



# **Tax Guide for Small Businesses**

## **(2019/20)**



*South African Revenue Service*

# Tax Guide for Small Businesses

## Preface

This guide is a general guide dealing with the taxation of small businesses such as sole proprietors, partnerships and companies not part of large groups. Some of the discussions in this guide could, however, be applicable to any type of taxpayer. The aim is to discuss the typical taxation issues of an average business trading in South Africa.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It should, therefore, not be used as a legal reference. It is also not a binding general ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the **SARS website** for details of the application procedure.

The information in this guide concerning income tax relates to –

- **natural persons** for the 2020 year of assessment commencing on 1 March 2019 and ending on 29 February 2020;
- **trusts** in respect of years of assessment commencing and ending during the period commencing on 1 March 2019 and ending on 29 February 2020; and
- **companies and CCs** with years of assessment ending during the 12-month period ending on 31 March 2020.

While care has been taken in the preparation of this document to ensure that the information and the rates published are correct at the date of publication, this document must be read with the relevant legislation pertaining to that rate, applicable to the tax, customs or excise concerned.

For income tax purposes, this guide has been updated to include the Tax Administration Laws Amendment Act 33 of 2019, the Taxation Laws Amendment Act 34 of 2019 and the Rates and Monetary Amounts and Amendment of Revenue Laws Act 32 of 2019 as well as the Budget Review of 2019.

For indirect tax purposes, all information has been updated to include amendments up to the date of the publication of this guide.

Should you require additional information concerning any aspect of taxation, you may –

- visit the SARS website at **www.sars.gov.za**;
- visit your nearest SARS branch;
- contact your own tax advisor or tax practitioner; or
- contact the SARS National Contact Centre –
  - if calling locally, on 0800 00 7277; or
  - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South Africa time).

All guides, interpretation notes, brochures, forms, returns and tables referred to in this guide are available on the **SARS website**. Unless indicated otherwise, the latest issue of these documents should be consulted.

Comments or suggestions on this guide may be emailed to [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za).

Prepared by

**Leveraged Legal Products**

**SOUTH AFRICAN REVENUE SERVICE**

Date of 1st issue	:	November 2008
Date of 2nd issue	:	December 2009
Date of 3rd issue	:	February 2011
Date of 4th issue	:	November 2013
Date of 5th issue	:	24 March 2014
Date of 6th issue	:	27 March 2015
Date of 7th issue	:	10 March 2017
Date of 8th issue	:	8 November 2017
Date of 9th issue	:	30 January 2019
Date of 10th issue	:	7 August 2019
Date of 11th issue	:	21 August 2020

# Contents

<b>Preface</b> .....	<b>i</b>
<b>Glossary</b> .....	<b>1</b>
<b>1. Overview</b> .....	<b>2</b>
<b>2. General characteristics of different types of business</b> .....	<b>2</b>
2.1 Introduction .....	2
2.1.1 Sole proprietorship .....	2
2.1.2 Partnership .....	3
2.1.3 Close corporation .....	4
2.1.4 Private company .....	4
2.1.5 Co-operative.....	5
2.1.6 Other types of business entities.....	5
(a) Small business corporation .....	5
(b) Micro business (turnover tax).....	5
(c) Personal service provider.....	5
(d) Labour broker.....	6
(e) Independent contractor .....	7
(f) Small, medium and micro enterprises.....	7
<b>3. A business and the South African Revenue Service</b> .....	<b>8</b>
3.1 Introduction .....	8
3.2 Income tax.....	8
3.2.1 General.....	8
3.2.2 Registration .....	8
3.2.3 Change of address.....	8
3.2.4 Year of assessment and filing of income tax returns .....	8
3.2.5 SARS eFiling and SARS MobiApp.....	9
3.2.6 Payments at banks.....	10
3.2.7 Electronic funds transfer .....	10
3.2.8 Provisional tax (the Fourth Schedule).....	10
3.2.9 Employees' tax (PAYE) (the Fourth Schedule).....	10
3.2.10 How to determine net profit or loss of a business .....	11
3.2.11 Comparative profit or loss statements .....	13
3.2.12 Connection between "net profit" and "taxable income" .....	14
3.2.13 Determination of taxable income or assessed loss .....	14
3.2.14 General deduction formula.....	15
3.2.15 Tax rates and rebates .....	16
(a) Taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit) of any natural person, deceased estate, insolvent estate or special trust.....	16
(b) Taxable income of trusts (other than special trusts or public benefit organisations, recreational clubs or small business funding entities that are trusts) .....	18
(c) Taxable income of companies .....	19
3.2.16 Special allowances or deductions and recoupment.....	20
(a) Machinery, plant, implements, utensils and articles [section 11(e)] .....	21
(b) Inventions, patents, designs, trade marks, copyrights and knowledge [sections 11(gA), 11(gB) and 11(gC)] .....	21
(c) Expenditure incurred to obtain a licence [section 11(gD)] .....	23
(d) Scientific or technological research and development (sections 11D, 12C and 13) .....	23
(e) Machinery, plant, implements, utensils or articles or improvements thereto used in farming or production of renewable energy (section 12B) .....	24
(f) Aircraft and ships (section 12C).....	25
(g) Manufacturing assets (section 12C) .....	25
(h) Certain pipelines, transmission lines and railway lines (section 12D) .....	26
(i) Rolling stock (trains and carriages) (section 12DA).....	27
(j) Airport assets (section 12F) .....	28
(k) Port assets (section 12F) .....	28
(l) Additional deduction for learnership agreements (section 12H).....	28
(m) Allowance for land conservation of nature reserves or national parks (section 37D).....	30

