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COUNTRY

Doing Business in
South Africa

Preface

This guide has been prepared by Baker Tilly South Africa, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in South Africa.

Baker Tilly International is the world's 8th largest accountancy and business advisory network by combined fee income, and is represented by 138 firms in 104 countries and over 24,000 personnel worldwide. Its members are high quality, independent accountancy and business advisory firms, all of whom are committed to providing the best possible service to their clients, both in their own marketplace and across the world.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be obtained from Baker Tilly South Africa or any of our independent member firms.

Doing Business in South Africa has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on South African matters can be obtained from Baker Tilly South Africa; contact details can be found at the end of this guide.

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1 Fact Sheet

Geography

Location	At the southernmost tip of the African continent
Area	1,221,037km ²
Land boundaries	Namibia, Botswana, Zimbabwe, Mozambique and Swaziland
Coastline	The Indian Ocean to the East, the Atlantic to the West
Climate	Generally mild throughout the year
Time zone	GMT +2. No daylight saving

People

Population	48.6 million
Religion	Predominantly Christian based
Language	English is widely spoken and is the language of business

Government

Country name	Republic of South Africa
Government type	Democratic electoral process at national and provincial level
Capital	Legislative – Cape Town, administrative – Pretoria, judicial – Bloemfontein
Political situation	Multi-party system dominated by the African National Congress

Economy

GDP – real growth rate	5.1% (2007)
Labour force	18 million
Unemployment	23.5%
Currency (code)	Rand (ZAR)

2 Business Entities and Accounting

The Companies Act regulates the formation, conduct of affairs and liquidation of all companies and close corporations. A new Companies Act has been published for comment and is likely to come into force in 2010.

No distinction is made between locally and foreign-owned companies. Companies may either be private or public; business may also be conducted by close corporations (a less formal entity that is not required to be audited), individuals, partnerships (including limited partnerships) and trusts.

In order to establish a business in South Africa, a business licence, which is valid indefinitely, must be obtained from the local authority (municipality).

2.1 Private Companies

Private companies (identified by the term “Proprietary Limited” or “(Pty) Ltd” in their titles) are commonly used by foreign investors as minimal annual formalities are required.

A private company must have at least one director and shareholder, while membership is restricted to a maximum of 50. There is no requirement for directors to be South African residents or nationals. A private company may not offer shares to the public.

Companies are registered with the Companies and Intellectual Property Registration Office (CIPRO), which maintains records regarding the structure and directors of the company, but not shareholdings. This information may be accessed by the public.

2.2 Public Companies

Public companies (Ltd) are formed to raise funds by offering shares to the public. A minimum of seven shareholders is needed to form a public company and there must be at least two directors. There is no limitation to the maximum number of shareholders.

Public companies are required to file annual financial statements and reports with the Registrar.

2.3 Branches

Foreign companies wishing to establish a local branch office in South Africa must register the branch as an external company with CIPRO within 21 days of establishing

an office. Government approval is not required and there is no condition that a percentage of shares be held locally.

External companies are required to submit annual financial statements to CIPRO within six months of their financial year-end. Legal liabilities are not restricted to the extent of local assets.

2.4 Close Corporations (CC)

Close corporations are a form of business organisation unique to South Africa. They have fewer registration and operating regulations than companies, but are not usually suitable for foreign investors.

A close corporation can have one or more members but at no time can the number of members exceed ten. Members may include individuals and beneficiaries of trusts.

2.5 Audit and Accounting Requirements

South Africa has a well-established accounting profession which complies with international standards.

All companies are required to keep accounting records in one of the 11 official languages. For practical purposes, English dominates with Afrikaans, the other major language, playing a role. Records must include the company's assets and liabilities, a fixed assets register, cash receipts and payments, details of goods purchased and sold and annual inventory statements. Company directors are responsible for issuing financial statements which fairly represent the company's state of affairs and which comply with Generally Accepted Accounting Practice.

Financial statements of both public and private companies are subject to an annual audit under the Companies Act. The auditor must be regulated with the Independent Regulatory Board for Auditors. Government institutions are investigated and evaluated by the Office of the Auditor General on a national and provincial level.

Close corporations are not subject to a compulsory audit. An accounting officer, recognised in terms of the Close Corporations Act, must be appointed to review the accounting policies and report on whether the financial statements agree with the accounting records.

3 Finance and Investment

3.1 Exchange Control

Current exchange control rules are largely procedural and affect South African resident companies and individuals.

Exchange regulations are administered by the Exchange Control Department of the South Africa Reserve Bank (Excon) through the banking system. Banks authorised to trade in foreign currencies (authorised dealers) have considerable flexibility and discretion in administering the exchange control rulings and are obliged to submit matters outside their ambit to Excon for approval. Parties wishing to approach Excon are obliged to do so through an authorised dealer.

