from the withholding tax on interest if:

- that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the interest is paid or
- the debt claim in respect of which the interest is paid is effectively connected to a permanent establishment of the non-resident in the Republic if the non-resident is a registered taxpayer in the Republic.

Such interest will be subject to normal tax in the Republic.

Withholding tax on dividends

With effect from 1 April 2012 local dividends received by non-residents are subject to a final withholding tax at a rate of 15%.

Withholding tax on royalties

Royalties paid to non-residents, to the extent that the amount is regarded as having been received or accrued from a source in the Republic, are subject to a final withholding tax at a rate of 12% (15% with effect from 1 January 2015)

With effect from 1 July 2013 a non-resident is exempt from the withholding on royalties if:

a. that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the 12-month period preceding the date on which the royalty is paid or
b. that person at any time during the 12-month period preceding the date on which the royalty is paid carried on business through a permanent establishment in the Republic or
c. the royalty is paid by a headquarter company for the granting of the use of, right of use, or permission to use intellectual property.

To royalties contemplated in a) and b) above will be subject to normal tax in the Republic.

Withholding tax on sale of immovable property

Any person who purchases immovable property in the Republic from a non-resident, must withhold from the amount that person must pay to the non-resident a withholding tax equal to:

- 5% if the non-resident is an individual
- 7.5% if the non-resident is a company and
- 10% if the non-resident is a trust.

The amount withheld is not a final tax, but regarded as a provisional payment in respect of the normal tax payable by the seller in respect of the disposal of the immovable property. The seller is entitled, under certain circumstances, to apply for a directive to reduce the withholding tax. The withholding tax does not apply where the consideration payable by the purchaser to the non-resident seller or any other person on his behalf is less than R2 million.

Withholding tax on visiting entertainers and sportspersons

Visiting entertainers and sportspersons are subject to a final withholding tax of 15% of the gross amount received or accrued to the extent that these entertainers and sportspersons are not employed by a South African resident employer and are not physically present in the Republic for a period exceeding 183 days in aggregate during any 12-month period beginning or ending during the year of assessment in which the activities are exercised.

The non-resident entertainer or sportsperson must pay the tax within 30 days after the receipt or accrual of the amount for the performance and the payment must be accompanied by the prescribed return. Where a resident is liable to pay to the non-resident entertainer or sportsperson any amount in respect of any activity exercised by that non-resident in the Republic, that resident must deduct and withhold from such payment the amount of tax and pay it over to SARS before the end of the month following the month during which the tax was deducted or withheld.

Withholding tax on service fees

With effect from 1 January 2016 service fees paid to or for the benefit of any non-resident will be subject to a final withholding tax at a rate of 15%, but only to the extent that the amount is regarded as having been received by or accrued to that non-resident from a source within the Republic.

OTHER BUSINESS TAXES

Other business taxes include surcharges on certain goods, toll road charges, import charges (customs and excise duties) and harbour and transport charges

EXTERNAL COMPANIES (BRANCHES)

The profits of a branch registered as an external company are taxable at 28%. Remittances of branch profits are not subject to withholding tax.

CAPITAL AND OTHER ALLOWANCES

Acquisition and Improvement of Machinery, Plant, Implements, Utensils and Articles (Capital Goods)

Manufacturers

New or unused plant and machinery used directly in a process of manufacture or a similar process:

- acquired and brought into use from 1 March 2002:
  - 1st year – 40%
  - 2nd to 4th years – 20%
- used plant and machinery used in a process of manufacture or a similar process
  - 20% – straight line.

Farmers and Producers of Bio-Diesel, Bio-Ethanol & Environmentally Friendly Energy

- New or used machinery, implements, utensils, articles (excluding office equipment, private vehicles, livestock) used for the purpose of carrying on a trade of farming and production of bio-diesel, bio-ethanol or environmentally friendly energy
  - 1st year – 50%
  - 2nd year – 30%
  - 3rd year – 20%

Aircraft and Ships

- New or used aircraft and ships used for the purpose of carrying on a trade
  - 20% straight line

Small Business Corporations

- Manufacturing assets brought into use from 1 April 2001
  - 100%
- Non-manufacturing assets brought into use from 1 April 2005
  - 1st year – 50%
  - 2nd year – 30%
  - 3rd year – 20%

