ECOVIS®
ARB

Property & Tax Guide

2015/2016

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ECOVIS ARB Auditors Inc.

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IMPORTANT NOTE AND DISCLAIMER

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 25 February 2015.

- 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 from time to time. 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.

2015/2016 BUDGET HIGHLIGHTS

- Increasing marginal personal income tax rates by one percentage point for all taxpayers earning more than R181 900, and adjusting tax brackets and rebates to account for fiscal drag.
- Raising the general fuel levy by 30.5 cents per litre and the Road Accident Fund levy by 50c/litre on 1st April 2015.
- Taking further steps to combat base erosion and profit shifting.
- Providing for a more generous turnover tax regime for small businesses.
- Increasing excise duties on alcohol and tobacco products.
- Reviewing the diesel refund scheme.
- Strengthening the energy-efficiency savings incentive.
- Raising the electricity levy.
- Changing the transfer duty rates and brackets.
- Reducing the UIF contribution threshold to a R1 000 per month for the 2015/16 year only.

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 29 FEBRUARY 2016

TAXABLE INCOME	RATES OF TAX
R0 – R181 900	+ 18% of each R1
R181 901 – R284 100	R32 742 + 26% of the amount above R181 900
R284 101 – R393 200	R59 314 + 31% of the amount above R284 100
R393 201 – R550 100	R93 135 + 36% of the amount above R393 200
R550 101 – R701 300	R149 619 + 39% of the amount above R550 100
R701 301 and above	R208 587 + 41% of the amount above R701 300

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2015

TAXABLE INCOME	RATES OF TAX
R0 – R174 550	+ 18% of each R1
R174 551 – R272 700	R31 419 + 25% of taxable income above R174 550
R272 701 – R377 450	R55 957 + 30% of taxable income above R272 700
R377 451 – R528 000	R87 382 + 35% of taxable income above R377 450
R528 001 – R673 100	R140 074 + 38% of taxable income above R528 000
R673 101 and above	R195 212 + 40% of taxable income above R673 100

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

* The tax rates applicable to special trusts are the same as those applicable to natural persons, except that the primary rebate and interest exemptions do not apply.

Tax rebates	2014	2015	2016
Primary	R12 080	R12 726	R13 257
Secondary (Persons 65 and older)	R6 750	R7 110	R7 407
Tertiary (Persons 75 and older)	R2 250	R2 367	R2 466

Tax thresholds	2014	2015	2016
Below age 65	R67 111	R70 700	R73 650
Age 65 to below 75	R104 611	R110 200	R114 800
Age 75 and over	R117 111	R123 350	R128 500

Interest Exemption:	2014	2015	2016
Below age 65	R23 800	R23 800	R23 800
Age 65 & above	R34 500	R34 500	R34 500

TRANSFER DUTY ON IMMOVABLE PROPERTY

Transfer duty is an indirect tax on the acquisition of immovable property situated in South Africa. The following are the main provisions:

- It is calculated on the value of the immovable property (purchase price or market value whichever is the highest).
- It is payable within six months after the transaction is entered into.
- 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.
- 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.

Transfer duty is calculated as follows:	
R0 – R750 000	0%
R750 001 – R1 250 000	3% of the value above R750 000
R1 250 001 – R1 750 000	R15 000 plus 6% of the value over R1 250 000
R1 750 001 – R2 250 000	R45 000 plus 8% of the value over R1 750 000
R2 250 001 +	R85 000 plus 11% of the value over R2 250 000

The most notable exemptions from transfer duty are the following:

- If the purchase price/value is R750,000 or less.
- If the transaction is subject to VAT (i.e. where the seller is a VAT vendor).
- 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.
- 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.

CAPITAL GAINS TAX & YOUR PROPERTY

IMMOVABLE PROPERTY SUBJECT TO CGT

CGT is payable on disposal of immovable property to the extent that the capital gains arise after 1 October 2001. Persons are subject to CGT on the following immovable property:

- Residents: On all immovable property disposed of including overseas immovable property.
- Non-residents: On immovable property or any right or interest in a property situated in South Africa.

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

CGT CALCULATION AND INCLUSION RATES

The capital gain or loss is the difference between the proceeds on disposal and the base cost of the property.

