PROPERTY & TAX GUIDE

2013 | 2014

YOUR SUCCESS IS OUR SUCCESS

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SERVICES

Accounting services

Audit services

Tax planning and compliance

Estate planning and administration

Secretarial services

Financial planning

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IMPORTANT NOTE

This guide is an easy reference, pocket-sized overview of the South African Tax System and residential property, incorporating announcements made in the Budget delivered on 27 February 2013.

- The information contained in this guide is a summary of current legislation, budget proposals and property related information.
- We suggest that you do not act solely on material contained in this guide as the nature of the information contained herein is general and may in certain circumstances be subject to misinterpretation. In addition, the budget proposals may not include all legislative adjustments which could be made in the near future. The information is provided with the understanding that no legal or professional advice is being rendered in this guide. We recommend that our advice be sought when encountering these potentially problematic areas.
- It is specifically noted that the Table of Bond and Transfer Costs are illustrative in nature and based on recommended guidelines of fees issued by and on behalf of the various law societies. Our fees may therefore vary from the guideline, based on the requirements of each specific matter quoted for.
- While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever will be accepted for any inaccuracies, errors, or omissions.

2013/2014 BUDGET HIGHLIGHTS

- Personal income tax relief of R7 billion, together with adjustments to the medical tax credit and other monetary thresholds, amounting to about R350 million.
- Individuals whose taxable income is from one employer and is below R250 000 a year are not required to submit income tax returns.
- From March 2014 an employer's contribution to retirement funds on behalf of an employee will be treated as a taxable fringe benefit in the hands of the employee. Individuals will from that date be allowed to deduct up to 27.5 per cent of the higher of taxable income or remuneration for contributions to pension, provident and retirement annuity funds with a maximum annual deduction of R350 000. Contributions above the cap are carried forward to future tax years.
- Creation of special economic zones with preferential tax treatment designed to attract investment.
- Requiring foreign businesses supplying e-books, music and other electronic services in South Africa to register as VAT vendors.
- Several measures are proposed to limit the deduction of interest on specific types of debt to protect the tax base.
- To curtail tax avoidance associated with trusts, government is proposing several legislative measures during 2013/14.
- An employment incentive through the tax system for first-time job seekers.
- Further tax relief for small businesses, including an increase in the monetary tax thresholds applicable for small business corporations.
- An overall increase of 23 cents per litre in fuel levies in April, which includes 8 cents per litre in the road accident fund levy.
- Increases in excise duties on alcohol and tobacco products of between 5.7 and 10 per cent.
- Policy paper on carbon emissions tax to be published in 2013 with the view of introducing a carbon tax from 2015.

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2014

TAXABLE INCOME	RATES OF TAX
R0 – R165 600	+ 18% of taxable income
R165 601 – R258 750	R29 808 + 25% of taxable income above R165 600
R258 751 – R358 110	R53 096 + 30% of taxable income above R258 750
R358 111 – R500 940	R82 904 + 35% of taxable income above R358 110
R500 941 – R638 600	R132 894 + 38% of taxable income above R500 940
R638 601 and above	R185 205 + 40% of taxable income above R638 600

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2013

TAXABLE INCOME	RATES OF TAX
R0 – R160 000	+ 18% of taxable income
R160 001 – R250 000	R28 800 + 25% of taxable income above R160 000
R250 001 – R346 000	R51 300 + 30% of taxable income above R250 000
R346 001 – R484 000	R80 100 + 35% of taxable income above R346 000
R484 001 – R617 000	R128 400 + 38% of taxable income above R484 000
R617 001 and above	R178 940 + 40% of taxable income above R617 000

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 29 FEBRUARY 2012

TAXABLE INCOME	RATES OF TAX
R0 – R150 000	+ 18% of each R1
R150 001 – R235 000	R27 000 + 25% of the amount above R150 000
R235 001 – R325 000	R48 250 + 30% of the amount above R235 000
R325 001 – R455 000	R75 250 + 35% of the amount above R325 000
R455 001 – R580 000	R120 750 + 38% of the amount above R455 000
R580 001 and above	R168 250 + 40% of the amount above R580 000

Tax rebates	**2012**	**2013**	**2014**
Primary	R10 755	R11 440	R12 080
Secondary (Persons 65 and older)	R6 012	R6 390	R6 750
Tertiary (Persons 75 and older)	R2 000	R2 130	R2 250

Tax thresholds	**2012**	**2013**	**2014**
Below age 65	R59 750	R63 556	R67 111
Age 65 to below 75	R93 150	R99 056	R104 611
Age 75 and over	R104 261	R110 889	R117 111

Interest Exemption:	**2012**	**2013**	**2014**
Below age 65	R22 800	R22 800	R23 800
Age 65 & above	R33 000	R33 000	R34 500

TRANSFER DUTY ON IMMOVABLE PROPERTY

TRANSFER DUTY:

- is calculated on the value of the immovable property (purchase price or market value whichever is the highest).
- is payable within six months after the transaction is entered into.
- will be exempted when the seller is a registered VAT vendor.
- where a registered VAT vendor purchases property from a non-vendor, the notional input tax is calculated by multiplying the tax fraction (presently 14/114) by the lesser of the consideration paid or market value.
- certain exemptions apply to unbundling of corporate structures.
- the acquisition of a contingent right in a trust that holds a residential property or the shares in a company or the member's interest in a close corporation, which owns residential property, comprising more than 50% of its assets, is subject to transfer duty at the applicable rate.
- the purchaser of the shares or members interest will be liable to pay transfer duty.
- liabilities of the entity to be disregarded when calculating the fair value of the contingent right in the trust, the shares in the company or the member's interest in the close corporation.

Transfer duty is calculated as follows:	
R0 – R600 000	0%
R600 001 – R1 000 000	3% of the value above R600 000
R1 000 001 – R1 500 000	R12 000 plus 5% of the value over R1 000 000
R1 500 001 and above	R37 000 plus 8% of the value over R1 500 000

Exemptions from transfer duty:

- Transfer duty will be exempted if the purchase price/value is R600,000 or less.
- In the event of immovable property being transferred to a person (including a close corporation, company or trust), in terms of a Last Will and Testament, or as a result of intestate succession, no VAT or transfer duty is payable.
- The transfer of any property to a surviving spouse, or divorced person, who acquires sole ownership of the whole or any portion of property registered in the name of his or her deceased or divorced spouse where that property or portion is transferred to that surviving or divorced spouse as a result of the death of his or her spouse or dissolution of the marriage or union, is also exempt from transfer duty.

CAPITAL GAINS TAX & YOUR PROPERTY

- Should your property be sold for an amount in excess of its original purchase price (less all capital improvements, cost of sale and cost of purchase), then this gain will be subject to CGT (but only if this gain has been realised after October 1, 2001).
- The capital gain or loss is thus the difference between the base cost of the property and the selling price. <u>The base cost is calculated as follows for property bought after 1 October 2001:</u> The purchase price plus allowable capital expenditure.
- <u>The base cost is calculated as follows for a property bought before 1 October 2001:</u>
- The valuation date value of the property on 1 October 2001, plus allowable capital expenditure. The valuation date value is calculated as follows:
  a) The market value on 1/10/2001 as determined by a valuation, or
  b) 20% of the proceeds after deducting the additional expenditure incurred after valuation date, or
  c) The time apportioned base cost, as determined by the formula in 8th schedule of the Income Tax Act.
- Allowable capital expenditure is as follows: the cost of acquisition or creation of the asset (excluding interest cost), the cost for valuation of the property for CGT purposes, remuneration payable to a surveyor, valuer, auctioneer, agent or other professional adviser in connection with the acquisition or disposal of a property, transfer cost including transfer duty, advertising cost in finding buyer or seller, the cost for improving or enhancing the value of the property.
- A disposal includes, inter alia, a sale, donation, exchange, and a vesting of the property in a beneficiary of a trust.
- This tax will apply to SA residents who dispose of their property held inside South Africa, (and also overseas) and non-residents who own properties in SA.
- In the event that you are a South African resident and a natural person or special trust, which is set up for the mentally ill or seriously physically disabled person, [see definition (a) on page 8] and the property is your primary residence, then up to **R2 million** of the gain made on the disposal of your property is exempt from CGT, and should be disregarded when calculating your aggregate capital gain on the property. Note that testamentary special trusts do not qualify for this exemption.

*(Note: where the residence is more than **2 hectares** in size, the exemption only applies to the gain made on the residence, and 2 of the hectares, provided that the land is used mainly for domestic or private purposes together with the residence, and the land is disposed of at the same time and to the same person who buys the residence – this land could be unconsolidated land next to the residence to qualify).*

- Any gain for these natural persons or special trusts (per definition (a) on page 8), which is over and above the R2 million exemption would be taxed as follows:

> 33.3% of the gain made on disposal of the property must be included in your taxable income for the year of assessment in which the property is disposed of, and then taxing that income at an individual's marginal rate of income tax. The present maximum marginal rate of income tax for individuals is 40% (reached at taxable income levels of R638 601 and above). Therefore you would pay a maximum of 13.3% of the capital gain.