(n)	Additional investment and training allowances for industrial policy projects (section 12I)	30
(o)	Deduction for expenditure incurred in exchange for issue of venture capital company shares (section 12J)	31
(p)	Deduction in respect of energy-efficiency savings (section 12L)	32
(q)	Deduction of medical lump sum payments (section 12M)	32
(r)	Deduction in respect of improvements not owned by taxpayers (section 12N)	32
(s)	Deduction in respect of improvements on property in respect of which government holds a right of use or occupation (section 12NA)	33
(t)	Industrial buildings (buildings used in a process of manufacture or a process of a similar nature) (section 13)	33
(u)	Buildings used by hotelkeepers (section 13 <i>bis</i> )	34
(v)	Urban development zones (section 13 <i>quat</i> )	34
(w)	Commercial buildings (section 13 <i>quin</i> )	35
(x)	Certain residential units (section 13 <i>sex</i> )	35
(y)	Deduction for sale of low-cost residential units on loan account (section 13 <i>sept</i> )	36
(z)	Residential buildings (section 13 <i>ter</i> )	37
(aa)	Environmental expenditure (sections 37A and 37B)	37
(bb)	Environmental conservation and maintenance expenditure (section 37C)	38
3.2.17	Tax relief measures for small business corporations (section 12E)	39
3.2.18	Tax relief measures for micro businesses (turnover tax) (sections 48 to 48C and the Sixth Schedule)	40
3.2.19	Tax relief measures for qualifying companies within a special economic zone (sections 12R and 12S)	40
3.2.20	Deduction of home office expenditure [section 11(a) read with section 23(b)]	41
3.2.21	Deductions in respect of expenditure and losses incurred before commencement of trade (section 11A)	41
3.2.22	Ring-fencing of assessed losses of certain trades (section 20A)	42
3.2.23	Prohibited deductions	43
(a)	Domestic or private expenses [section 23(a) and (b)]	43
(b)	Bribes, fines or penalties [section 23(o)(i) and (ii)]	43
3.2.24	Exemption of certified emission reductions (section 12K)	43
3.2.25	Film owners (section 12O)	43
3.2.26	Exemption of amounts received or accrued in respect of government grants (section 12P)	44
3.2.27	Exemption of income in respect of ships used in international shipping (section 12Q)	45
3.2.28	Capital gains tax (the Eighth Schedule)	46
(a)	Introduction	46
(b)	Registration	46
(c)	Rates	46
(d)	Capital losses	47
(e)	Disposal	47
(f)	Exclusions	47
(g)	Base cost (paragraph 20 of the Eighth Schedule)	47
(h)	Small businesses (paragraph 57 of the Eighth Schedule)	48
3.2.29	Withholding of amounts from payments to non-resident sellers on the sale of immovable property (section 35A)	48
3.3	Withholding tax on royalties (sections 49A to 49H)	49
3.4	Taxation of foreign entertainers and sportspersons (sections 47A to 47K)	50
3.5	Withholding tax on interest (sections 50A to 50H)	50
3.6	Donations tax (sections 54 to 64)	51
3.7	Dividends tax (sections 64D to 64N)	51
3.8	Value-added tax	52
3.8.1	Introduction	52
3.8.2	Tax rates	52
3.8.3	Collection and payment of VAT	52
3.8.4	Application of VAT to supplies and imports	53
3.8.5	standated supplies	53
3.8.6	Exempt supplies	54
3.8.7	Registration	55
(a)	Compulsory registration	55
(b)	Voluntary registration	56
3.8.8	Refusal of voluntary registration	57