A disposal includes a sale, donation, exchange and a vesting of the property in a beneficiary of a trust.

Proceeds are equal to the amount received by the taxpayer in respect of the disposal.
The base cost is calculated as follows for property bought after 1 October 2001:

- The purchase price; plus
- Allowable capital expenditure.

The base cost is calculated as follows for a property bought before 1 October 2001:

- The valuation date value of the property on 1 October 2001; plus
- Allowable capital expenditure incurred after 1 October 2001.

The valuation date value is calculated as follows:

- The market value on 1/10/2001 as determined by a valuation; or
- 20% of the proceeds after deducting the allowable capital expenditure incurred after valuation date; or
- The time apportioned base cost, as determined by a formula.

Allowable capital expenditure includes the following:

- The cost of acquiring, creating or improving the asset (excluding any borrowing costs).
- The cost for valuation of the property for CGT purposes.
- Cost incurred in respect of disposal of the property (including sales commission, advertising, valuation costs, accounting and legal costs, removal cost etc.).

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

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

Natural persons may deduct the following from their net capital gain:

- Annual exclusion: R30 000
- Annual exclusion on death: R300 000

The inclusion rates are as follows:

PERSON	RATE
Natural person and special trust	33.3%
Company	66.6%
Trust	66.6%

Note: *A special trust is a trust created solely for the benefit of someone who suffers from a disability that prevents such person from earning sufficient income for their maintenance or from managing their own financial affairs. A special trust can also be created by way of a testamentary trust whereby relatives of the testator who are alive on the date of death are the beneficiaries. In order to qualify as a special trust, the youngest of the beneficiaries must, on the last day of the year of assessment of that trust, be under the age of 18 years.*

PRIMARY RESIDENCE EXCLUSION

When a primary residence is disposed of capital gains up to R2 million is exempt from CGT. The following are the main provisions relating to primary residences:

- The exemption is applicable to natural persons and special trusts.
- Only one residence at a time may be a primary residence of a person.
- The exemption is applicable if a person merely has an interest in the residence. As a result a share in a share block company and a usufruct may qualify (subject to further provisions).
- If the residence is held by more than one person as a primary residence an apportionment of the R2 million must be made in relation to their interest.

- An apportionment of the profit must be done if the person used the house as a primary residence for only part of the time it was owned. If a person was absent from the residence for less than 2 years as a result of the residence being offered for sale and vacated due to the intended acquisition of a new primary residence, the residence being erected on land acquired, the residence being accidently rendered uninhabitable or the death of that person, it will not be seen as an absence from the residence.
- When the residence is used partially for residential and partially for business purposes an apportionment must be done.
- If a person is absent from his residence for a continuous period of 5 years or less and lets the premises during this time, the absence will be ignored if the person stayed in the residence for a period of at least one year before and after the period it was let, no other residence was treated as a primary residence during this period and the person was absent from the residence due to being absent from South Africa or was employed or engaged in a business in South Africa at a location more than 250 kilometers from the residence.
- Where the residence is more than 2 hectares in size, the exemption only applies to the gain made on the residence and 2 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 and next to the residence to qualify).

WITHHOLDING TAX ON ACQUISITION OF PROPERTY FROM NON-RESIDENT

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

If the purchaser is a resident withholding tax must be paid within 14 days from the date on which the seller was paid and if the purchaser is a non-resident, within 28 days.

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

NON-RESIDENT SELLER	RATE
Natural person	5%
Company	7.5%
Trust	10%

The seller may apply to SARS for a directive in order to reduce the amount to be withheld.

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. Notwithstanding the above, the general view is that Section 49 of the CPA should be taken cognisance of in all cases– and provision should be made that any waiver of liability, assumption of an obligation, or waiver of a right is drawn specifically to the attention of both parties to the agreement in a conspicuous manner.

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 15 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 the purchaser's benefit pending transfer by the conveyancer (in terms of Section 78(2)(A) of the Attorneys Act).

- 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.

CERTIFICATES

The contract of sale is required to include clauses which deal with the Electrical, Beetle, Gas and Plumbing Certificate (where applicable).

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, provided the certificate is less than two years old.