Hotelkeepers

- New or used machinery, utensils or articles (excluding vehicles or equipment for offices or employees' rooms)
  - 20% straight line

Buildings

Industrial Buildings

- In respect of qualifying buildings either used wholly or mainly for the purpose of carrying on a process of manufacture, research and development (on or after 1 April 2012 or such later date as the Minister may determine) or similar process, or let to tenants utilising these buildings for such purposes and brought into use for the first time by the lessee for the purpose of the lessee's trade:
- Annual allowance in respect of the cost of erection or improvements to buildings
  - commenced on or before 31 December 1988
    - 2% straight line
  - commenced on or after 1 January 1989
    - – 5% straight line
  - commenced during period 1 July 1996 to 30 September 1999, and brought into use on or before 31 March 2000
    - 10% straight line
  - commenced on or after 1 October 1999
    - 5% straight line

  The allowance is also available in respect of purchased buildings where either the seller was entitled to the allowance, or the building was not previously used, determined by reference to the date of erection and not the date of purchase.

  In the case of a building acquired and brought into use on or after 1 April 2000, the allowance is 5%, notwithstanding that the person from whom the building was acquired was entitled to 10%.

Commercial Buildings

New or unused commercial buildings (and improvements) contracted for on or after 1 April 2007

- 5% straight line

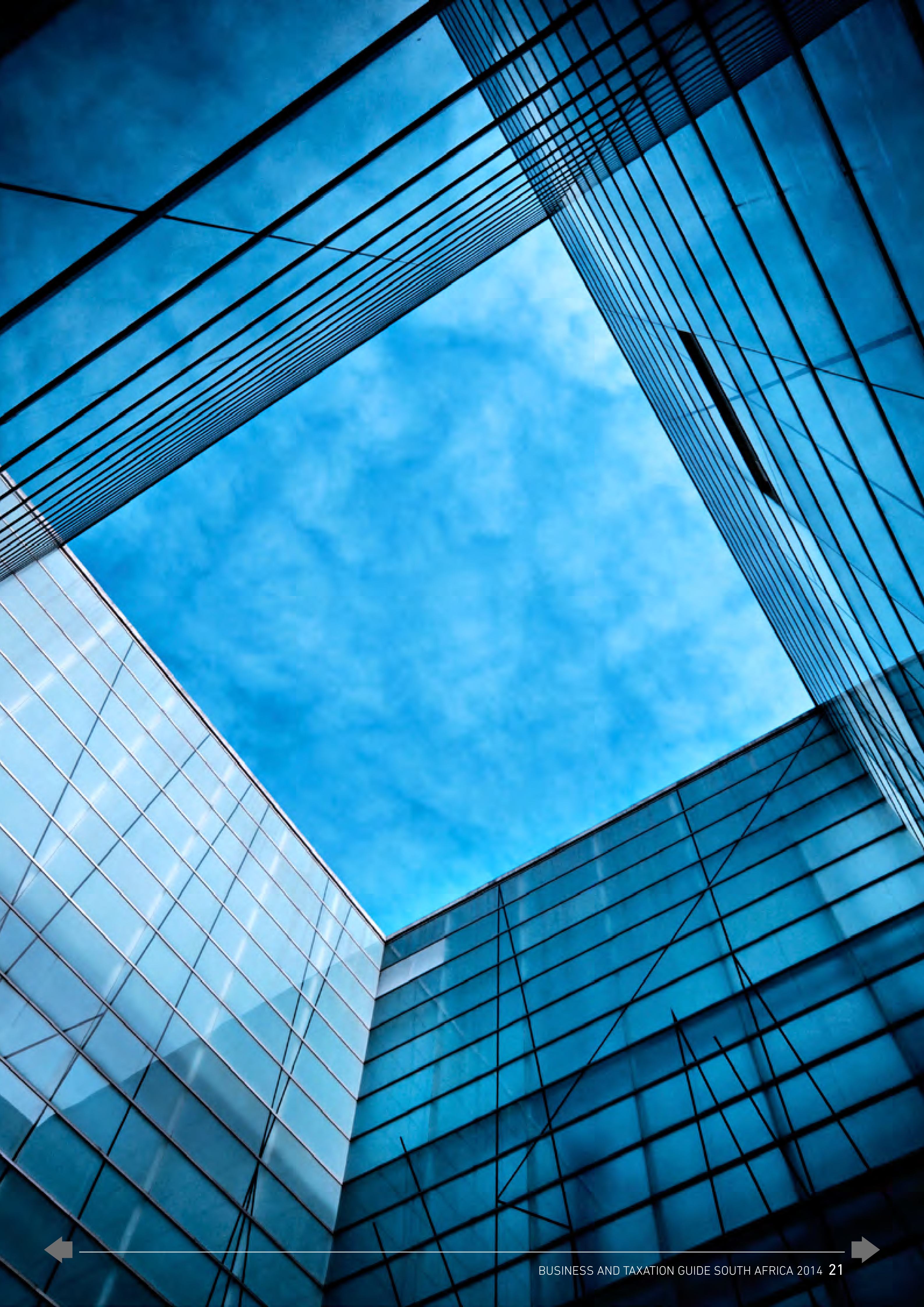
With effect from 21 October 2008 where unused part of building acquired