- Only one residence at a time may be a primary residence of a person to qualify for the exemption.
- The person need only hold an interest in that property to qualify, for example, a natural person who holds a usufruct in the primary residence (a right of use), or a share in a share block company which owns that person's primary residence. In these cases the person would qualify for the full CGT exemption (provided other requirements are also met).
- The residence that qualifies could be a house, boat, caravan or mobile home, as long as it is used as a place of residence by that person, and is used mainly for domestic purposes.
- When the residence is used partially for residential and partially for business purposes, an apportionment must be done. For example if 30% of the property is used for trade, then the maximum exclusion that a person will be entitled to on the sale of the residence is R1,400,000 of the gain (R2 million less 30% of R2 million).

ABSENCE FROM PRIMARY RESIDENCE

- Where the residence is occupied only for a certain period of time, an apportionment will be required.
- However, where the residence was not inhabited because it was being offered for sale, in process of erection or renovation, or had accidentally been rendered uninhabitable, the exemption will apply for a period not exceeding 2 years.

HOLIDAY AND LEASED HOMES

Should a property be held in your personal name, yet be a holiday home or secondary property subject to a lease, or for any other reason, not qualify as a primary residence, then the exemption will not apply and the entire gain made on the property when it is disposed of, is taxed as CGT.

In all other cases, for example, in the case of an ordinary trust, special testamentary trust (see definition (b) on page 8), close corporation (CC) or company owning a property (even if it is a primary residence), the exemption does not apply, and the entire gain made on the property when it is disposed of (i.e. the increase in value after 1 October 2001), is taxed as CGT, as follows:

- ***66.6% of the capital gain must be included in that entity's taxable income. The income tax rate for a company is 28%, and these entities will therefore pay the marginal rate of 18.6% of the capital gain in CGT, while ordinary trusts, whose income tax rate is 40%, will pay 26.66% of the capital gain.***
- For natural persons and special trusts, the first **R30 000** of their capital gain (or loss) in any year of assessment will be exempt and thus disregarded. In the case of a natural person the figure is **R300 000** in the year in which he or she dies.
- If a capital loss is made on the disposal of a property, it may be set off against any capital gains made in that year of assessment, and, if no capital gains have been made, the loss may be carried forward to subsequent years of assessment.
- Non-residents are only liable to pay CGT on the disposal of the following:
  Immovable property situated within the country, including any right or interest in immovable property, plus an interest of at least 20% in a company where 80% or more of the net assets value of the company is attributable, directly or indirectly, to immovable property in South Africa.
- Non-residents do not qualify for the exemption if their primary residence is not in South Africa.
- There is an obligation on purchasers of property from non-resident sellers, to withhold tax (CGT) from the purchase price and pay it across to SARS (except where the amount payable by the purchaser is less than R2 million).

Section 1 of the Income Tax Act defines two types of special trust:

a. Special Trust for Incapacitated Persons:

This is a trust created for the maintenance and care of a person with a mental illness (as defined in the Mental Health Care Act) or any serious physical disability which precludes him from earning income, or managing his own affairs: Provided that where the person for whose benefit the trust was so created dies, such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date of such person's death.

b. Special Testamentary Trust:

This is a trust created by a testator by or in terms of his Will solely for the maintenance and care of his relatives who are alive on the date of death of the deceased (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust, under the age of 21 years.

Taxation of special trusts

Special trusts	
• Taxed at individual tax rates • Primary rebate, and interest and foreign dividend exemptions do not apply	
Incapacitated persons definition (a) on page 8	Testamentary definition (b) on page 8
Capital gains tax: treated as individual, with capital gains tax inclusion rate of 33.3%, effective rate 13.3% of gain, capital gains tax primary residence exemption allowed if meets criteria.	Capital gains tax: treated same as all other trusts Capital gains tax inclusion rate of 66.6%, no capital gains tax primary residence exemption.

THE DEED OF SALE

After all the preliminary steps have been concluded, a written agreement must be drafted and signed. A verbal sale agreement in respect of immovable property is unenforceable and void in South Africa. The following are some important clauses to be borne in mind:

DESCRIPTION OF THE PROPERTY AND PARTIES

The property and parties must be properly defined, so as to be capable of identification from the very wording used in the agreement.

UNFAIR CONTRACT TERMS PROHIBITED IN TERMS OF THE CONSUMER PROTECTION ACT 68 OF 2008

In terms of the Consumer Protection Act (the “CPA”), unfair contract terms are to be prohibited in deeds of sale to which the Act applies. Note that it is still ambiguous as to whether the CPA applies at all to residential property sales, as a seller in these “once off” private sales, may not be deemed to be a supplier selling goods in his/her ordinary course of business, as defined in the Act. Where the CPA does apply, each case will be determined on its merits as to what is deemed to be fair or unfair contract terms.

PURCHASE PRICE & PAYMENT

- The price offered must be clearly stated, written both numerically and alphabetically.
- Sellers normally do and should require the payment of a deposit, which shows good faith, and the financial ability on the part of the purchaser and also provides security for the seller to cover its losses should the purchaser breach the agreement. However, see page 16 relating to Sections 48–52 of the CPA which deal with unfair contract terms. The effect of these provisions could mean that where the CPA applies, a clause to the effect that a purchaser forfeits his/her deposit if the sale is cancelled for any reason, or a variety of clauses that are outside the control of the purchaser, may be deemed to be void, which may result in the entire contract being void, unless the sale is cancelled as a result of a breach by the purchaser. As a purchaser, it is advisable to protect yourself by stipulating that the deposit is to be held in trust in an interest-bearing account, for your benefit pending transfer (this protects you as purchaser should the seller go insolvent).
- The balance of the purchase price is normally secured by a bank guarantee, usually coupled with a mortgage bond to be registered over the property. The seller's conveyancer must make sure that guarantees are provided timeously, and the purchaser must ensure that the contract provides sufficient time to arrange finance and provide guarantees.

OCCUPATIONAL INTEREST

Where occupation takes place on a particular date and transfer takes place after the date of occupation, occupational interest is paid at an agreed amount for the period of occupation until transfer. In most cases this is paid by the purchaser, who may take occupation prior to transfer being registered. The terms should be stipulated in the deed of sale. In some cases, it is the seller who is the one who has to stay on in the property he or she has sold and where transfer has been registered. In this case, the seller will be required to pay occupational interest to the purchaser. In general, on occupation, risk passes to the purchaser. Clauses dealing with occupational interest and risk (who is at risk while the purchaser is in occupation) should be included in the deed of sale.

NEW ELECTRIC FENCE REGULATIONS

Regulation 12 of the "Electrical Machinery Regulations" require that you have an "electric fence system certificate of compliance" if you install, add to, or alter an electric fence after 1 October 2012, or where there is a change of ownership of the premises on which the system exists, if the change of ownership takes place after 1 October 2012.

This affects the buying and selling of property. The Regulations do not specify that a certificate is required in order for property to be transferred. However, a purchaser may find that he/she is required to obtain a certificate in order to comply with the Regulations. Sale agreements concluded after 1 October 2012 should make provision for the Electrical fence system certificate, and set out clearly which party is liable for the provision of the certificate, and who shall bear the cost of doing so. This would in most cases be the seller, who would be required to provide the certificate prior to transfer taking place, (similar to the beetle, plumbing and electrical certificates required to be supplied by the seller). The certificate is transferable. Once it has been issued, there is no need to obtain a new one upon a change of ownership.

THE "FINANCIAL INTELLIGENCE CENTRE ACT NO 38 OF 2001" (FICA) CLAUSE

Cash transactions and FICA:

Accountable institutions (AI's), which include attorneys, are required to file a report with the Financial Intelligence Centre in regard to any cash transactions involving domestic and foreign notes and coins, and travellers cheques above R25 000.

The transferring attorney is required to request certain documents from both the seller and the purchaser, in compliance with FICA.