DISCLOSURE OF LISTED INVASIVE SPECIES

The National Environmental Management Biodiversity Act 10 of 2004 came into force on 1 October 2014. Section 29(3) requires that the seller of an immovable property must, prior to the conclusion of the relevant sale agreement, notify the purchaser of such immovable property, in writing, of the presence of listed invasive species on the property. The obligation and the duty to remove could be negotiated between the seller and the purchaser.

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 and the estate agent is required to request certain documents from both the seller and the purchaser, in compliance with FICA.

If applicable, the bank, and the bank's attorneys 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 the natural person at his or her 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.

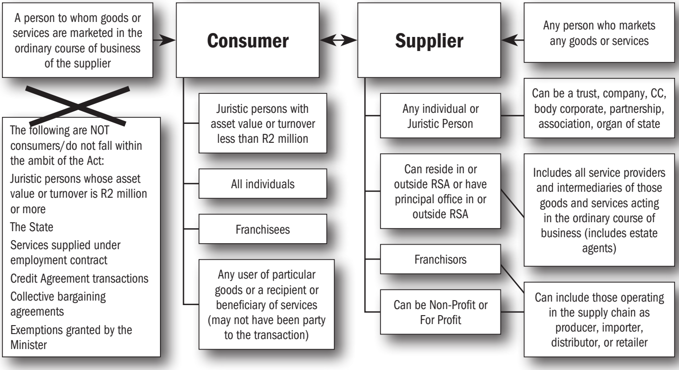
Scope of the Act:

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.

In terms of Section 49(1)(c) of the CPA, a supplier "must not require consumer, or other person to whom any goods or services are supplied at the direction of the consumer -

(i) to waive any rights;
(ii) assume any obligations; or
(iii) waive any liability of the supplier

on terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction".

It is also considered to be an unfair or unjust contract if the effect of any terms was not drawn to the attention of the consumer in a conspicuous manner. Both parties attention must be drawn to the clause.

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, estate agents, and attorneys involved in the drafting of the contract of sale 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, land use planning and building plan approval, accepts it as is, then the exception should apply. As per Section 49 of the CPA, such provision must have been drawn to the attention of the consumer and in a conspicuous manner, that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances, and before the earlier of the time at which the consumer enters into the transaction or agreement, or is required or expected to offer consideration for the transaction or agreement.

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. 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 both parties are juristic persons and the tenant as juristic person has assets or turnover value of less than R2 million).

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)
  - 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.
- In order for the deductions to be allowed the expenditure must have been actually incurred in the production of income and not be of a capital nature.
- The cost of improvements, reconstructions or additions to the property cannot be deducted, as these expenses are of a capital nature. Improvements made to leasehold property in terms of a lease agreement by the tenant must be included in the income of the landlord. Either the stipulated amount or a fair and reasonable value will be included. The landlord may be entitled to discount the value of the improvements over the period of the lease or 25 years whichever is the shorter.
- Allowed deductions are subtracted from rental income received and tax is payable on the balance at the tax rates applicable to the landlord.

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 for tax purposes if the rental payment or expenditure was actually incurred in the production of income.
- If improvements are made to leasehold property in terms of a lease agreement by the tenant, the tenant may deduct such expenditure over the period of the lease.

THE RENTAL HOUSING ACT

The Rental Housing Act (50 of 1999) aims to regulate the relationship between tenants and landlords by setting out general requirements relating to leases, laying down general principles and governing conflict resolution. The Rental Housing Tribunal's function is to ensure that unfair practices between landlords and tenants are eliminated and hence it interprets both the Act and the Procedural and Unfair Practice Regulations, where applicable, in its deliberations. The service is free to both tenants and landlords. A lease will be deemed to include a number of terms, which cannot be waived by either party, such as:

- That the landlord must furnish the tenant with written receipts for all payments received by the landlord from the tenant.
- If on the expiration of the lease, the tenant remains in the dwelling with the express or tacit consent of the landlord, the landlord and tenant are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease.
- A deposit must be invested by the landlord in an interest bearing account, such interest not to be less than the rate applicable to a savings account. During the period of the lease, the tenant is entitled to request proof from the landlord in respect of interest accrued.
- The Rental Housing Amendment Bill [B56B-2013], which was promulgated in July 2014, has at the date of this publication not yet been implemented. The Bill incorporates most of the provisions that currently exist in the Regulations. Some of the amendments incorporated into the Bill are:
    - Leases must be reduced to writing. The onus will be on the landlord to make sure it is in writing.
    - A tenant has the right, during the lease period, to privacy, and should the landlord wish to exercise his or her right of inspection, the inspection must be done in a reasonable manner after reasonable notice to the tenant.
    - Consent to sub-let may not be unreasonably withheld.
    - A landlord must provide a tenant with a dwelling that is fit and suitable to live in, as well as maintain the existing structure of the dwelling and where possible, facilitate the provision of utilities to the dwelling.

Due to the limitations in the length of this guide, all of the provisions of the Act, Regulations, and the Bill where applicable, cannot be included. Please contact our offices for further information and assistance.

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)
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 (subject to the MOI and Act)
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)
2. Complex legislation to comply with (i.e. Companies Act)

CLOSE CORPORATION

ADVANTAGES

1. Management is also represented by members who hold interest in the CC

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. 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 risk and 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 such as 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. Dividends tax 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 11% of the gross purchase price, is payable to SARS. **(R0 to R750 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 equates 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 **R30** and **R4 000**, dependent on purchase price/value of property.
- **FICA costs** – usually between **R500** and **R850** (plus VAT) per FICA investigation.
- **Sundry charges** – posts and petties and telephone calls payable to the transferring attorney (usually about R850 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 **R293.50**), electronic document generation fee.
- **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

ACQUISITION OF FIXED PROPERTY BY NON-RESIDENTS

Non-residents may acquire fixed property in the Republic, provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arms' length, at fair market-related prices, and are financed in an approved manner.

The following provisions relate to financial assistance in South Africa:

- Emigrants: Local financial assistance made available to emigrants is subject to the 1:1 ratio.
- Non-residents: Authorised Dealers may grant or authorise local financial assistance facilities to non-residents in respect of the acquisition of commercial property without restrictions.Where the funds are required for the acquisition of residential property in South Africa the 1:1 ratio will apply.
- Affected persons (i.e.where non-residents directly or indirectly owns 75% or more of the shares): There is no restriction on the amount that could be borrowed locally in instances where an affected person wishes to borrow locally to finance the acquisition of commercial property. Wholly non-resident owned subsidiaries may borrow locally up to 100% of the total shareholders' investment in respect of the acquisition of residential property in South Africa.The effect of local participation in non-resident controlled entities is to make the abovementioned norms more liberal the greater the local participation, i.e. the ability to borrow locally increases. This is based on a formula.

DISPOSAL OF FIXED PROPERTY BY NON-RESIDENTS

Proceeds from the sale of immovable property by non-residents in South Africa may be remitted abroad.

Proceeds on the sale of immovable property in South Africa by Emigrants will be subject to the blocked account provisions.

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), it is advisable to set up a testamentary trust in your will, which would come into effect should both parents pass away before they reach 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. Non-residents are only liable to pay estate duty on South African properties.

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%.

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 6 to 8 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.

Purchaser and Seller sign agreement	Stage 1
◆ 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 and copy of rates account ◆ 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 2**
◆ 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, beetle, gas and electric fence certificates arranged (and plumbing, where appropriate)	**Stage 3**
◆ 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 4**
◆ 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	**Stage 5**

COMPARATIVE TAX RATES

RATES OF TAX	2014	2015	2016
NATURAL PERSONS			
Maximum marginal rate	40%	40%	41%
◆ Reached at a taxable income	638 600	673 100	701 300
Minimum rate	18%	18%	18%
◆ Up to taxable income of	165 500	174 550	181 900
◆ CGT inclusion rate	33.3%	33.3%	33.3%
COMPANIES & CC's			
◆ Normal tax rate	28%	28%	28%
◆ STC rate/Dividends Tax	15%	15%	15%
◆ CGT inclusion rate	66.6%	66.6%	66.6%
TRUSTS (other than special trusts)			
◆ Flat rate	40%	40%	41%
◆ CGT inclusion rate	66.6%	66.6%	66.6%
SUNDRY			
◆ Donations Tax	20%	20%	20%
◆ Estate Duty	20%	20%	20%
SMALL BUSINESS CORPORATIONS			
Maximum marginal rate	28%	28%	28%
◆ Reached at a taxable income	550 000	550 000	550 000
Minimum rate	0%	0%	0%
◆ Up to a taxable income of	67 111	70 700	73 650
MICRO BUSINESS			
Max Rate of Tax	6%	6%	3%
◆ On turnover of	750 000	750 000	750 000
Minimum Rate	0%	0%	0%
◆ Up to a turnover of	150 000	150 000	335 000