3.8.9	How to register .....	57
3.8.10	Accounting basis .....	57
	(a) Invoice basis .....	57
	(b) Payments basis .....	58
	(c) Special cases .....	58
3.8.11	Tax periods .....	59
3.8.12	Calculation of VAT .....	59
3.8.13	Documentation .....	61
3.8.14	Submission of VAT returns .....	62
	(a) Manual submission .....	62
	(b) Electronic submission .....	62
3.8.15	Duties of a vendor .....	62
3.8.16	Exports to foreign countries .....	63
3.9	Estate duty (the Estate Duty Act 45 of 1955) .....	63
3.9.1	Introduction .....	63
3.9.2	Rate of estate duty .....	64
3.9.3	Taxation of deceased persons and deceased estates (sections 9HA, 9HB and 25 and paragraph 40(2) of the Eighth Schedule) .....	65
	(a) Capital gains tax .....	65
	(b) Income tax .....	66
3.10	Securities transfer tax (the Securities Transfer Tax Act 25 of 2007) .....	66
3.11	Transfer duty (the Transfer Duty Act 40 of 1949) .....	67
3.11.1	Introduction .....	67
3.11.2	Transfer duty rates .....	69
3.11.3	Transfer duty or VAT payable .....	70
3.12	Importation of goods and payment of customs and excise duties .....	71
3.12.1	Introduction .....	71
3.12.2	Registration as an importer .....	71
3.12.3	Goods imported through designated places of entry .....	71
3.12.4	Import declarations .....	71
3.12.5	Tariff classification .....	72
3.12.6	Customs value .....	72
3.12.7	Duties and levies .....	72
	(a) Customs duty .....	72
	(b) Excise duty .....	72
	(c) Anti-dumping, countervailing and safeguard duties on imported goods .....	72
3.12.8	Value-added tax on the importation of goods .....	73
3.12.9	Deferment, suspension and rebate of duties .....	73
3.13	Exportation of goods .....	73
3.13.1	Introduction .....	73
3.13.2	Registration as an exporter .....	73
3.13.3	Export declarations .....	73
3.14	Free trade agreements and preferential arrangements with other countries .....	74
3.14.1	Bi-lateral Agreements (non-reciprocal) .....	74
3.14.2	Preferential dispensation for goods entering the Republic of South Africa (non-reciprocal) .....	74
3.14.3	Free or preferential trade agreements (reciprocal) .....	74
3.14.4	Generalised Systems of Preference (non-reciprocal) .....	74
3.15	Environmental levy .....	75
3.15.1	Plastic bags (Part 3A of Schedule 1 of the Customs and Excise Act) .....	75
3.15.2	Electricity generated in South Africa (Part 3B of Schedule 1 of the Customs and Excise Act) .....	75
3.15.3	Electrical filament lamps (Part 3C of Schedule 1 of the Customs and Excise Act) .....	75
3.15.4	Carbon dioxide (CO <sub>2</sub> ) vehicle emissions levy (Part 3D of Schedule 1 of the Customs and Excise Act) .....	75
3.15.5	Tyre environmental levy (Part 3E of Schedule 1 of the Customs and Excise Act) .....	76
3.16	Fuel levy and Road Accident Fund levy (Parts 5A and 5B of Schedule 1 to the Customs and Excise Act) .....	77
3.17	Air passenger departure tax (section 47(B) of the Customs and Excise Act) .....	77
3.18	Health Promotion Levy .....	78
3.18.1	Sugary beverages levy (Part 7A of Schedule 1 of the Customs and Excise Act) .....	78

3.19	Skills development levy (the Skills Development Levies Act 9 of 1999).....	78
3.20	Unemployment insurance fund contributions (the Unemployment Insurance Contributions Act 4 of 2002 and the Unemployment Insurance Act 63 of 2001) .....	78
3.21	Employment tax incentive (the Employment Tax Incentive Act 26 of 2013).....	79
<b>4.</b>	<b>A business and other authorities .....</b>	<b>81</b>
4.1	Introduction .....	81
4.2	Municipalities.....	81
4.3	Unemployment Insurance Commissioner .....	81
4.4	South African Reserve Bank – Exchange control .....	81
4.5	Department of Trade and Industry.....	81
4.6	Broad-Based Black Economic Empowerment Act 53 of 2003.....	82
4.7	Environmental legislation.....	82
4.8	Safety and security .....	82
4.9	Employment and Labour .....	82
4.10	Promotion of Access to Information Act 2 of 2000.....	83
4.11	Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 .....	83
4.12	Electronic Communications and Transactions Act 25 of 2002 .....	83
4.13	Prevention of Organised Crime Act 121 of 1998 .....	83
4.14	Financial Intelligence Centre Act 38 of 2001 .....	83
4.15	Financial Advisory and Intermediary Services Act 37 of 2002 .....	84
4.16	Prevention and Combating of Corrupt Activities Act 12 of 2004 .....	84
4.17	Companies Act 71 of 2008 .....	84
4.18	National Small Enterprise Act 102 of 1996 .....	84
4.19	Lotteries Act 57 of 1997.....	84
4.20	Promotion of Administrative Justice Act 3 of 2000.....	84
4.21	Protected Disclosures Act 26 of 2000.....	84
4.22	National Credit Act 34 of 2005.....	85
4.23	Consumer Protection Act 68 of 2008.....	85
<b>5.</b>	<b>Duty to keep records, retention period in case of audit, objection or appeal and records.....</b>	<b>85</b>
<b>6.</b>	<b>Appointment of auditor or accounting officer.....</b>	<b>85</b>
<b>7.</b>	<b>Representative taxpayer .....</b>	<b>85</b>
<b>8.</b>	<b>Tax clearance certificates and Tax Compliance Status .....</b>	<b>86</b>
<b>9.</b>	<b>Non-compliance with legislation .....</b>	<b>86</b>
<b>10.</b>	<b>Interest, penalties and additional tax.....</b>	<b>86</b>
<b>11.</b>	<b>Request for correction .....</b>	<b>86</b>
<b>12.</b>	<b>Objection against assessment or decision .....</b>	<b>87</b>
<b>13.</b>	<b>Dispute resolution .....</b>	<b>87</b>
<b>14.</b>	<b>Complaint Management Office .....</b>	<b>87</b>
<b>15.</b>	<b>Further information .....</b>	<b>87</b>