If applicable, the bank granting the bond may require the same documents as listed below. The documents required are as follows:

Trust

- Verification of all authorised Trustees and Beneficiaries (income tax, identity numbers and residential addresses)
- Letters of authority to act as Trustees
- Copy of the Trust Deed
- Resolution authorising Trustee to act on the Trust's behalf in the property transaction
- Income tax number of the Trust
- VAT number of the trust (where applicable)
- For bond registrations, financial institution may require financial statements and/or personal suretyship from the Trustees

Company/Close Corporation

- Verification of all Directors and shareholders/members (income tax, identity numbers and residential addresses)
- Memorandum of Incorporation/Founding Statement (and amended where applicable)
- CoR 39 Certificate (Certificate of Director amendments)
- Resolution authorising Director/Member to act on entity's behalf in the property transaction
- Income tax and VAT number of the company/CC (where applicable)
- For bond registrations, financial institution may require financial statements and/or personal suretyship from the shareholders/members

Natural Person
- Identity document(s)
- Income tax registration number (latest tax return submitted to SARS and VAT number – where applicable)
- Proof: marital status:marriage certificate, antenuptial contract, divorce orders
- Consent papers (where applicable)
- Either a utility bill (water or lights), or a levy account that is addressed to you at your residential address

Estate agent
- VAT details, income tax details of agency and agent involved in the transaction

These lists are not exhaustive and are intended to give an idea of the required documentation for FICA compliance.

THE CONSUMER PROTECTION ACT AND PROPERTY TRANSACTIONS

Please note that the information contained in this section is not exhaustive and serves as a brief overview of the CPA as it specifically relates to property related transactions. There are still many ambiguities and uncertainties surrounding some of the provisions of the Act which only time (and the courts) will be able to interpret and clarify. You are strongly advised to contact our offices for further advice or consultation on this topic.

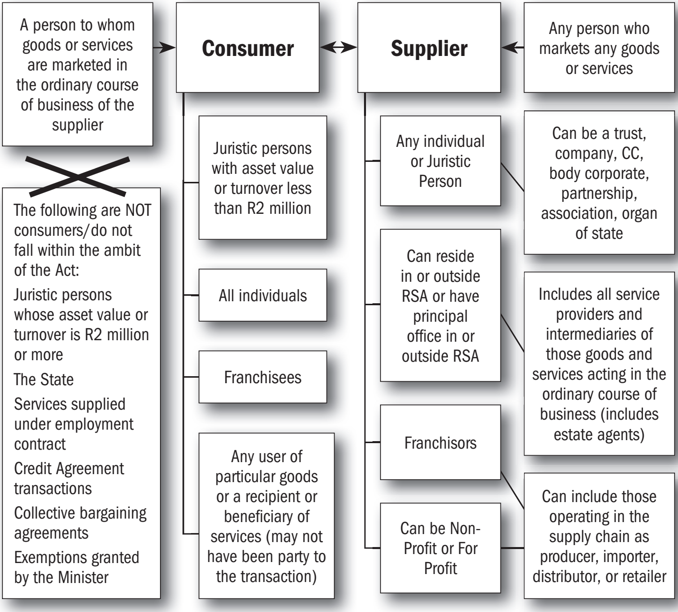
Scope of the Act:

The CPA regulates the activities of suppliers and creates rights for consumers in the event that they fall within the ambit and scope of the Act. The CPA applies to every transaction occurring within SA, and covers both goods or services delivered or rendered "in the ordinary course of business" and it applies to transactions which suppliers enter into with consumers (a transaction refers to the supply of goods or services in return for payment). It therefore covers:

- the promotion and advertising of goods or services that could lead to the transaction being entered into (unless exempted);
- the performance of the service and the supply of the goods;
- the goods and services themselves after the transaction is completed;
- goods which form the subject of an exempted transaction.

The Act does not apply to certain consumers, certain transactions, or in specific instances where exempted by the Minister.

Summary of Consumer/Supplier:



SALE AND PURCHASE OF IMMOVABLE PROPERTY:

- Where the supplier is a seller of property (who sells property as his/her ordinary course of business), and the purchaser is an individual or a juristic body whose turnover or asset value is less than R2 million, the Act will have application.
- The basic test is whether the consumer purchases the property from the supplier in the course of the latter's "ordinary course of business". This means that it is unlikely that the CPA will apply to property sales in the average "one-off" private sale situation – it is aimed more at "commercial" sales – by property developers, builders, speculators, and other property dealers, extending to transactions where people buy and sell property on a continuous basis. In such cases, the deed of sale and actual transfer of property into the name of the purchaser would fall under the provisions of the CPA (where the purchaser qualifies as a consumer in terms of the Act).

Definition of "goods" includes a legal interest in land or other immovable property:

- The definition of "goods" in the CPA is defined to include a legal interest in land or any other immovable property, other than an interest that falls within the definition of "services". In other words, the definition of "goods" includes the sale and purchase of immovable property. Note: whether the CPA applies to a once off sale of residential property has not yet been tested in our Courts, as it will depend on who is selling the property, and whether such seller falls within the definition of supplier in terms of the Act.

REMEDIES FOR CONSUMERS (AS PURCHASERS) PROVIDED BY THE ACT:

Right to fair and honest dealing with consumers – Sections 40–42, 44

The CPA deals with unconscionable conduct, false, misleading or deceptive representations (whether by word or conduct), fraudulent schemes or offers, and the consumers right to assume a supplier is entitled to sell goods. Consumers (purchasers) are entitled to fair and reasonable marketing. "Market" is defined in the CPA as the "promotion and supply of any goods or services".

Estate agents will need to take cognisance of all the relevant provisions in the Act in regard to their marketing practices, and to all mandates that they take from sellers and purchasers (even in regard to "once-off" private transactions). All negotiations and representations made by sellers, estate agents, property developers, builders and other property dealers – to purchasers, must comply with the Act, so as to ensure that purchasers are treated lawfully and fairly.

Cooling off period – Section 16

Consumers are afforded a period of five business days to rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing. Direct marketing includes telephone calls, electronic communications and cold calling – as opposed to ordinary marketing-which involves printed brochures, print media and websites. It is only in relation to direct marketing that this cooling off period applies.

This section may have the effect of allowing a cooling-off period when a property is purchased due to direct marketing, even if it is sold for more than R250 000 (i.e this cooling off right is in addition to the cooling off period in terms of Section 29A of the Alienation of Land Act, which applies where the value of the property is less than R250 000, and the purchaser is an individual).

On a literal interpretation of this section, the disgruntled purchaser may rescind a sale agreement within five days of signing it, or even worse, within five days after taking transfer of the property – in the event of the transaction occurring as a result of direct marketing. The supplier has fifteen days to return any payment or property after receiving the cooling off notice. The person who directly markets, and who concludes a transaction with a consumer must inform them of their rights to rescind the agreement.

Disclosure and Information – Section 22–28

Consumers (purchasers/tenants where applicable) are entitled to information in plain and understandable language, and all agreements and documentation are required to comply with this requirement. Purchasers must understand exactly what they are buying. The purchaser has the right to receive express notice of any term in an agreement which limits the risk or liability of the provider, or of any term which constitutes an assumption of risk or liability by the consumer.

INFORMATION TO BE DISCLOSED BY INTERMEDIARIES/AGENTS/ESTATE AGENTS IN TERMS OF THE CPA:

Regulation 9

1. Full names, physical address, postal address, phone number, cell number, fax number, email address and its registration number, if any.
2. Identity number, unless the intermediary is a juristic person, in which case the intermediary must disclose its registration number.
3. If the intermediary is a juristic person, the contact details of its public officers.
4. The exact service to be rendered by the intermediary.
5. Upon the consumer's request, the fee the intermediary shall receive for providing the services.
6. The costs the consumer is liable for, and under what circumstances the costs can be recovered.
7. The frequency with which the consumer shall receive written accounts updating the consumer on its mandate.
8. All relevant information that the consumer requires in order to decide whether or not to acquire the intermediaries services, or whether to continue with the services.
9. The commission, consideration fees, charges or brokerage payable to the intermediary by any other person.
10. Details of any code of conduct or other standard applicable to the intermediary or the service.

In addition, intermediaries are obliged to disclose whether he or she has ever been found guilty of any offence involving dishonesty which was punishable by criminal imprisonment without the option of a fine, placed under sequestration, liquidation or judicial management or is still an unrehabilitated insolvent, as well as any other relevant information. Any personal interest the intermediary may have in the services or goods which may give rise to a potential conflict of interest must also be disclosed to the consumer in writing, and the intermediary must take all reasonable steps to ensure the consumer is treated fairly.

Consumer agreements – Sections 48–52

Unfair, unreasonable or unjust contract terms are not allowed in deeds of sale. These agreements will be scrutinised – the meaning and effect of all applicable terms and conditions of the agreement are required to be explained, and no terms or conditions that are deemed unfair for the consumer will be able to be inserted.

Right to fair value, good quality and safety – Sections 53–60

A. Right to fair value

Sale prices could be scrutinised for reasonableness. In addition, the price should always be displayed when the property is being advertised for sale.

B. Right to good quality and safety – Sections 55–56

Section 55(2): Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that –

a) are reasonably suitable for the purposes for which they are generally intended;
b) are of good quality, in good working order and free of any defects;
c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply.

In other words, where the CPA applies, it would seem that the purchaser has a right to return goods (to require the seller to take re-transfer of the property) if any of the requirements listed in (a) to (c) are not met.