- 5% straight line on 55% of costs if part of building acquired or, 30% of costs if improvement acquired

Residential Buildings

Erection of residential unit as defined in housing project commenced 1 April 1982 to 20 October 2008

- 1st year – 12%
- 2nd to 45th years – 2%



Erection of new and unused residential unit as defined or improvement commenced on or after 21 October 2008:

- new and unused residential unit – 5% straight line
- low cost residential unit – 10% straight line.

With effect from 21 October 2008, to the extent that the taxpayer acquires a residential unit as defined or improvements thereto, representing a part of a building which the taxpayer did not construct, the cost upon which the allowances are based, is deemed to be:

- 55% of the acquisition price in the case of a unit being acquired
- 30% of the acquisition price in the case of an improvement being acquired.

Buildings in Designated Urban Development Zones

Commercial or Residential Buildings

Improvements commenced on or after publication date of relevant Government Gazette notice:

- low cost residential units 25% – straight line
- other buildings 20% - straight line.

Construction of new buildings, extensions or additions (exceeding 1000m2) commenced on or after publication date of relevant Government Gazette notice:

- brought into use before 21 October 2008
  - 1st year – 20%
  - 2nd to 17th years – 5%
- brought into use on or after 21 October 2008
  - 1st year – 20%
  - 2nd to 11th years – 8%
- brought into use on or after 21 October 2008 – low cost residential units
  - 1st year – 25%
  - 2nd to 6th years –13%
  - 7th year – 10%

The allowance is first granted in the year in which the building or improvement is brought into use.

With effect from 21 October 2008, where an unused building or part of a building is acquired from a developer, the above allowances are determined on the basis of 55% of cost if that building or part thereof is acquired or, 30% of cost if an improvement is acquired.

The building or part of a building must be brought into use by 31 March 2020. The qualifying requirements are complex.

Leasehold Improvements to Government Owned Land

Taxpayers who conduct business on land leased from the Government are entitled to claim capital allowances on improvements effected to the land provided that they are under an obligation in terms, inter alia, of a Public Private Partnership or Independent Power Producer Procurement Programme to effect such improvements. No allowances may be claimed where:

- the taxpayer's business constitutes banking, insurance or financial services or
- the land or buildings are sublet, unless:
  - the sub-lessee, who occupies the land or buildings, is a company forming part of the same group of companies as the taxpayer and
  - the taxpayer retains the risk of destruction and the cost of maintaining the land or buildings.

Intellectual Property

Research and Development

Where scientific or technological research and development as defined, is undertaken on or after 1 October 2012 (or such later date as the Minister may determine, but before 1 October 2022) are entitled to:

- 100% of expenditure incurred
- an additional 50% of expenditure incurred where the taxpayer is a company and application has been approved by the Minister of Science and Technology and the expenditure is incurred in respect of research and development carried on by the taxpayer on or after the date the application for approval has been submitted or
- an additional 50% of expenditure incurred where an application has been approved by the Minister of Science and Technology and the expenditure is incurred by a taxpayer to fund expenditure incurred by another person carrying on research and development on his behalf provided that the person undertaking the research and development is a tax-exempt entity (for example the Council for Scientific and Industrial Research)

The additional 50% deduction does not apply to the extent that the taxpayer received a Government grant.