## Glossary

In this guide, unless the context indicates otherwise –

- **“CC”** means close corporation;
- **“CGT”** means capital gains tax, being the normal tax attributable to the inclusion of a taxable capital gain in taxable income under section 26A;
- **“Customs and Excise Act”** means the Customs and Excise Act 91 of 1964;
- **“ETI”** means employment tax incentive;
- **“ETI Act”** means the Employment Tax Incentive Act 26 of 2013;
- **“MTC”** means medical scheme fees tax credit contemplated in section 6A;
- **“PAYE”** means Pay-As-You-Earn namely “employees’ tax” as defined in paragraph 1 of the Fourth Schedule;
- **“PPP”** means a “Public Private Partnership” as defined in section 1(1);
- **“R&D”** means scientific or technological research and development;
- **“SBC”** means small business corporation;
- **“Schedule”** means a Schedule to the Act;
- **“SDL”** means skills development levy;
- **“section”** means a section of the Act;
- **“SEZ”** means a “special economic zone” as defined in section 12R(1);
- **“SMME”** means small, medium and micro enterprise;
- **“South Africa”** means the Republic of South Africa;
- **“STT”** means securities transfer tax;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“tax treaty”** means an agreement for the avoidance of double taxation entered into between South Africa and another country;
- **“the Act”** means the Income Tax Act 58 of 1962;
- **“UIF”** means unemployment insurance fund;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the relevant Act.



## 1. Overview

This guide contains information about the tax laws and some other statutory obligations applying to small businesses. It describes some of the forms of business entities in South Africa, namely sole proprietorships, partnerships, CCs and private companies.

It also contains general information, such as registration, aspects of record-keeping, relief measures for SBCs, and how the net profit or loss and taxable income or assessed loss of a small business is determined. This guide illustrates some of the specific tax considerations for the different types of business entities. Furthermore, it contains information on some of the other taxes that may be payable in addition to income tax.

While the information in this guide applies to different kinds of business and is of a general nature, specific types of business such as insurance companies, banks and investment companies are not discussed. However, the requirements of the tax laws regarding, for example, registration and filing of tax forms also apply to these businesses.

## 2. General characteristics of different types of business

### 2.1 Introduction

A person wanting to start a business must decide what type of business entity to use. There are legal, tax and other considerations that can influence this decision. The legal and other considerations are beyond the scope of this guide while the tax consequences of conducting business through each type of entity will be an important element in making a decision.

The purpose of this guide is not to provide advice on the type of business entity through which to conduct a business, but to provide entrepreneurs with information to assist them to make their own informed decisions when starting a business.

#### 2.1.1 Sole proprietorship

A sole proprietorship is a business that is owned and operated by a natural person and is the simplest form of business type. The business has no existence [therefore it is not a “legal person” such as a “company” as defined in section 1(1)] separate from the owner who is called the proprietor. The income from such business should be included in the owner’s income tax return and the owner is responsible for the payment of taxes thereon. Only the owner has the authority to make decisions for the business. The owner assumes the risks of the business to the extent of all of the owner’s assets whether used in the business or not.

Some advantages of a sole proprietorship are that –

- it is simple to establish and operate;
- the owner is free to make decisions;
- there are minimum legal requirements;
- the owner receives all the profits; and
- it is easy to discontinue the business.