Where the sale agreement expressly lists any patent (visible) defects, latent (unknown) defects, or specifies the exact condition of the property, the seller will most likely be protected. Such a clause must be expressly accepted by the purchaser. The purchaser must have expressly agreed to accept the goods (property) in that condition or knowingly acted in a manner consistent with accepting the goods in that condition [Section 55(6)].

Right to return defective goods – Section 56(2)

Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in Section 55.

It would seem that, where the CPA applies, the purchaser has the right to return the goods to the seller –without penalty and at the seller's risk and expense – within six months of delivery (registration of transfer at the deeds office). The purchaser has the choice as to whether the seller will be required to refund the full purchase price or repair the 'goods" (where applicable). The choice is with the purchaser – the seller cannot dictate the purchaser's options in this regard.

Effect of the CPA on the Voetstoots clause

There are conflicting views on the likely effect of the CPA on the traditional voetstoots clause.

Certainly, where the Act applies, traditional voetstoots clauses that breach the consumer's rights as per Section 55 of the Act will no longer be applicable.

Property speculators, developers, builders and the like will be required to comply with Sections 55–56.

However it is also likely that the exception in Section 55(6) will relate to the voetstoots clause in that when the purchaser signs the deed of sale, and (s)he acknowledges that (s)he has been expressly informed that the property is sold in the specific condition that (s)he sees it, and which condition is listed in detail in the contract itself, and is acquainted with the property's condition, nature and extent, and accepts it as is, then the exception should apply.

LEASES AND LANDLORDS

'Lease' is not defined in the CPA, however, 'services' is defined as including the provision of accommodation or sustenance, access to or use of any premises or other property in terms of a rental. 'Rental' means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered to or at the direction of the consumer, or the right to use any premises or other property is granted to or at the direction of the consumer, excluding a lease within the meaning of the National Credit Act.

Landlord as Supplier/Tenant as Consumer:

- The Act applies where the landlord is in the business of letting properties, and the tenant meets the criteria of 'consumer' – being an individual or juristic body whose turnover or asset value is less than R2 million.
- The question arises as to what is meant by "the landlord being in the business of letting properties" – one view is that it includes the individual property owner who earns rental income from a property irrespective of what he or she does for a living. Another view is that the landlord must be a serial property renter before (s)he falls within the ambit of the Act. There are still many ambiguities and uncertainties surrounding some of the provisions of the Act which only time (and the courts) will be able to interpret and clarify.

Some sections in the Act which will apply to lease agreements:

- Sections 22 and 40 of the Act state that it is the inherent duty of the landlord to ensure the tenant understands the lease agreement, and to provide full disclosure and information.
- The tenant is entitled to information in plain and understandable language, which implies that tenants will have a right to claim that they did not understand the terms fully or were unduly influenced to sign. Sections 48–52 deal with unfair, unreasonable or unjust contract terms.

- The section in the Act which is creating the most controversy in relation to lease agreements is Section 14 – which deals with the renewal and expiry of fixed term agreements.
- Most lease agreements are for a fixed period. Section 14 provides that the tenant may arbitrarily terminate the lease by providing twenty working days written notice to the landlord (for a lease entered into after 1 April 2011). This right to cancel does not apply to contracts entered into prior to 1 April 2011. Should a tenant (consumer) wish to cancel a lease agreement entered into prior to 1 April 2011, the written agreement must be perused, and the costs, together with the terms of cancellation, carefully considered.
- Where the CPA applies, a landlord can only terminate the lease if there was a material breach and the tenant has not remedied the same within the specified period provided for in the lease agreement.
- Upon cancellation by the tenant, the landlord may impose a reasonable cancellation penalty.
- Section 14 however does not apply to transactions between juristic persons, regardless of their annual turnover or asset value. The consequence may well be that landlords (who are also juristic persons) may insist on only transacting with a juristic person as tenant (where the landlord is an individual and the tenant is a juristic person, the latter will still have the right to cancel per section 14).
- In addition, fixed lease agreements under the Act now have a maximum duration of twenty-four months. After expiry of the agreement, it will continue on a month to month basis unless a new agreement is signed. Should the landlord wish to terminate the agreement upon its expiry, (s)he must notify the tenant in writing not more than eighty but not less than forty business days (before expiration of the agreement) of its looming expiry.
- If the agreement is to be renewed, a notice of any material changes that would apply would need to be provided to the tenant by the landlord within the same time frame.
- In summary, if two individuals enter into a lease agreement (commercial or residential), the CPA will apply, including Section 14. If an individual as landlord and a juristic person with assets or turnover of less than R2million, as tenant, enter into a lease agreement, the CPA will apply, including Section 14. However, if two juristic persons, regardless of assets or turnover value, enter into a lease agreement, Section 14 of the Act will not apply (the remaining provisions of the Act may apply where the tenant as juristic person has assets or turnover value of less than R2 million). In other words in this scenario, the lease agreement can be for a longer period than 24 months.

Note that where the tenant as juristic person has assets or turnover over R 2 million, the CPA will not apply to the lease agreement at all.

TAX IMPLICATIONS ON THE LEASING OF PROPERTY

For the landlord:

- All income received from rental of a property is of a revenue nature and has to be declared as part of a landlord's gross income.
- Deductions are available, such as:
  - Interest on bond repayments;
  - Repairs and maintenance;
  - Municipal rates and taxes;
  - Letting agent's fees (if applicable);
  - Costs of drawing up of the lease agreement (if the landlord pays for it);
  - Expenses not recovered from the tenant, such as security, utilities or garden services;
  - In the case of a sectional title scheme, the levy is also deductible.
- Three requirements have to be met in order for the deductions to be allowed:
  - The expenditure must have been (a) actually incurred (b) during the production of income (c) and mainly paid out for the purposes of trade;
  - Where the expenses were incurred before the letting of the property (the date the lease is signed) then these may not be allowed, and where there is a break in letting (e.g for renovations) then the expenditure cannot be claimed during this time or where the lease has expired at the time the expenses were incurred.
- The cost of improvements, reconstructions or additions to the property cannot be deducted, as these expenses are of a capital nature.
- Allowed deductions and exempt income are then subtracted and tax is payable on the balance on a sliding scale.

Note: Rental agents are obliged to give SARS a document showing rental collected and paid over to a landlord, and thus SARS will be looking out for this income on the landlord's income tax return.

For the tenant:

- The tenant can claim the rental expense as a deduction if the following can be shown: That the rental payment or expenditure was:
  - actually incurred;
  - and it was incurred during the production of income;
  - was mainly laid out for the purpose of trade.
- In other words, if the tenant is renting a home solely to live in, he/she cannot claim the expense, however if the premises is used for the purpose production of income, then it may be deductible.

PURCHASING VIA LEGAL ENTITIES – PRO'S & CON'S

COMPANY

ADVANTAGES

1. CC, trust, company can be shareholders
2. Strictly controlled by legislation (Companies Act, no 71 of 2008, as amended, and which came into operation on 1 May 2011)
3. Can have more than 10 shareholders, as opposed to CC's
4. Has greater image value than a CC or a trust as a business vehicle
5. Relatively easier sale of interest through a sale of shares
6. Shareholders agreement can neatly regulate the relationship between the shareholders
7. A bond may be registered subject to the solvency and liquidity requirements of Section 44 having been met

DISADVANTAGES

1. The costs of annual audit (where applicable based on the provisions of the Companies Act, 2008)

CLOSE CORPORATION

ADVANTAGES

1. Management is also represented by members who hold interest in the CC
2. Simplified corporate governance

DISADVANTAGES

1. Membership limited to 10. If a trust is a member, the number of beneficiaries on the trust, plus the individual members may not be more than 10
2. Unique to SA, not readily recognised internationally
3. With the implementation of the 2008 Companies Act, CC's are gradually being phased out, and no new CC's are able to be registered as from 1 May 2011

TRUST

ADVANTAGES

1. The trust is treated as an entity separate from the individuals
2. Requirements for registration relatively simple
3. Good estate planning device
4. Assets don't form part of the insolvent estate in the event of sequestration
5. Strict controls – Trustees accountable to Master of the High Court
6. Special trusts formed for mentally ill or seriously disabled, will be allowed CGT exemption if primary residence (and meets other requirements to qualify)
7. Special trusts – taxed at individual rates
8. Trust deed can be set up so as to determine the manner in which Trustee administers the fixed property and the Trustee is dutybound to obey these wishes
9. Perpetuity – the trust ordinarily continues to exist as an entity, despite the death of the founder, a trustee or beneficiary

DISADVANTAGES

1. Cannot be sold as an entity
2. The beneficiaries normally have discretionary rights which are not assets that can be sold like shares
3. Letters of authority must be issued at the date of signature of agreement. Trustees cannot act until this authority has been issued