Capital assets owned or acquired and first brought into use for purposes of research and development on or after 1 April 2012 (or such later date as the Minister may determine, but before 1 April 2022):

- 1st year – 40%
- 2nd to 4th years – 20%.

Royalties

In certain circumstances restrictions apply to the deduction of payments for the right to use intellectual property.

Deduction in Respect of Wear and Tear or Depreciation

A taxpayer who so elects can depreciate the cost of an asset on a straight-line basis.

From 1 March 2009 small items not forming part of a set and costing less than R7 000 per item may be written off in full in the year of acquisition.

LEARNERSHIPS

Registered learnership agreements are learnership agreements entered into between a learner and employer before 1 October 2016 and registered in accordance with the Skills Development Act, 1998.

Employers' party to a registered learnership agreement will qualify for the following deductions:

- R30 000 in each year during which they are party to the learnership, apportioned in accordance with the number of months during each year that such employer was party to the learnership.
- On successful completion:
  - where the learnership is less than 24 full months in duration, R30 000; or
  - where the learnership is equal to or exceeds 24 full months, R30 000 multiplied by the number of consecutive full 12-month periods of the learnership.

The above deductions are increased by R20 000 for learners with disabilities at the time of entering into the learnership.

"Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another."

NELSON MANDELA

PERSONAL TAXATION

RESIDENTS

From 1 January 2001 the Income Tax Act 1962 defines the term 'resident'. A natural person will be a resident of the RSA if he is ordinarily resident in the Republic; or if he is physically present in the Republic.

A person who is ordinarily resident in the Republic, will have his usual or principal residence or real home in the Republic.

For a person to be considered a resident by virtue of time spent in South Africa, the person must be present in the Republic for a period of more than ninety-one days in the current, and each of the preceding five years of assessment and a total of more than 915 days during the preceding three years of assessment. The ninety-one days and the 915 days of physical presence need not be continuous.

COMPUTATION OF TAXABLE INCOME

The income tax year runs from 1 March to the end of February. The tax equation begins with establishing Gross Income from which Exempt Income is deducted to give Income. Deductions and Allowances are deducted from Income to give Taxable Income. A person's Net Capital Gain (See Capital Gains below) for a year is added to Taxable Income. Tax is calculated on Taxable Income according to a progressive table. Rebates are deducted from Tax as calculated from the table to arrive at Tax Payable for the year. Four main groups of income are distinguished although scheduling is not applied:

- personal income
  - income from employment (salaries, wages)
  - self-employed (for example as auditors or attorneys)
- income from agriculture or forestry
- investment income and rental income
- income from business and trade
- a number of tax deductions and rebates can reduce the taxable income. These include deductions for expenditure actually incurred in the production of income, deductions for pension fund and retirement annuity fund contributions, limited amounts for medical expenses and donations to educational institutions. All taxpayers receive a primary rebate and there are limited rebates for the aged
- married couples are assessed separately on income earned.
- for individuals the rates of normal income tax for the 2014/2015 year of assessment range from 18% on income up to R174 550 in steps up to 40% on the excess over R673 100.

Social security

There is no statutory social security system. Employers must belong to compulsory indemnity funds such as unemployment insurance and accident insurance funds to which the employee must contribute. Welfare pensions, free legal clinics and free medical facilities are available to the lower income groups.

CAPITAL GAINS

Capital Gains Tax applies to a resident's worldwide assets and to a non-resident's immovable property or assets of a permanent establishment, branch or agency in the Republic.

To establish Taxable Capital Gain the process below is followed.

The capital gain or loss on each disposal is first calculated. This is the proceeds less the base cost. The sum of all of the gains is then determined, as is the sum of the losses. A person's aggregate capital gain for the year is the amount by which the person's total capital gains exceed the total capital losses and annual exclusion (in the case of a natural person). The annual exclusion for natural persons is R30 000. This effectively excludes the first R30 000 of net capital gains or net capital losses from the system. The assessed capital loss, if any, from the prior year is brought forward and set off against the aggregate capital gain to determine the net capital gain. Where there is a net capital gain the applicable inclusion rate (see below) is then applied to this gain and the resulting amount, known as the taxable capital gain, is included in taxable income and income tax is payable thereon at normal income tax rates. Where there is a 'net capital loss', this loss is carried forward to the following year and can only be set off against future capital gains. i.e. a net capital loss does not reduce taxable income.