Some disadvantages of a sole proprietorship are as follows:

- Unlimited liability of the owner.

The owner is legally liable for all the debts of the business. Not only the investment or business property, but any personal and fixed property may be attached by creditors.

- Limited ability to raise capital.

The business capital is limited to whatever the owner can personally secure which limits the expansion of a business when new capital is required. A common cause for failure of this form of business organisation is a lack of funds which restricts the ability of the owner to operate the business effectively and survive at an initial low profit level, or to get through an economic hardship.

- Limited skills.

One owner alone may have limited skills, although employees with sought-after skills may be contracted or employed.

### 2.1.2 Partnership

A partnership (or unincorporated joint venture) is the relationship existing between two or more persons who join together to carry on a trade, business or profession. A partnership is not a separate legal person or taxpayer.<sup>1</sup> The profits are taxed in the hands of each partner according to the relevant share of the partnership profits.<sup>2</sup> Each person contributes money, property, labour or skills and shares in the profits and losses of the partnership. A partnership is similar to a sole proprietorship except that a group of owners replaces the sole proprietor.

Some advantages of a partnership are that –

- it is easy to establish and operate;
- it has greater financial strength;
- it combines the different skills of the partners; and
- each partner has a personal interest in the business.

Some disadvantages of a partnership are as follows:

- Unlimited liability of the partners (excluding silent partners who have limited liability).
- Each partner may be held liable for the debts of the business. One partner who is not exercising sound judgment could cause the loss of the assets of the partnership as well as the personal assets of all the partners.
- Authority for decision-making is shared and differences of opinion could slow the process down.
- It is not a legal entity.
- Lesser degree of business continuity, since the partnership legally dissolves every time a partner joins or leaves the partnership.

---

<sup>1</sup> A partnership is, however, regarded as a separate person for VAT purposes as it is included in the definition of “person” in section 1(1) of the VAT Act.

<sup>2</sup> This is unlike the position under the VAT legislation where the partnership itself (being a “person”) may be required to register for VAT and will account for the VAT on any taxable supplies made and received.

### 2.1.3 Close corporation

A CC is similar to a private company (see 2.1.4). It is a legal entity with its own legal personality and perpetual succession and must register as a taxpayer in its own right. The owners of a CC are the members of the CC and have a membership interest in the CC. Membership, generally speaking, is restricted to natural persons and a trustee of an *inter vivos* trust or testamentary trust.

A CC may not have an interest in another CC. For income tax purposes, a CC is dealt with as if it is a company.

With effect from 1 May 2011 (implementation date of the Companies Act 71 of 2008), no new CC could be registered and a conversion from a company to a CC is not allowed.

### 2.1.4 Private company

A private company is treated by law as a separate legal entity and must register as a taxpayer in its own right. The owners of a private company are the shareholders. The managers of a private company may or may not be shareholders.

Some advantages of a private company are as follows:

- The existence of the business is perpetual, that is, it continues uninterrupted as shareholders change.
- Transfer of ownership of shares in the company is not prohibited, but subject to the company's memorandum of incorporation.
- It is easier to raise capital and to expand the business.
- Efficiency of management is maintained.
- A small, medium to large business may be carried on.

Some disadvantages of a private company are as follows:

- It is subject to many legal requirements.
- It is more difficult and expensive to establish and operate than other forms of ownership such as a sole proprietorship or partnership.

#### *Personal liability of shareholders and directors*

Shareholders have limited liability, that is, they are generally not responsible for the liabilities of the company. However, a person (shareholder or director) who controls or is regularly involved in the management of a company's overall financial affairs shall under the TA Act be personally liable for any outstanding tax debt of the company including, amongst others, income tax, PAYE, VAT, additional tax, understatement penalty, penalty or interest for which the company is liable if a senior SARS official is satisfied that the person is or was negligent or fraudulent in respect of the payment of the tax debts of the company.

The Companies Act 71 of 2008 imposes personal liability on directors. Any person, not only a director, who is knowingly a party to the carrying on of a business in a reckless (gross carelessness or gross negligence) or fraudulent manner may be personally held liable for all or any of the debts of the private company.

## 2.1.5 Co-operative

A “co-operative” is defined in section 1(1) as any association of persons registered under section 27 of the Co-operatives Act 91 of 1981 or section 7 of the Co-operatives Act 14 of 2005.

## 2.1.6 Other types of business entities

### (a) Small business corporation

This type of entity is discussed in **3.2.17** under the heading **Tax relief measures for small business corporations**.

### (b) Micro business (turnover tax)

This type of entity is discussed in **3.2.18** under the heading **Tax relief measures for micro businesses (turnover tax)**.