South African corporate entities are allowed to invest abroad and in Africa subject to certain limitations provided a long-term benefit to South Africa can be demonstrated.

There is currently a dispensation available to entities to acquire foreign portfolio assets, subject to limitations on the level of institutional foreign assets as a percentage of total assets in the case of long-term insurers and pension funds, and of assets under management for fund managers and unit trusts through unit trust management companies.

There are restrictions on the ability of companies with a foreign shareholding or control of 75% or more to utilise local financial assistance. Borrowing limits are based on a set formula related to total shareholders' funds employed.

3.2 Banking and Sources of Finance

South Africa has a sophisticated banking system; finance can be accessed through both the commercial and merchant banking systems.

All banks have branches and associates worldwide and international trade is readily facilitated.

3.3 Trade and Investment Incentives

The government offers a comprehensive range of incentives to both domestic and foreign investors through the Department of Trade and Industry (DTI) and various other supporting bodies.

The incentives on offer can be broadly classified into the following ten categories:

- Development finance
- Empowerment
- Export facilitation
- Human resources and skills development
- Investment incentives
- Matching grants
- Sectoral
- Small, medium and micro enterprises (SMMEs)
- Technology (research and development)
- Tourism.

To encourage investment in manufacturing and the expansion of existing plants, accelerated depreciation allowances are available on the cost of plant or machinery, implements, utensils and other articles used by taxpayers for the purpose of their trade.

The DTI maintains the Business Referral and Information Network (BRAIN) as a resource for establishing and developing SMMEs. The BRAIN website contains information and contacts for doing business in South Africa for all type of business enterprises.

4 Employment Regulation and Social Security

Employment in South African companies is regulated by the Basic Conditions of Employment Act, which provides a framework for the employment contract and the employment relationship. In addition, the Employment Equity Act provides for the eradication of discrimination in employment practices and the implementation of affirmative action policies.

The Employment Equity Act requires designated employers to compile and implement an employment equity act plan aimed at promoting equal opportunities and affirmative action, while eliminating unfair discrimination. Designated employers include those who employ more than 50 people or have an annual turnover of a certain amount. The Act is intended to redress the employment disadvantages of black people, women and those with disabilities (designated groups).

4.1 Work Permit Requirements

Foreigners seeking work in South Africa are required to obtain work permits issued by The Department of Home Affairs.

The employment of local residents is not subject to regulations other than the guidelines referred to earlier in regard to employment equity and the need to aim for a labour force representative of the population demographics of the country.

4.2 Trade Unions

Trade union organisations exist in most sectors of the economy; the Council of Trade Unions of South Africa (COSATU) is an influential political grouping. Membership of unions is not compulsory in most businesses.

4.3 Social Security

There is no formal social security system requiring employee contribution other than an Unemployment Insurance Fund which pays short-term benefits to employees who lose employment.

Pensions are payable to the elderly, subject to a means test.

5 Taxation

The South African Revenue Services (SARS) is the country's primary taxing authority. The main sources of revenue are income tax (levied on individuals and companies), VAT (value added tax), customs and excise duties, transfer duties (levied on the purchase considerations of fixed property), stamp duties and estate duties (levied on estates of deceased persons). Other taxes include marketable securities tax, uncertified securities tax, the skills development levy, air passenger departure tax and capital gains tax.

Income from trade arising in South Africa is taxed in South Africa regardless of where the taxpayer resides or is registered. There are agreements with many countries to prevent double taxation on the same income.

Local residents are subject to tax on their foreign earned income.

5.1 Companies and Close Corporations

5.1.1 Tax rates

Normal tax (for the year ended 28 February 2009)

Small business corporations are taxed on a progressive basis on income up to ZAR1m.

Taxable Income ZAR	Rate of Tax ZAR
0 – 100,000	0%
100,001 – 300,000	2% of each ZAR1 above 100,000
300,001 – 500,000	4,000 + 4% of the amount above 300,000
500,001 – 750,000	12,000 + 5.5% of the amount above 500,000
750,001 – 1,000,000	25,570 + 7.5% of the amount above 750,000

Employment companies are taxed at 34%.

Companies with effective management outside South Africa and carrying on trade through branches or agencies in South Africa are also taxed at 34%.

The rate for all other companies is 28%.

Secondary tax on companies

This tax is payable by companies on all dividend distributions at the rate of 10%.

There are current proposals to replace the tax with a dividend tax imposed on the recipient at the same rate.

5.2 Trusts (Other than Special Trusts)

Trusts, other than special trusts, are taxed at 40% with no primary rebate (see 5.5) and no interest exemption.

5.3 Special Trusts

A special trust is defined as a trust created solely for the benefit of a person suffering from a severe mental illness or physical disability, or a testamentary trust established solely for the benefit of minor children related to the deceased.