For individuals, 33.3% of the net capital gain is included in taxable income and 66.6% for companies, close corporations and trusts.

The following are excluded from Capital Gains Tax:

A person's primary/principal owned-occupied residence (subject to limitations); private motor vehicles, personal belongings and effects; lump sum benefits in respect of most superannuation and life assurance policies; compensation for personal injury or illness or defamation actions; betting, lotteries, competitions or the disposition of a chance to win a prize or a right to receive a prize; foreign legal tender for personal use, gains or losses made by the foreign government agencies; small business assets disposed of where the proceeds are used for retirement (subject to limitations) and institutions fully exempt from normal taxation.

DONATIONS TAX (GIFT TAX)

Donations tax applies to donations made by South African residents. Exemptions include gifts made between husband and wife, donations made by public companies, donations made to exempt institutions or, in certain circumstances, property donated outside the RSA. Limited exemptions are given for gifts made by private companies and individuals. In all other instances donations tax is levied at a fixed rate of 20%. The first R100 000 per annum of property donated by an individual is exempt from donations tax.

DEATH DUTIES

Estate duty (inheritance tax) is levied at a fixed rate of 20% on the dutiable amount of an estate. The dutiable amount is calculated by establishing the Gross Value of Property, deducting Deductions to establish the Net Value of the Estate from which the Abatement is deducted to arrive at the Dutiable Amount.

Bequests to a surviving spouse qualify as a deduction. The abatement is R3.5 million.

EMPLOYEES' TAX

Employers are required to deduct Pay-as-you-earn (PAYE) from the earnings of employees. PAYE paid is a credit in respect of tax due by an employee on assessment.

Directors of private companies are included in the definition of employees.

Note: See Part 6 (page 17)

Dates of financial and tax year-ends.

NON-RESIDENTS

Non-residents are taxable only on their income of a South African source

Under several double taxation agreements, foreign employees may, under certain circumstances, be exempt if they are present in the country for less than six months in any one tax year (March to February). Non-residents are liable to withholding taxes in the same way as companies, as discussed in Part 6 above.

DOUBLE TAXATION AGREEMENTS

Comprehensive agreements are in place with Algeria, Australia, Austria, Belarus, Belgium, Botswana, Brazil, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Democratic Republic of Congo (DRC), Denmark, Egypt, Ethiopia, Finland, France, Germany, Ghana, Greece, Grenada, Hungary, India, Indonesia, Iran, Ireland, , Israel, Italy, Japan, Korea, Kuwait, Lesotho, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mauritius, Mexico, Mozambique, Namibia, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Poland, Portugal, Romania, Russian Federation, Rwanda, Saudi Arabia, Serbia, Seychelles, Sierra Leone, Singapore, Slovak Republic, Spain, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Zambia and Zimbabwe.

Agreements being negotiated, signed or ratified with Cameroon, Cuba, Gabon, Hong Kong, Isle of Man (Limited), Kenya, Morocco, Qatar, Senegal, Syria, United Arab Emirates and Vietnam.

Dividends are subject to a withholding tax of 15%. Some treaties provide for a lesser rate to apply in certain circumstances.

South Africa is shortly to introduce a withholding tax on interest paid to non-residents. Royalty payments are subject to a 12% withholding tax unless the double taxation agreement prohibits the taxation of royalties other than in the resident country of the beneficial owner of the royalty.

VALUE-ADDED TAX

Value-added tax is an indirect system of taxation and is levied on the supply of goods or services made by any vendor in the course or furtherance of an enterprise, as well as on the import by any person of goods and services. The VAT levied on the supply of goods and services by a vendor is known as output tax. The VAT paid on the acquisition of goods and services by a vendor for enterprise purposes is known as input tax. VAT paid to or refunded by the SARS each period is Output VAT less Input VAT.

All persons who carry on an enterprise where the total value of taxable supplies (at standard or zero rates) exceeds or is likely to exceed R1 000 000 per year must register as vendors. All persons with taxable supplies between R50 000 and R1 000 000 may register. The minimum threshold for registration (and continued registration) as a commercial rental enterprise is turnover of R60 000 per annum.

VAT is charged at the standard rate of 14%, unless the particular supply is zero rated, in which case the VAT levied is 0%. Where a supply is exempt, no VAT is charged at all.