### (c) Personal service provider

The term “personal service provider” is defined in paragraph 1 of the Fourth Schedule and means any company or trust if any service rendered on behalf of such company or trust to a client of such company or trust is rendered personally by any person who is a connected person in relation to such company or trust, and –

- such person would be regarded as an employee of such client if such service was rendered by such person directly to such client, other than on behalf of such company or trust;
- when those duties must be performed mainly at the premises of the client, such person or such company or trust is subject to the control or supervision of such client as to the manner in which the duties are performed or are to be performed in rendering such service; or
- when more than 80% of the income of such company or trust during a year of assessment from services rendered consists of or is likely to consist of amounts received directly or indirectly from any one client of such company or trust, or any “associated institution” as defined in the Seventh Schedule, in relation to such client.

A company that falls within the above definition of “personal service provider” will not qualify as an SBC (see **3.2.17**). However, should that company employ three or more full-time employees (excluding holders of shares or members or any persons connected to the holders of shares or members) throughout the year of assessment and the employees are engaged in the business of the company in rendering the specific service, that company may qualify as an SBC.

Payments made to a personal service provider are subject to the deduction of PAYE.<sup>3</sup> For VAT purposes, any payment made to a personal service provider who is carrying on an enterprise will be subject to VAT at the standard rate. This rule applies even if such payments have been subject to the deduction of PAYE.<sup>4</sup>

---

<sup>3</sup> For more information see Interpretation Note 35 “Employees’ Tax: Personal Service Providers and Labour Brokers”.

<sup>4</sup> Paragraph (iii)(bb) of the proviso to the definition of “enterprise” in section 1(1) of the VAT Act..

Under section 23(k)(ii) only the following expenses incurred by a personal service provider may be claimed as a deduction:

- The amounts paid or payable to the employees of the personal service provider for services rendered that will be taken into account in the determination of the taxable income of those employees.
- Certain legal expenses.
- Bad debts, if certain requirements are met.
- Contributions by the employer to pension funds, provident funds or retirement annuity funds for the benefit of the employees.
- Amounts received or accrued for services rendered or in respect of or by virtue of employment or the holding of any office that was included in taxable income of the personal service provider and is refunded by that person.
- Any amount previously received or accrued as compensation for restraint of trade that is refunded by the personal service provider.
- Expenses for premises, finance charges, insurance, repairs and fuel and maintenance of assets, if such premises or assets are used wholly and exclusively for purposes of trade.

#### **(d) Labour broker**

The term “labour broker” is defined in paragraph 1 of the Fourth Schedule and means any natural person who conducts or carries on a business for reward of providing clients with other persons to render a service or perform work for the clients, or procures those other persons, for which such other persons are remunerated by the labour broker.

Employers are required to deduct PAYE at the tax rates applicable to individuals from all payments made to a labour broker, unless the labour broker is in possession of a valid IRP30 (exemption certificate) issued by SARS.

An exemption certificate will be issued by SARS to a labour broker if the labour broker –

- carries on an independent trade and is registered as a provisional taxpayer;
- is registered as an employer; and
- has, subject to any extension granted by the Commissioner, submitted all returns as are required to be submitted by the labour broker.

SARS will not issue an exemption certificate if –

- more than 80% of the gross income of the labour broker during the year of assessment consists of amounts received from any one client of the labour broker or any associated institution in relation to the client, unless the labour broker employs three or more full-time employees throughout the year of assessment who are engaged in the business of the labour broker on a full-time basis of providing persons to the clients and who are not connected persons in relation to the labour broker;
- the labour broker provides to any of its clients the services of any other labour broker;  
or

- the labour broker is contractually obliged to provide a specified employee of the labour broker to render services to the client.<sup>5</sup>

The deduction of expenses incurred by a labour broker without an exemption certificate is restricted to the amounts paid to the employees of the labour broker for services rendered that will comprise remuneration in the hands of those employees.

#### **(e) Independent contractor**

The concept of an “independent trader” or “independent contractor” (synonymous for practical purposes) still remains a complex feature of the Fourth Schedule. A decision in favour of either independent contractor or employee status impacts on an employer’s liability to deduct PAYE.

The liability of an employer to deduct PAYE is dependent on whether or not “remuneration” as defined in paragraph 1 of the Fourth Schedule is paid to an employee. Subject to certain conditions, amounts paid to a qualifying independent contractor for services rendered are excluded from “remuneration” as defined, in which case an employer has no liability to deduct PAYE from the amounts paid.