APPLICABLE TO ALL ENTITIES	
ADVANTAGES 1. Separate legal personality (CC's and Companies) 2. If shares held in trust, may protect the shares as long as not offered as security against a loan 3. Shares/Members interests can be sold 4. Continues to exist as an entity even in event of death or resignation of member/shareholder/director/trustee 5. Need not be in existence at time of signing agreement (CC's and Companies) **DISADVANTAGES** 1. Capital gains tax – where property is held in Company/CC, ordinary trust, and special testamentary trust, even although may be the primary residence, no primary residence exemption allowed	2. A new dividend tax was implemented on 1 April 2012. Levied at a rate of 15% on the amount of any dividend paid by a company. The recipient of the dividend (the shareholder) will be liable for the dividend tax, but subject to certain exemptions, the company declaring and paying the dividend is obliged to withhold the tax from the amount of the dividend paid and pay the tax to SARS by the last day of the month succeeding the date of payment 3. Registration and administration costs 4. Transfer of members interest, shares – subject to Securities Transfer Tax at a rate of 0.25% on the transfer of listed or unlisted securities

COSTS OF BUYING & SELLING PROPERTY

TYPICAL COSTS OF BUYING:

PURCHASE PRICE

- A deposit (usually 10% of the gross purchase price) to the estate agent or conveyancer payable usually on signature of the deed of sale by both parties or within 7 to 14 days from signature (if applicable).
- The balance of the purchase price is lodged with the conveyancer prior to transfer, or is secured by way of a bank guarantee. Over and above the purchase price, the purchaser should have the cash available to cover the transfer costs (if this is not included in the bond) and the bond registration costs as follows:

TRANSFER COSTS

- **Transfer duty** – calculated on a sliding scale between 0% to 8% of the gross purchase price, is payable to SARS. **(R0 to R600 000 is exempt)**.

- If the seller is a VAT vendor, then VAT is payable at 14% of the purchase price. As the seller is liable for payment, it is important to add the VAT to the purchase price, and to state clearly whether the agreed purchase price includes or excludes VAT. If nothing is stated, it is deemed to be inclusive of VAT, and the seller will be liable for VAT at the "tax fraction" (which comes to 12.28% of the gross price).
- The transaction may be zero-rated only when an income generating entity, which is also a going concern, is sold from a VAT vendor to a VAT vendor.
- A divorced spouse may acquire sole ownership in the whole or any portion of property registered in the name of his or her divorced spouse. Such transfer shall be exempt from transfer duty where that property or portion is transferred to that divorced spouse as a result of the dissolution of their marriage.
- **Conveyancing fees** – of the transferring attorney, may vary slightly according to rates set by the conveyancer who attends to the transfer, but are based on recommended fee guidelines from the law society (plus VAT).
- **Bond registration costs** – the purchaser normally pays the transfer and bond registration costs (plus VAT).
- **Deeds office/registration fees** – a fee which varies between **R70** and **R3 000**, dependent on purchase price/value of property.
- **FICA costs** – usually between **R300** and **R500** (plus VAT) per FICA investigation.
- **Sundry charges** – posts and petties and telephone calls payable to the transferring attorney (usually about R500 plus VAT), and valuation certificates – a disbursement to the local authority to obtain a valuation certificate – which varies depending on the local authority (e.g. Cape Town is **R250.80**).
- **Occupational rental/pro rata rates and taxes** – occupational rental payable as per agreement and usually prior to and adjusted on registration of transfer. Rates and taxes and utilities (levied by the local authority) are paid by the seller in advance for 120 days, who may then claim a refund from council for any amount overpaid, covering the period after registration of transfer.

TYPICAL COSTS OF SELLING:

- **Estate agent's commission** – Commission rates are calculated as a % of the gross purchase price and should be negtiated upfront with the agent. Sellers need to establish very clearly what commission an agent proposes to charge before awarding a mandate and to ensure that the % agreed upon after any negotiation is written into the mandate document (where applicable) and establish whether such % includes VAT.
- **Beetle inspection, electrical inspection, plumbing and gas certificates** – usually between **R350** and **R500** (plus VAT). The Seller will be responsible for any repairs required before such a clearance certificate can be issued. The beetle inspection certificate may be required by inclusion in the contract of sale. The electrical inspection

certificate is required to be obtained by the seller in terms of legislation (Occupational Health and Safety Act no 85 of 1993).

- **Bond cancellation fees** – to cancel an existing bond.
- **Rates and taxes** – the seller is normally liable to pay rates up to the date of transfer. This may involve paying a 120 days rates in advance, payable before registration of transfer (can vary from agreement to agreement).
- **Electrical System fence certificate** – see page 10. Usually this will be provided for in sale agreements concluded after 1 October 2012, which in most cases, will require the seller to bear the cost of ensuring compliance with specifications, together with the cost of obtaining the compliance certificate.

EXCHANGE CONTROL/WITHHOLDING TAX

A "foreign buyer" is a:

- non-resident (natural or legal entity) whose normal place of residence, domicile or registration is outside of SA.
- A SA resident who has lived abroad for more than **5** years, regardless of whether or not he/she has emigrated, is treated as a non-resident (for purposes of obtaining finance to purchase property in SA).
- Illegal aliens are prohibited from buying immovable property in SA.
- All other non-residents are not restricted from owning property in the country, however, they are subject to certain restrictions in regard to obtaining finance to buy property in SA, in that a non-resident may borrow up to **50%** of the purchase price on application to the SA Reserve Bank. However, if a non-resident has brought money in to the country over an extended period of time, this criterion may be waived subject to Reserve Bank approval.

Foreign sellers/Withholding Tax

- All funds introduced from outside SA to acquire fixed property within SA may be repatriated together with any profit, on resale of the property, provided that:
  - The non-resident can prove that funds for purchase were remitted from overseas.
  - The required CGT deduction is made; (non-residents will not qualify for the R2 million exemption if their primary residence is not in the country).
  - Purchasers of property from non-resident sellers (and their estate agent and/or transferring attorney) are obliged to retain a percentage of the selling price and pay it to SARS as a deposit for the Seller's liability for CGT.
  - If the buyer is a SA resident, (s)he must pay it within **14 days** from the date on which the amount was so withheld, and if the buyer is a non-resident, within **28 days**.

- ❖ Aim: to ensure the efficient collection of CGT from non-residents who are often not registered as SA taxpayers and whose connection in the country is tenuous. The payment acts as an advance against the non-resident's income tax liability for the year of assessment in which the property is sold.
- ❖ The purchaser, estate agent and transferring attorney may not be guided by whether any CGT is payable – the two deciding issues are the price and the fact that the seller is a non-resident.

- The actual tax rate depends on whether the non-resident seller is:

a natural person* – 5%	a company – 7.5%	a trust – 10%

* includes a special trust

- The tax is not charged on the full selling price all at once, but rather on each payment as and when it is paid from the buyer to the seller (if an instalment sale is concluded). [Note: payment of a deposit does not trigger the withholding tax].
- The foreign seller will be required to register as a South African taxpayer (and the withholding tax would then be set off against the final tax liability due to SARS).
- The law effectively holds the purchaser, estate agent and conveyancing attorney responsible for the withholding tax to be paid to SARS, as follows:

Duties of the Purchaser

- The obligation arises if the purchaser knew (or should reasonably have known) that the seller is a non-resident, to deduct the amount from each payment to the seller and pay it across to SARS within the required time period (interest will be levied for late or non-payment).
- The purchaser is personally liable to pay the amount to SARS irrespective of whether or not it was withheld from the Seller.

Duties of the Estate agent or Conveyancer

- Where the agent or conveyancer knew (or should reasonably have known) that the seller was a non-resident, (s)he has the responsibility of notifying the purchaser in writing.
- Should the agent or conveyancer fail to give such notice, the withholding obligations will fall upon them with the purchaser for the amount that is required to be withheld and paid to SARS – although their liability will be limited to their fees or other payments due in respect of services rendered in relation to the transaction.

Who is a "Non-resident" Seller

- In practice it is often difficult to determine whether a seller is a non-resident or not for tax purposes, and it may become a feature of the sales process to require sellers to sign a formal declaration or affidavit on their residency status, in order to clear up any questions regarding residency for tax purposes.

- The obligation on the purchaser is to withhold the tax and the obligation on the estate agent/ conveyancer is to notify the purchaser in writing of the non-resident status of the seller.
- The purchaser, estate agent or conveyancer may recover the amount paid in terms of this section from the seller.

SARS directive for Seller

- The seller may apply to SARS for a directive to prevent or reduce the withholding tax payable, and, where SARS is satisfied that the seller has sufficient other assets or security in SA, it may issue such a directive. The seller must then provide the purchaser with proof thereof. Once the purchaser has the directive, (s)he need only withhold an amount equal to the amount set out in the directive.