The following supplies are zero rated:

- goods and services exported from RSA
- sale of an enterprise as a going concern to a registered vendor
- goods let for use in an export country
- supply of certain goods used for agricultural, pastoral or other farming purposes
- illuminating paraffin, petrol and other distillate fuels
- certain basic food products
- international transport of passengers and goods.

The following supplies are tax exempt:

- premiums on life policies and contributions to pension, provident, retirement annuity and medical aid funds, as well as compulsory charges in respect of unit trust schemes
- accommodation in a residential dwelling
- letting of land for the purposes of providing residential accommodation
- service by a body corporate or share block company to its members, where such costs are met out of levies
- transport of fare paying passengers and their belongings by road or railway
- educational services provided in pre-primary, primary, secondary, tertiary school of a public character, including the supply of incidental goods and services.

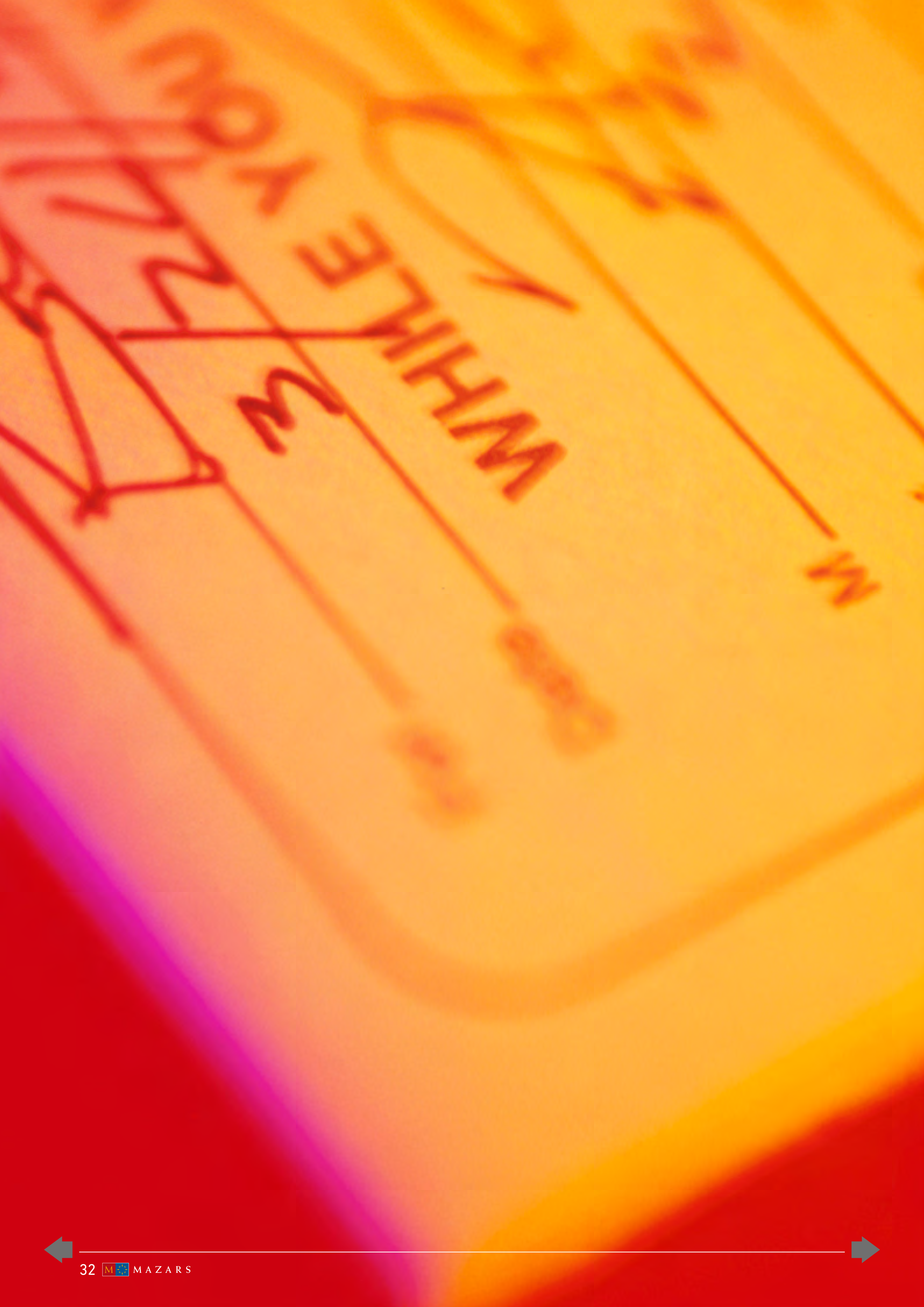
Vendors must submit VAT returns every two months, unless turnover exceeds R30 million per annum, in which case a monthly return must be submitted. Farmers may submit VAT returns every six months. There are duties on a number of goods and services.