Special trusts are taxed at the same rate as individuals; there is no rebate and no interest exemption.

5.4 Individual Tax

Individuals are taxed on a progressive basis income with a rate of 40% applicable to the top slice of income.

For the year ended 28 February 2009

Taxable Income ZAR	Rates of Tax ZAR
0 – 122,000	18% of each ZAR1
122,001 – 195,000	21,960 + 25% of the amount above 122,000
195,001 – 270,000	40,210 + 30% of the amount above 195,000
270,001 – 380,000	62,710 + 35% of the amount above 270,000
380,001 – 490,000	101,210 + 38% of the amount above 380,000
490,001 and over	143,010 + 40% of the amount above 490,000

5.5 Rebates

An individual's tax liability is calculated in accordance with the table above (5.4). An age-related rebate is deducted from the liability as follows:

Primary	ZAR8,280
65 and over – additional	ZAR5,040

5.6 Tax Thresholds

Below 65	ZAR46,000
65 and over	ZAR74,000

5.7 Exempt Interest

Interest

Below 65	ZAR19,000
65 and over	ZAR27,500

5.8 Deductions

Pension fund and retirement annuity fund contributions are deductible subject to limits and carry forward of excess retirement annuity fund contributions.

Qualifying expenses of caring for family members with a medical or physical disability are deductible subject to certain limitations.

Qualifying donations are deductible up to 10% of taxable income before deductions.

5.9 Minor Children

Children under 18 years are taxed separately, except on income resulting from the donation by a parent which is taxed in the donor's hands.

5.10 Ring Fencing of Assessed Losses

Limitations may apply to consistent losses incurred in regard to certain "hobby activities" and property rentals where these are realised by natural persons with incomes in excess of ZAR490,000. Examples of these activities are sport practices, dealing in collectables, animal showing, performing or creative arts, any form of betting or gambling by the taxpayer or relative.

5.11 Capital Allowances

A variety of capital and depreciation allowances apply in the case of:

- Urban development zones
 - Refurbishment of buildings
 - New commercial or residential buildings
- New manufacturing assets

- Small business corporations
- Industrial buildings
- Residential buildings
- Farming equipment.

5.12 Wear and Tear

Wear and tear allowances are applicable in the case of business assets and are subject to taxation upon recoupment.

5.13 Non-residents

5.13.1 Interest

Exempt where:

- A non-resident does not carry on business in South Africa and is not a resident of the common monetary area
- A natural person who is absent for a total of 183 days during the year.

5.13.2 Dividends

Exempt.

5.13.3 Royalties

A withholding tax of 12% is levied on the gross amount of royalties paid for the use of a patent, design, trademark, copyright, model etc, or for know-how. Royalty income subject to withholding tax is excluded from gross income.

5.13.4 Business income, remuneration, rental income

Taxed in the normal way if the income arises in South Africa.

5.14 VAT

Basic rate – 14%.

5.15 Capital Gains Tax (CGT)

Effective date 1 October 2001.

5.15.1 Basic framework

Aggregate gain will be included in taxable income:

- A South African resident is taxed on the disposal of worldwide assets
- A Non-resident is taxed on the disposal of immovable property in South Africa or of assets of a permanent establishment in South Africa.

Gain or loss must be determined for each asset taking into account the base cost. Losses are off-set against gains; any excess loss can be carried forward to the following year.

5.15.2 Taxable portion

Companies, close corporations and trusts are taxed on 50% of the gain.

Natural persons and special trusts are taxed on 25% of the gain in excess of the annual exclusion, currently ZAR16,000.

5.16 Donations Tax

In general, donations made after 1 October 2001 attract tax at 20%.

Principal exemptions include donations:

- By natural persons up to ZAR100,000 per tax year
- To a spouse not separated
- To recognised institutions for the advancement of science, art, or charitable, educational or religious nature
- "Deathbed" donations
- Casual gifts not exceeding ZAR10,000 by someone other than a natural person
- By public companies.

5.17 Estate Duty

The rate on estates of persons dying after 1 October 2001 is 20%.

The dutiable amount is reduced by ZAR3.5m.

The net value of a resident's estate includes worldwide assets and deemed assets, including:

- Life insurance policies payable on death of the insured
- Pension and other funds payable on death of the insured.

Deductions include:

- Funeral, tombstone and deathbed expenses
- Costs of administering and liquidating estate
- Liabilities
- Claims by spouse under the accrual system
- Bequests to surviving spouse.

5.18 Stamp and Transfer Duties

Immovable property rate

Transfer duty (if purchased by natural persons after 1 March 2006)

On the first ZAR500,000 0%

On ZAR500,001 – ZAR1,000,000 5%

Thereafter 8%

Transfer duty (if purchased by non-natural person)

On purchase consideration 8%

Transfer duty (if the transaction is subject to VAT) Nil

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