Note: this withholding tax is **not** payable on properties with a selling price of R2 million or less.

YOUR WILL & YOUR PROPERTY

SOME POINTS TO CONSIDER:

- If you bequeath your fixed property to your surviving spouse, then no tax is payable, as all bequests to spouses are exempt from estate duty and/or CGT. No transfer duty is payabe on a bequest of fixed property to an heir/legatee.
- If the value of your estate is more than R3,5 million, estate duty will become payable on the balance in excess of R3,5 million. Sufficient cash should be made available to pay this duty in order to avoid selling any fixed property.
- If your property is subject to a mortgage bond, and you leave your property as a specific bequest, you may wish to make the bequest subject to the provision that your legatee takes over the bond liability. Alternatively, you may wish to secure the bond by life assurance, the proceeds of which would clear the debt on your death.
- If your children are still minors, (under 18 and unmarried), you should set up a testamentary trust in your will, which would come into effect should both parents pass away before they reach majority, or a stipulated age over majority.
- If you bequeath your fixed property to a number of heirs in equal shares, this may give rise to impracticalities due to the indivisibility of the bequest, and may give rise to a redistribution agreement being drawn up between your heirs.
- There may be specific provisions in your antenuptial contract in regard to your fixed property, which may override your wishes in terms of your will.
- See page 28 regarding the portable R3.5 million estate duty deduction between spouses.

REGULATIONS FOR NEW BUILDINGS AND ENERGY USAGE

The EE Regulations or "energy efficiency regulations" for energy usage in buildings provide that:

All new buildings and building extensions in South Africa must conform to the new regulations on energy conservation, especially the new regulation SANS 10400–XA (Energy use in buildings) and SANS 204 (Energy efficiency in buildings).

This includes homes, industrial buildings, hotels and schools.

The main purpose of the regulations is to reduce CHG emissions by reducing operational energy use of new buildings without reducing comfort and amenity. All building work will have to be designed in such a way as to use energy efficiently.

For example:

Thermal installation: All new buildings and building extensions per the building occupancy classes specified in the regulation will be required to have thermal insulation installed. Roof covering materials (tiles, sheeting etc) are required to meet a minimum total thermal resistance as specified for the various climatic zones (the rules for more temperate regions are not as stringent as those for hot areas).

Water heating sources: the minimum requirements are that 50 percent (by volume) of hot water in a new building must be heated from a source other than electrical resistance heating (geysers). Alternatives include, without limitation, solar heating, heat pumps, appliances burning renewable combustible fuel, or heat recovery from other sources.

Building orientation: in future we may see buildings orientated with their longer axis running east/west, and with the major habitable rooms and offices facing north, while bathrooms and kitchens are more likely to face south. Ceilings, walls and windows will have to meet minimum requirements for preventing heat loss in winter or heat gain in summer. The effect: reducing electricity consumption.

Compliance:

The regulations will be enforceable in terms of the National Building Regulations and Building Standards Act. Building plans will not be approved without compliance with the regulations. Buildings Control Officers (inspectors) will be required to ensure that buildings are built in accordance with National Building Regulations and specifically with energy usage requirements. No compliance – no occupancy certificate.

TAX ALLOWANCE FOR ENERGY-EFFICIENCY SAVINGS

The Department of Energy has released a new tax allowance for Energy-efficiency savings Regulation. The Regulation stipulates that any company holding a certificate that can prove their energy savings are genuine, can submit the certificate to claim an allowance from SARS. The allowance is as contemplated in Section 12L (2) of the Income Tax Act, 1962.

DONATIONS TAX

Donations Tax is payable by any individual living in the Republic of South Africa, or any South African company or one managed or controlled in the Republic, on the value of any gratuitous disposal of property including the disposal of property for inadequate consideration and the renunciation of rights.

PRINCIPAL EXEMPTIONS:

1. Donations between spouses.
2. Donations to charitable, ecclesiastical and educational institutions, and certain public bodies in the Republic of South Africa limited to certain thresholds.
3. Donations by natural persons not exceeding R100 000 per year.
4. The donation of assets situated outside the Republic, subject to certain conditions.
5. Donations by companies not considered to be public companies up to R10 000 per annum.
6. Donations where the donee will not benefit until the death of the donor.
7. Donations made by companies which are recognised as public companies for tax purposes.
8. Donations cancelled within six months of the effective date.
9. Property disposed of under and in pursuance of any trust.
10. Donations between companies forming part of the same group of companies.
11. Reasonable bona fide contributions to maintenance of individual.

RATES:

Donations tax is payable within 3 months after the donation at a flat rate of 20%.

ESTATE DUTY

The general rule is that if the taxpayer is ordinarily resident in the Republic at the time of death, all of his assets, wherever they are situated, will be included in the gross value of his estate for the determination of duty payable thereon.

The dutiable amount is arrived at as follows –

◆ **Value of all property at date of death (including limited interests such as usufruct)**	**R**
◆ **Deemed property**	**R**
◆ **Gross value of property**	**R**
◆ **Deductions**	**R**
◆ **Net Value of Estate**	**R**
◆ **Abatement**	**R (3 500 000)**
◆ **Dutiable Estate (A)**	**R**
◆ **Estate Duty 20% of A**	**R**

Deemed property includes: Insurance Policies on the life of the deceased, claims in terms of the Matrimonial Property Act, as well as property that the deceased was competent to dispose of immediately prior to his death.

The most important deductions are:

- Deductions for liabilities at date of death
- Bequests to certain public benefit organisations and/or charities
- Property accruing to surviving spouse.

There is relief from Estate Duty in the case of the same property being included in the estates of spouses dying within 10 years of each other. The deduction is calculated on a sliding scale varying from 100% where the taxpayers die within 2 years of each other and 20% where the deaths are within 8 to 10 years of each other.

Portable R3.5 million deduction between spouses

The Act allows for the R3.5 million deduction from estate duty to roll over from the deceased to a surviving spouse so that the surviving spouse can use a R7 million deduction amount on death. The portability of the deduction will apply to the extent that the first dying spouse did not use the whole abatement.

RATES: Estate duty is payable at a flat rate of 20% on all property of residents and South African property of non-residents.

MORTGAGE BOND REPAYMENT FACTORS

INTEREST	YEARS		
%	20	25	30
8.00	8.36	7.72	7.34
8.50	8.68	8.05	7.69
9.00	9.00	8.39	8.05
9.50	9.32	8.74	8.50
9.75	9.48	8.91	8.59
10.00	9.65	9.10	8.80
10.50	10.00	9.45	9.15
11.00	10.32	9.80	9.52
11.50	10.66	10.16	9.90
12.00	11.01	10.53	10.29
12.50	11.36	10.90	10.67
13.00	11.72	11.27	11.06
13.50	12.07	11.65	11.45
14.00	12.43	12.03	11.84
14.50	12.80	12.42	12.24
15.00	13.16	12.80	12.64
15.25	13.35	13.00	12.84
15.50	13.53	13.19	13.04
15.75	13.73	13.39	13.25
16.00	13.91	13.58	13.44
16.25	14.10	13.79	13.65
16.50	14.28	13.98	13.85
16.75	14.48	14.18	14.05
17.00	14.66	14.37	14.25
17.25	14.86	14.58	14.46
17.50	15.04	14.77	14.66
17.75	15.24	14.97	14.87

INTEREST	YEARS		
%	20	25	30
18.00	15.43	15.17	15.07
18.25	15.63	15.37	15.28
18.50	15.82	15.57	15.48
18.75	16.01	15.78	15.68
19.00	16.21	15.98	15.89
19.25	16.40	16.18	16.09
19.50	16.60	16.38	16.30
19.75	16.79	16.58	16.50
20.00	16.99	16.78	16.71
20.25	17.18	16.99	16.92
20.50	17.38	17.19	17.12
20.75	17.58	17.89	17.33
21.00	17.78	17.60	17.53
21.25	17.97	17.80	17.74
21.50	18.17	18.00	17.95
21.75	18.37	18.21	18.15
22.00	18.57	18.41	18.36
22.25	18.77	18.62	18.57
22.50	18.97	18.82	18.77
22.75	19.17	19.03	18.98
23.00	19.37	19.23	19.19
23.25	19.57	19.44	19.39
23.50	19.77	19.64	19.60
23.75	19.97	19.85	19.81
24.00	20.17	20.05	20.01
24.25	20.38	20.26	20.22
25.00	20.98	20.88	20.85

The table gives a monthly repayment per R1,000 of a loan with an interest rate ranging between 8% and 25% p.a, over a period of 20, 25 or 30 years. For example, if the loan is R100 000 at an interest rate of 10% p.a, to be repaid over 20 years, the monthly repayment is R100 000 divide by R1,000 × 9.65 which is R965. Monthly repayments of approximately R965 will be required to liquidate capital and interest on a bond of R100 000.