PRIME BANK OVERDRAFT RATES

EFFECTIVE DATE	RATE
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%
30. 01. 2014	9,00%
18. 07. 2014	9,25%

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	4 375	612,50	70	5 057,50	0	5 057,50	3 500	490,00	310	4 300,00
150 000	4 550	637,00	70	5 257,00	0	5 257,00	3 625	507,50	310	4 442,50
200 000	5 130	718,20	400	6 248,20	0	6 248,20	4 030	564,20	350	4 944,20
250 000	5 600	784,00	400	6 784,00	0	6 784,00	4 435	620,90	350	5 405,90
300 000	6 410	897,40	400	7 707,40	0	7 707,40	4 970	695,80	350	6 015,80
400 000	7 460	1 044,40	500	9 004,40	0	9 004,40	6 180	865,20	500	7 545,20
500 000	8 750	1 225,00	500	10 475,00	0	10 475,00	7 260	1 016,40	500	8 776,40
600 000	9 910	1 387,40	500	11 797,40	0	11 797,40	8 440	1 181,60	500	10 121,60
700 000	11 070	1 549,80	700	13 319,80	0	13 319,80	9 620	1 346,80	700	11 666,80
750 000	12 230	1 712,20	700	14 642,20	0	14 642,20	10 800	1 512,00	700	13 012,00
800 000	12 230	1 712,20	700	14 642,20	1 500	16 142,20	10 800	1 512,00	700	13 012,00
900 000	13 390	1 874,60	800	16 064,60	4 500	20 564,60	11 980	1 677,20	800	14 457,20
950 000	14 550	2 037,00	800	17 387,00	6 000	23 387,00	13 160	1 842,40	800	15 802,40
1 000 000	14 550	2 037,00	800	17 387,00	7 500	24 887,00	13 160	1 842,40	800	15 802,40
1 100 000	15 130	2 118,20	900	18 148,20	10 500	28 648,20	13 750	1 925,00	900	16 575,00
1 200 000	15 710	2 199,40	900	18 809,40	13 500	32 309,40	14 340	2 007,60	900	17 247,60
1 250 000	16 290	2 280,60	900	19 470,60	15 000	34 470,60	14 930	2 090,20	900	17 920,20
1 300 000	16 290	2 280,60	900	19 470,60	18 000	37 470,60	14 930	2 090,20	900	17 920,20
1 350 000	16 870	2 361,80	900	20 131,80	21 000	41 131,80	15 520	2 172,80	900	18 592,80
1 400 000	16 870	2 361,80	900	20 131,80	24 000	44 131,80	15 520	2 172,80	900	18 592,80
1 500 000	17 450	2 443,00	900	20 793,00	30 000	50 793,00	16 110	2 255,40	900	19 265,40
1 600 000	18 030	2 524,20	900	21 454,20	36 000	57 454,20	16 700	2 338,00	900	19 938,00