Two sets of tests are applied to determine whether a person is an independent contractor for PAYE purposes. The first is referred to as the statutory tests. The statutory tests are conclusive in nature which, if they apply, means that a person is either deemed to be, or is deemed not to be, an independent contractor for purposes of determining PAYE. The second is the common law tests, used to determine whether a person is an independent contractor or an employee. Unfortunately, the common law tests as they apply in South Africa do not permit a simple “checklist” approach. There are no hard and fast rules in determining whether or not a person is an independent contractor. An “overall” or “dominant impression” of the employment relationship must be formed. Legally, the common law tests should be performed first in determining whether a person is an employee or an independent contractor. In practice, the statutory tests are considered first. If the statutory tests are not applicable in a particular situation, the common law tests are applied to finally determine whether the person is an independent contractor or an employee.<sup>6</sup>

For VAT purposes, an independent contractor who carries on an enterprise is liable to register as a VAT vendor if the registration threshold of R1 million is exceeded.<sup>7</sup>

#### **(f) Small, medium and micro enterprises**

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, types of business entities and requirements of registration of a business entity, can be obtained from the Department of Trade and Industry or on its website [www.dti.gov.za](http://www.dti.gov.za).

<sup>5</sup> For more information see Interpretation Note 35 “Employees’ Tax: Personal Service Providers and Labour Brokers”.

<sup>6</sup> For more information see Interpretation Note 17 “Employees’ Tax: Independent Contractors”.

<sup>7</sup> Paragraph (iii)(bb) of the proviso to the definition of “enterprise” in section 1(1) of the VAT Act.

## **3. A business and the South African Revenue Service**

### **3.1 Introduction**

A general understanding of SARS, as well as the duties and obligations under the various tax laws are required when conducting a business.

Certain tax laws are administered by the Commissioner or by any officer or person engaged in carrying out the relevant laws under a delegation from or under the control, direction or supervision of the Commissioner.

SARS is obligated by law to determine and collect from each taxpayer the correct amount of tax that is due. The SARS officials or persons are the representatives of the Commissioner and in that capacity must ensure that the tax laws are administered correctly and fairly so that no one is favoured or prejudiced above the rest.

### **3.2 Income tax**

#### **3.2.1 General**

Income tax in respect of a business is levied on taxable income determined under the Act, or on taxable turnover of a micro business [see **2.1.6(a)** and **3.2.15(c)**].

#### **3.2.2 Registration**

As soon as a person commences a business, whether as a sole proprietor, a partner in a partnership or as a company, the person is required to register as a taxpayer with the local SARS branch or on SARS eFiling<sup>8</sup> in order to obtain a reference number. The person must register within 21 business days after becoming liable for any normal tax or becoming liable to submit any return.

See the **SARS website** for details for registering as a taxpayer.

Depending on other factors such as the type of taxpayer, turnover, payroll amounts, involvement in imports and exports etc, a taxpayer could also be liable for other taxes, duties, levies and contributions such as VAT, PAYE, SDL, UIF contributions, dividends tax, Customs and Excise.

#### **3.2.3 Change of address**

The TA Act requires that if a person's postal or physical address changes, the person must, within 21 business days after the change, notify SARS of the new address.

#### **3.2.4 Year of assessment and filing of income tax returns**

The year of assessment for natural persons and trusts covers a 12 month period which commences on 1 March of a specific year and ends on the last day of February of the following year. The year of assessment of a deceased person commences on 1 March and ends on the date of death. An insolvent person must submit two returns for a year of assessment, one for the period commencing on 1 March and ending on the date preceding the date of sequestration, and one commencing on the date of sequestration and ending on the last day of February. A natural person ceasing to be a resident should submit a return for the period commencing on 1 March and ending on the day preceding the date that the person ceases to be a resident.

---

<sup>8</sup> Registration on SARS eFiling can be done for income tax, VAT and PAYE.

Natural persons and trusts may be allowed to draw up financial statements for their business to a date other than the last day of February.<sup>9</sup>

A company's year of assessment ends on a date that coincides with its financial year-end. The year of assessment of a company with a financial year-end of 30 June will run from 1 July and end on 30 June of the following year. A company that ceases to be a resident, must submit a return for the period commencing on the first day of the year of assessment and ending on the day preceding the date that the company ceases to be a resident.

Income tax returns must be submitted manually or electronically by a specific date each year. The date is published for information of the general public and is promoted by a filing season campaign to encourage compliance in this regard. Companies are allowed to close their financial accounts on a date other than the last day of the financial year, based on the Commissioner's approval.<sup>10</sup>

### 3.2.5 SARS eFiling and SARS MobiApp

SARS eFiling is an online process for the submission of tax returns and related functions. This service allows taxpayers, tax practitioners and businesses to register, submit tax returns, make payments and perform a number of other interactions with SARS in a secure online environment.