"Great investors need to have the right combination of intuition, business sense and investment talent."

ANDREW LO

PORTFOLIO INVESTMENT FOR FOREIGNERS

Foreigners are free to buy stocks and shares in RSA companies. There are almost no restrictions as to the acquisition of immovable property.



TRUSTS

Various forms of trusts are available:

- ordinary family trusts (inter vivos and mortis causa)
- share unit trusts making share investments on the Johannesburg Stock Exchange
- property unit trusts dealing mainly in real estate (commercial)
- various other business trusts
- endowment, mutual and other pension funds.

Trusts have more inherent secrecy regarding disclosure of the identity of the donor, trustees and beneficiaries, its objects and activities, than any other business vehicle in the RSA.

The use of trusts by foreigners and residents alike are almost limitless, subject however to normal tax, insolvency and business restrictions. As the law regarding trusts is not yet codified, the nature of trusts is still somewhat uncertain from both a legal and a tax point of view.

The general rule is that trusts are taxed at the rate of 40% on income and 26.64% on capital gains.

"In Africa today, we recognise that trade and investment, and not aid, are pillars of development."

PAUL KAGAME

PRACTICAL INFORMATION

COMMUNICATIONS

There are extensive railways and public roads. The principal ports are Cape Town, Durban, Richards Bay, Port Elizabeth and East London. There are international airports in Cape Town, Durban, Bloemfontein, Johannesburg, Port Elizabeth and Upington. The satellite station at Hartebeeshoek is probably the best telecommunications system on the African continent.

LANGUAGE

There are eleven official languages with English and Afrikaans predominant. Each of the major Black ethnic groups speaks its own language.

TIME RELATIVE TO GREENWICH MEAN TIME

Two hours in advance of GMT.

BUSINESS HOURS

Due to long hours of sunshine (eight to ten hours daily) office hours are relatively flexible, but 8.00am to 4.30pm from Monday to Friday is typical. Offices are normally closed on Saturdays, but shops are increasingly extending business hours on weekends and later at night.

PUBLIC HOLIDAYS

2014		2015	
January 1, Wednesday	New Year's Day	January 1, Thursday	New Year's Day
March 21, Friday	Human Rights Day	March 21, Saturday	Human Rights Day
April 18, Friday	Good Friday	April 3, Friday	Good Friday
April 21, Monday	Family Day	April 6, Monday	Family Day
April 27, Sunday	Freedom Day	April 27, Monday	Freedom Day
May 1, Thursday	Workers Day	May 1, Friday	Workers Day
June 16, Monday	Youth Day	June 16, Tuesday	Youth Day
August 9, Thursday	Women's Day	August 9, Sunday	Women's Day
September 24, Wednesday	Heritage Day	September 24, Thursday	Heritage Day
December 16, Tuesday	Reconciliation Day	December 16, Wednesday	Reconciliation Day
December 25, Thursday	Christmas Day	December 25, Friday	Christmas Day
December 26, Friday	Day of Goodwill	December 26, Saturday	Day of Goodwill

Note: When a public holiday falls on a Sunday, the next day is also a public holiday.

Mazars is present in 5 continents.

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Mazars is an international, integrated and independent organisation, specialising in audit, accounting, tax and advisory services across a range of markets and sectors.

In South Africa, Mazars employs over 900 staff in 12 offices nationally. With the skills of 13 800 staff operating in 72 countries, we're big enough to service international listed clients, yet small enough to help small companies grow and prosper in their own environments.

Mazars is represented in 22 African countries.

This guide is intended as a general guide and should not be acted upon without further advice.

REGISTERED AUDITOR — A FIRM OF CHARTERED ACCOUNTANTS(SA)

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