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	18 610	2 605,40	900	22 115,40	42 000	64 115,40	17 290	2 420,60	900	20 610,60
1 800 000	19 190	2 686,60	900	22 776,60	49 000	71 776,60	17 880	2 503,20	900	21 283,20
1 900 000	19 770	2 767,80	900	23 437,80	57 000	80 437,80	18 470	2 585,80	900	21 955,80
2 000 000	20 350	2 849,00	900	24 099,00	65 000	89 099,00	19 060	2 668,40	900	22 628,40
2 100 000	20 930	2 930,20	1 100	24 960,20	73 000	97 960,20	19 650	2 751,00	1 250	23 651,00
2 300 000	22 090	3 092,60	1 100	26 282,60	90 500	116 782,60	20 830	2 916,20	1 250	24 996,20
2 400 000	22 670	3 173,80	1 100	26 943,80	101 500	128 443,80	21 420	2 998,80	1 250	25 668,80
2 500 000	23 250	3 255,00	1 100	27 605,00	112 500	140 105,00	22 010	3 081,40	1 250	26 341,40
2 600 000	23 830	3 336,20	1 100	28 266,20	123 500	151 766,20	22 600	3 164,00	1 250	27 014,00
2 700 000	24 410	3 417,40	1 100	28 927,40	134 500	163 427,40	23 190	3 246,60	1 250	27 686,60
2 800 000	24 990	3 498,60	1 100	29 588,60	145 500	175 088,60	23 780	3 329,20	1 250	28 359,20
2 900 000	25 570	3 579,80	1 100	30 249,80	156 500	186 749,80	24 370	3 411,80	1 250	29 031,80
3 000 000	26 150	3 661,00	1 100	30 911,00	167 500	198 411,00	24 960	3 494,40	1 250	29 704,40
3 200 000	27 310	3 823,40	1 100	32 233,40	189 500	221 733,40	26 140	3 659,60	1 250	31 049,60
3 300 000	27 890	3 904,60	1 100	32 894,60	200 500	233 394,60	26 730	3 742,20	1 250	31 722,20
3 400 000	28 470	3 985,80	1 100	33 555,80	211 500	245 055,80	27 320	3 824,80	1 250	32 394,80
3 500 000	29 050	4 067,00	1 100	34 217,00	222 500	256 717,00	27 910	3 907,40	1 250	33 067,40
3 600 000	29 630	4 148,20	1 100	34 878,20	233 500	268 378,20	28 500	3 990,00	1 250	33 740,00
3 700 000	30 210	4 229,40	1 100	35 539,40	244 500	280 039,40	29 090	4 072,60	1 250	34 412,60
3 800 000	30 790	4 310,60	1 100	36 200,60	255 500	291 700,60	29 680	4 155,20	1 250	35 085,20
3 900 000	31 370	4 391,80	1 100	36 861,80	266 500	303 361,80	30 270	4 237,80	1 250	35 757,80
4 000 000	31 950	4 473,00	1 100	37 523,00	277 500	315 023,00	30 860	4 320,40	1 250	36 430,40