SALE OF PROPERTY TIMELINE

While the transfer process follows a series of successive stages, the time period involved varies considerably. Here are some guidelines:

- Cash transactions may take up to 6 weeks, subject to delays at the local authority and/or SARS and/or the Deeds office.
- In normal circumstances (including bond approval and registration), approx 2 months.
- If conditional on sale of purchaser's property (within 30 days), approx 3 months.

Buyer and Seller sign agreement — **Stage 1**

Stage 2

- Seller to advise bank of intention to cancel bond to avoid 90 day cancellation penalty
- Bond approved
- Fulfillment of other suspensive conditions
- Deposit paid
- Transferring, bond and cancellation attorneys instructed
- Parties to provide FICA documentation
- Transfer attorney requests title deeds and cancellation figures from the bank, and prepares transfer documents for signature by parties
- Bond attorney advises transfer attorney of amount available for guarantees

Stage 3

- Purchaser pays transfer costs
- Rates clearance and valuation certificates applied for (seller pays rates and utilities to transferring attorney)
- Transfer attorney receives title deed and cancellation figures from cancellation attorneys and sends draft deed to bond attorney
- Bond documents prepared once draft deed received
- Cancellation attorney is requested to cancel seller's bond on receipt of guarantees from the new bond attorney
- Purchaser signs bond documents and pays bond registration costs
- Purchaser signs transfer documents
- Seller signs transfer documents
- Electrical and beetle certificates arranged (and plumbing, where appropriate)

Stage 4

- Transfer attorney pays rates/levies and transfer duty to SARS (electronically)
- Bond attorneys send guarantees to the transfer or cancellation attorneys
- Transfer attorney obtains consent from the bondholder to cancel the seller's bond

Stage 5

- Documents prepared for lodgement at Deeds Office
- Documents lodged at Deeds Office
- Documents are checked in the Deeds Office (+10 days, regulation: 7 days)
- Purchaser must have balance of purchase price available and pay it to transfer attorney before lodgement, or when called for in terms of the agreement

ON REGISTRATION:

- Financial institution's attorneys have bond amount available
- Property registered in purchaser's name. Seller's bond cancelled. Purchaser's bond registered

COMPARATIVE TAX RATES

RATES OF TAX	2012	2013	2014
NATURAL PERSONS			
Maximum marginal rate	40%	40%	40%
◆ Reached at a taxable income	580 000	617 000	638 600
Minimum rate	18%	18%	18%
◆ Up to taxable income of	150 000	160 000	165 600
◆ CGT inclusion rate	25 %	33.3%	33.3%
COMPANIES & CC's			
◆ Normal tax rate	28%	28%	28%
◆ STC rate/Dividends Tax	10%	15%	15%
◆ CGT inclusion rate	50%	66.6%	66.6%
TRUSTS (other than special trusts)			
◆ Flat rate	40%	40%	40%
◆ CGT inclusion rate	50%	66.6%	66.6%
SUNDRY			
◆ Donations Tax	20%	20%	20%
◆ Estate Duty	20%	20%	20%
SMALL BUSINESS CORPORATIONS			
Maximum marginal rate			
◆ Reached at a taxable income	28%	28%	28%
Minimum rate	300 000	350 000	550 000
◆ Up to a taxable income of	0%	0%	0%
	59 750	63 556	67 111
MICRO BUSINESS			
Max Rate of Tax	6%	6%	6%
◆ On turnover of	750 000	750 000	750 000
Minimum Rate	0%	0%	0%
◆ Up to a turnover of	150 000	150 000	150 000

PRIME BANK OVERDRAFT RATES

EFFECTIVE DATE	RATE
28. 06. 1999	18,00 %
14. 07. 1999	17,50 %
23. 07. 1999	16,50 %
04. 10. 1999	15,50 %
25. 01. 2000	14,50 %
18. 06. 2001	13,75 %
16. 07. 2001	13,50 %
28. 09. 2001	13,00 %
16. 01. 2002	14,00 %
18. 03. 2002	15,00 %
15. 06. 2002	16,00 %
16. 09. 2002	17,00 %
13. 06. 2003	15,50 %
15. 08. 2003	14,50 %
11. 09. 2003	13,50 %
20. 10. 2003	12,00 %
15. 12. 2003	11,50 %
16. 08. 2004	11,00 %
15. 04. 2005	10,50 %
08. 06. 2006	11,00 %
03. 08. 2006	11,50 %
13. 10. 2006	12,00 %
08. 12. 2006	12,50 %
08. 06. 2007	13,00 %
17. 08. 2007	13,50 %
12. 10. 2007	14,00 %
07. 12. 2007	14,50 %
11. 04. 2008	15,00 %
13. 06. 2008	15,50 %
12. 12. 2008	15,00 %
06. 02. 2009	14,00 %
25. 03. 2009	13,00 %
04. 05. 2009	12,00 %
29. 05. 2009	11,00 %
14. 08. 2009	10,50 %
26. 03. 2010	10,00%
10. 09. 2010	9,50%
19. 11. 2010	9,00%
20. 07. 2012	8,50%

ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS

	Transfer Costs						Bond Costs			
Price/Value/ Bond amount R	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
100,000	4,015	562.10	70	4,647.10	0	4,647.10	3,000	420.00	310	3,730.00
150,000	4,290	600.60	70	4,960.60	0	4,960.60	3,240	453.60	310	4,003.60
200,000	4,840	677.60	350	5,867.60	0	5,867.60	3,600	504.00	350	4,454.00
250,000	5,280	739.20	350	6,369.20	0	6,369.20	3,960	554.40	350	4,864.40
300,000	6,050	847.00	350	7,247.00	0	7,247.00	4,440	621.60	350	5,411.60
400,000	7,040	985.60	450	8,475.60	0	8,475.60	5,520	772.80	450	6,742.80
500,000	8,250	1,155.00	450	9,855.00	0	9,855.00	6,480	907.20	450	7,837.20
600,000	9,350	1,309.00	450	11,109.00	0	11,109.00	7,440	1,041.60	450	8,931.60
700,000	10,450	1,463.00	650	12,563.00	3,000	15,563.00	8,400	1,176.00	650	10,226.00
750,000	11,550	1,617.00	650	13,817.00	4,500	18,317.00	9,360	1,310.40	650	11,320.40
800,000	11,550	1,617.00	650	13,817.00	6,000	19,817.00	9,360	1,310.40	650	11,320.40
900,000	12,650	1,771.00	750	15,171.00	9,000	24,171.00	10,320	1,444.80	750	12,514.80
950,000	13,750	1,925.00	750	16,425.00	10,500	26,925.00	11,280	1,579.20	750	13,609.20
1,000,000	13,750	1,925.00	750	16,425.00	12,000	28,425.00	11,280	1,579.20	750	13,609.20
1,100,000	14,300	2,002.00	850	17,152.00	17,000	34,152.00	11,808	1,653.12	850	14,311.12
1,200,000	14,850	2,079.00	850	17,779.00	22,000	39,779.00	12,336	1,727.04	850	14,913.04
1,250,000	15,400	2,156.00	850	18,406.00	24,500	42,906.00	12,864	1,800.96	850	15,514.96
1,300,000	15,400	2,156.00	850	18,406.00	27,000	45,406.00	12,864	1,800.96	850	15,514.96
1,350,000	15,950	2,233.00	850	19,033.00	29,500	48,533.00	13,392	1,874.88	850	16,116.88
1,400,000	15,950	2,233.00	850	19,033.00	32,000	51,033.00	13,392	1,874.88	850	16,116.88
1,500,000	16,500	2,310.00	850	19,660.00	37,000	56,660.00	13,920	1,948.80	850	16,718.80
1,600,000	17,050	2,387.00	850	20,287.00	45,000	65,287.00	14,448	2,022.72	850	17,320.72

ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS (Continued)

	Transfer Costs						Bond Costs			
Price/Value/ Bond amount R	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
1,700,000	17,600	2,464.00	850	20,914.00	53,000	73,914.00	14,976	2,096.64	850	17,922.64
1,800,000	18,150	2,541.00	850	21,541.00	61,000	82,541.00	15,504	2,170.56	850	18,524.56
1,900,000	18,700	2,618.00	850	22,168.00	69,000	91,168.00	16,032	2,244.48	850	19,126.48
2,000,000	19,250	2,695.00	850	22,795.00	77,000	99,795.00	16,560	2,318.40	850	19,728.40
2,100,000	19,800	2,772.00	950	23,522.00	85,000	108,522.00	17,088	2,392.32	950	20,430.32
2,300,000	20,900	2,926.00	950	24,776.00	101,000	125,776.00	18,144	2,540.16	950	21,634.16
2,400,000	21,450	3,003.00	950	25,403.00	109,000	134,403.00	18,672	2,614.08	950	22,236.08
2,500,000	22,000	3,080.00	950	26,030.00	117,000	143,030.00	19,200	2,688.00	950	22,838.00
2,600,000	22,550	3,157.00	950	26,657.00	125,000	151,657.00	19,728	2,761.92	950	23,439.92
2,700,000	23,100	3,234.00	950	27,284.00	133,000	160,284.00	20,256	2,835.84	950	24,041.84
2,800,000	23,650	3,311.00	950	27,911.00	141,000	168,911.00	20,784	2,909.76	950	24,643.76
2,900,000	24,200	3,388.00	950	28,538.00	149,000	177,538.00	21,312	2,983.68	950	25,245.68
3,000,000	25,300	3,542.00	950	29,792.00	157,000	186,792.00	21,840	3,057.60	950	25,847.60
3,200,000	25,850	3,619.00	950	30,419.00	173,000	203,419.00	22,896	3,205.44	950	27,051.44
3,300,000	26,400	3,696.00	950	31,046.00	181,000	212,046.00	23,424	3,279.36	950	27,653.36
3,400,000	26,950	3,773.00	950	31,673.00	189,000	220,673.00	23,952	3,353.28	950	28,255.28
3,500,000	27,500	3,850.00	950	32,300.00	197,000	229,300.00	24,480	3,427.20	950	28,857.20
3,600,000	28,050	3,927.00	950	32,927.00	205,000	237,927.00	25,008	3,501.12	950	29,459.12
3,700,000	28,600	4,004.00	950	33,554.00	213,000	246,554.00	25,536	3,575.04	950	30,061.04
3,800,000	29,150	4,081.00	950	34,181.00	221,000	255,181.00	26,064	3,648.96	950	30,662.96
3,900,000	29,700	4,158.00	950	34,808.00	229,000	263,808.00	26,592	3,722.88	950	31,264.88
4,000,000	30,250	4,235.00	950	35,435.00	237,000	272,435.00	27,120	3,796.80	950	31,866.80

4,200,000	31,350	4,389.00	1,100	36,839.00	253,000	289,839.00	28,176	3,944.64	1,100	33,220.64
4,300,000	31,900	4,466.00	1,100	37,466.00	261,000	298,466.00	28,704	4,018.56	1,100	33,822.56
4,500,000	33,000	4,620.00	1,100	38,720.00	277,000	315,720.00	29,760	4,166.40	1,100	35,026.40
5,000,000	35,750	5,005.00	1,100	41,855.00	317,000	358,855.00	32,400	4,536.00	1,100	38,036.00
5,500,000	37,125	5,197.50	1,100	43,422.50	357,000	400,422.50	33,720	4,720.80	1,100	39,540.80
6,000,000	38,500	5,390.00	1,100	44,990.00	397,000	441,990.00	35,040	4,905.60	1,100	41,045.60
6,200,000	39,050	5,467.00	1,500	46,017.00	413,000	459,017.00	35,568	4,979.52	1,500	42,047.52
6,400,000	39,600	5,544.00	1,500	46,644.00	429,000	475,644.00	36,096	5,053.44	1,500	42,649.44
6,500,000	39,875	5,582.50	1,500	46,957.50	437,000	483,957.50	36,360	5,090.40	1,500	42,950.40
6,700,000	40,425	5,659.50	1,500	47,584.50	453,000	500,584.50	36,888	5,164.32	1,500	43,552.32
6,800,000	40,700	5,698.00	1,500	47,898.00	461,000	508,898.00	37,152	5,201.28	1,500	43,853.28
6,900,000	40,975	5,736.50	1,500	48,211.50	469,000	517,211.50	37,416	5,238.24	1,500	44,154.24
7,000,000	41,250	5,775.00	1,500	48,525.00	477,000	525,525.00	37,680	5,275.20	1,500	44,455.20
7,200,000	41,800	5,852.00	1,500	49,152.00	493,000	542,152.00	38,208	5,349.12	1,500	45,057.12
7,300,000	42,075	5,890.50	1,500	49,465.50	501,000	550,465.50	38,472	5,386.08	1,500	45,358.08
7,400,000	42,350	5,929.00	1,500	49,779.00	509,000	558,779.00	38,736	5,423.04	1,500	45,659.04
7,500,000	42,625	5,967.50	1,500	50,092.50	517,000	567,092.50	39,000	5,460.00	1,500	45,960.00
7,600,000	42,900	6,006.00	1,500	50,406.00	525,000	575,406.00	39,264	5,496.96	1,500	46,260.96
7,700,000	43,175	6,044.50	1,500	50,719.50	533,000	583,719.50	39,528	5,533.92	1,500	46,561.92
7,800,000	43,450	6,083.00	1,500	51,033.00	541,000	592,033.00	39,792	5,570.88	1,500	46,862.88
7,900,000	43,725	6,121.50	1,500	51,346.50	549,000	600,346.50	40,056	5,607.84	1,500	47,163.84
8,000,000	44,000	6,160.00	1,500	51,660.00	557,000	608,660.00	40,320	5,644.80	1,500	47,464.80
8,200,000	44,550	6,237.00	1,500	52,287.00	573,000	625,287.00	40,848	5,718.72	1,500	48,066.72
8,300,000	44,825	6,275.50	1,500	52,600.50	581,000	633,600.50	41,112	5,755.68	1,500	48,367.68
8,500,000	45,375	6,352.50	1,500	53,227.50	597,000	650,227.50	41,640	5,829.60	1,500	48,969.60
8,600,000	45,650	6,391.00	1,500	53,541.00	605,000	658,541.00	41,904	5,866.56	1,500	49,270.56
8,800,000	46,200	6,468.00	1,500	54,168.00	621,000	675,168.00	42,432	5,940.48	1,500	49,872.48
8,900,000	46,475	6,506.50	1,500	54,481.50	629,000	683,481.50	42,696	5,977.44	1,500	50,173.44
9,000,000	46,750	6,545.00	1,500	54,795.00	637,000	691,795.00	42,960	6,014.40	1,500	50,474.40

ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS (Continued)

	Transfer Costs						Bond Costs			
Price/Value/ Bond amount R	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
9,100,000	47,025	6,583.50	1,500	55,108.50	645,000	700,108.50	43,224	6,051.36	1,500	50,775.36
9,200,000	47,300	6,622.00	1,500	55,422.00	653,000	708,422.00	43,488	6,088.32	1,500	51,076.32
9,500,000	48,125	6,737.50	1,500	56,362.50	677,000	733,362.50	44,280	6,199.20	1,500	51,979.20
9,600,000	48,400	6,776.00	1,500	56,676.00	685,000	741,676.00	44,544	6,236.16	1,500	52,280.16
9,700,000	48,675	6,814.50	1,500	56,989.50	693,000	749,989.50	44,808	6,273.12	1,500	52,581.12
9,800,000	48,950	6,853.00	1,500	57,303.00	701,000	758,303.00	45,072	6,310.08	1,500	52,882.08
10,000,000	49,500	6,930.00	1,500	57,930.00	717,000	774,930.00	45,600	6,384.00	1,500	53,484.00
11,000,000	52,250	7,315.00	2,000	61,565.00	797,000	858,565.00	48,240	6,753.60	2,000	56,993.60
12,000,000	55,000	7,700.00	2,000	64,700.00	877,000	941,700.00	50,880	7,123.20	2,000	60,003.20
15,000,000	63,250	8,855.00	2,000	74,105.00	1,117,000	1,191,105.00	58,800	8,232.00	2,000	69,032.00
16,000,000	66,000	9,240.00	2,500	77,740.00	1,197,000	1,274,740.00	61,440	8,601.60	2,500	72,541.60
20,000,000	77,000	10,780.00	2,500	90,280.00	1,517,000	1,607,280.00	72,000	10,080.00	2,500	84,580.00
25,000,000	90,750	12,705.00	3,000	106,455.00	1,917,000	2,023,455.00	85,200	11,928.00	3,000	100,128.00
30,000,000	104,500	14,630.00	3,000	122,130.00	2,317,000	2,439,130.00	98,400	13,776.00	3,000	115,176.00

NOTES:

Transfer and bond costs not inclusive of FICA costs, and any other petty disbursements, such as post, rates clearance and/or levies, cancellation costs of existing bond, bank initiation and valuation fee etc. - for which provision should also be made. Whilst every care is taken with compiling these tables, we reserve the right to correct any possible inaccuracies and cannot be bound by them.

NB: the conveyancing fees serve as a GUIDELINE only as per recommended guidelines of fees and are subject to change and updates issued by the various law societies from time to time. Mere reference to the tables may result in in misapprehension as to the costs involved. Our fees may vary from the guideline based on each matter quoted for.