4 200 000	33 110	4 635,40	1 500	39 245,40	299 500	338 745,40	32 040	4 485,60	1 500	38 025,60
4 300 000	33 690	4 716,60	1 500	39 906,60	310 500	350 406,60	32 630	4 568,20	1 500	38 698,20
4 500 000	34 850	4 879,00	1 500	41 229,00	332 500	373 729,00	33 810	4 733,40	1 500	40 043,40
5 000 000	37 750	5 285,00	1 500	44 535,00	387 500	432 035,00	36 760	5 146,40	1 500	43 406,40
5 500 000	39 200	5 488,00	1 500	46 188,00	442 500	488 688,00	38 235	5 352,90	1 500	45 087,90
6 000 000	40 650	5 691,00	1 500	47 841,00	497 500	545 341,00	39 710	5 559,40	1 500	46 769,40
6 200 000	41 230	5 772,20	1 800	48 802,20	519 500	568 302,20	40 300	5 642,00	1 800	47 742,00
6 400 000	41 810	5 853,40	1 800	49 463,40	541 500	590 963,40	40 890	5 724,60	1 800	48 414,60
6 500 000	42 100	5 894,00	1 800	49 794,00	552 500	602 294,00	41 185	5 765,90	1 800	48 750,90
6 700 000	42 680	5 975,20	1 800	50 455,20	574 500	624 955,20	41 775	5 848,50	1 800	49 423,50
6 800 000	42 970	6 015,80	1 800	50 785,80	585 500	636 285,80	42 070	5 889,80	1 800	49 759,80
6 900 000	43 260	6 056,40	1 800	51 116,40	596 500	647 616,40	42 365	5 931,10	1 800	50 096,10
7 000 000	43 550	6 097,00	1 800	51 447,00	607 500	658 947,00	42 660	5 972,40	1 800	50 432,40
7 200 000	44 130	6 178,20	1 800	52 108,20	629 500	681 608,20	43 250	6 055,00	1 800	51 105,00
7 300 000	44 420	6 218,80	1 800	52 438,80	640 500	692 938,80	43 545	6 096,30	1 800	51 441,30
7 400 000	44 710	6 259,40	1 800	52 769,40	651 500	704 269,40	43 840	6 137,60	1 800	51 777,60
7 500 000	45 000	6 300,00	1 800	53 100,00	662 500	715 600,00	44 135	6 178,90	1 800	52 113,90
7 600 000	45 290	6 340,60	1 800	53 430,60	673 500	726 930,60	44 430	6 220,20	1 800	52 450,20
7 700 000	45 580	6 381,20	1 800	53 761,20	684 500	738 261,20	44 725	6 261,50	1 800	52 786,50
7 800 000	45 870	6 421,80	1 800	54 091,80	695 500	749 591,80	45 020	6 302,80	1 800	53 122,80
7 900 000	46 160	6 462,40	1 800	54 422,40	706 500	760 922,40	45 315	6 344,10	1 800	53 459,10
8 000 000	46 450	6 503,00	1 800	54 753,00	717 500	772 253,00	45 610	6 385,40	1 800	53 795,40
8 200 000	47 030	6 584,20	2 100	55 714,20	739 500	795 214,20	46 200	6 468,00	2 100	54 768,00
8 300 000	47 320	6 624,80	2 100	56 044,80	750 500	806 544,80	46 495	6 509,30	2 100	55 104,30
8 500 000	47 900	6 706,00	2 100	56 706,00	772 500	829 206,00	47 085	6 591,90	2 100	55 776,90
8 600 000	48 190	6 746,60	2 100	57 036,60	783 500	840 536,60	47 380	6 633,20	2 100	56 113,20
8 800 000	48 770	6 827,80	2 100	57 697,80	805 500	863 197,80	47 970	6 715,80	2 100	56 785,80
8 900 000	49 060	6 868,40	2 100	58 028,40	816 500	874 528,40	48 265	6 757,10	2 100	57 122,10
9 000 000	49 350	6 909,00	2 100	58 359,00	827 500	885 859,00	48 560	6 798,40	2 100	57 458,40

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	49 640	6 949,60	2 100	58 689,60	838 500	897 189,60	48 855	6 839,70	2 100	57 794,70
9 200 000	49 930	6 990,20	2 100	59 020,20	849 500	908 520,20	49 150	6 881,00	2 100	58 131,00
9 500 000	50 800	7 112,00	2 100	60 012,00	882 500	942 512,00	50 035	7 004,90	2 100	59 139,90
9 600 000	51 090	7 152,60	2 100	60 342,60	893 500	953 842,60	50 330	7 046,20	2 100	59 476,20
9 700 000	51 380	7 193,20	2 100	60 673,20	904 500	965 173,20	50 625	7 087,50	2 100	59 812,50
9 800 000	51 670	7 233,80	2 100	61 003,80	915 500	976 503,80	50 920	7 128,80	2 100	60 148,80
10 000 000	52 250	7 315,00	2 100	61 665,00	937 500	999 165,00	51 510	7 211,40	2 100	60 821,40
11 000 000	55 150	7 721,00	2 500	65 371,00	1 047 500	1 112 871,00	54 460	7 624,40	2 500	64 584,40
12 000 000	58 050	8 127,00	2 500	68 677,00	1 157 500	1 226 177,00	57 410	8 037,40	2 500	67 947,40
15 000 000	66 750	9 345,00	2 500	78 595,00	1 487 500	1 566 095,00	66 260	9 276,40	2 500	78 036,40
16 000 000	69 650	9 751,00	3 000	82 401,00	1 597 500	1 679 901,00	69 210	9 689,40	3 000	81 899,40
20 000 000	81 250	11 375,00	3 000	95 625,00	2 037 500	2 133 125,00	81 010	11 341,40	3 000	95 351,40
25 000 000	95 750	13 405,00	4 000	113 155,00	2 587 500	2 700 655,00	95 760	13 406,40	3 500	112 666,40
30 000 000	110 250	15 435,00	4 000	129 685,00	3 137 500	3 267 185,00	110 510	15 471,40	3 500	129 481,40

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, electronic document generation fees 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.

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