Taxpayers registered for SARS eFiling can engage with SARS online for the submission of returns and payments of the following:

- Dividends tax
- Estate duty
- Income tax
- PAYE
- Provisional tax
- SDL
- Transfer duty
- UIF contributions
- VAT
- Withholding tax on interest

While the payment of withholding tax on royalties can be made via the SARS eFiling platform, the Return for Withholding Tax on Royalties (WTR01) must be submitted manually. For taxpayers that deal with the Large Business Centre, this return must be submitted via email to **lbqueries@sars.gov.za** along with the proof of payment. All other taxpayers must manually submit the return at the nearest SARS branch office with the proof of payment.

SARS also introduced SARS MobiApp to make it simpler and more convenient for taxpayers to file income tax returns.

---

<sup>9</sup> For more information see Interpretation Note 19 "Year of Assessment of Natural Persons and Trusts: Accounts Accepted to a Date other than the Last Day of February".

<sup>10</sup> For more information see Interpretation Note 90 "Year of Assessment of a Company: Accounts Accepted to a Date other than the Last Day of a Company's Financial Year".



The following should be noted:

- A taxpayer must retain all supporting documents to a return for five years from the date upon which the return is submitted to SARS, since SARS may require these documents for audit purposes.
- SARS will under certain circumstances, on request, still require the submission of documents for purposes of verification.
- SARS will do validation checks on the data submitted to ensure its accuracy, including validations against the electronic employees' tax certificates (IRP5s) submitted by employers to SARS.
- SARS will generally issue assessments electronically.

For more information visit the SARS eFiling website at [www.sarsefiling.gov.za](http://www.sarsefiling.gov.za).

### **3.2.6 Payments at banks**

Over-the-counter tax payments can be made countrywide at several banks.

For more information on the payment rules see the *External Guide: South African Revenue Service Payment Rules (GEN-PAYM-01-G01)*.

### **3.2.7 Electronic funds transfer**

Payment may be made via internet banking facilities. All internet payments must be correctly referenced to ensure that SARS is able to identify taxpayers' payments and to correctly allocate the amounts to taxpayers' accounts.

Several banks support EFT payments. See the **SARS website** for more details.

### **3.2.8 Provisional tax (the Fourth Schedule)**

As soon as a taxpayer commences business, such taxpayer may become liable for provisional tax.

The payment of provisional tax is intended to assist taxpayers in meeting their normal tax liabilities. Two provisional tax payments are made during a relevant year of assessment and an optional third payment can be made after the end of the year of assessment.

The first provisional tax payment must be made within six months after the commencement of the year of assessment and the second payment not later than the last day of the year of assessment. An optional third payment is voluntary and may be made within six months after the end of the year of assessment if the year of assessment ends on a date other than the last day of February. For a year of assessment ending on the last day of February, the optional third payment must be made within seven months after the end of the year of assessment.<sup>11</sup>

### **3.2.9 Employees' tax (PAYE) (the Fourth Schedule)**

An employer is, under the Act, required to deduct PAYE from the remuneration of employees and pay these amounts deducted over to SARS on a monthly basis. PAYE is not a separate tax and is set off against the income tax liability of an employee, calculated on an annual basis to determine the employee's final income tax liability for the year of assessment.

---

<sup>11</sup> For more information see the *External Guide: Guide for Provisional Tax 2020 (IT-PT-AE-01-G01)* and Interpretation Note 1 "Provisional Tax Estimates".

Every employer who pays or becomes liable to pay an amount of remuneration, or if that amount constitutes a lump sum to any person who is liable for normal tax, must register with SARS as an employer for PAYE purposes. An employer must apply for registration within 21 business days after becoming an employer or within such further period as the Commissioner may approve. That means that any business that pays remuneration to any of its employees that is above the tax threshold for the 2020 year of assessment, namely –

- R79 000 (for a natural person under the age of 65 years);
- R122 300 (for a natural person aged 65 years or older but not yet 75 years); or
- R136 750 (for a natural person aged 75 years or older),

must register with SARS for PAYE purposes. See the **SARS website** for registration procedures.

Once registered, the employer must request a monthly return (EMP 201) on SARS eFiling or e@syFile™ that must be submitted within seven days after the end of the month during which the PAYE was deducted (for example, PAYE deducted for the month of April should be paid by the 7<sup>th</sup> of May). If none of the employer's employees is liable for income tax, the employer is not required to register as an employer.

For more information on the deduction of PAYE and the payment thereof to SARS see the guide<sup>12</sup> and tables.<sup>13</sup>

### 3.2.10 How to determine net profit or loss of a business

To prepare an income tax return, a taxpayer will need to understand the basic steps in determining the profit or loss of a business. A profit or loss is determined as follows:

$$\text{Income} - \text{Expenses} = \text{Profit (Loss)}$$

The diagram, **Comparative profit or loss statements** (see 3.2.11), explains the determination of net profit or loss and the distribution of income for the different types of business entities.

The following key concepts are explained:

- *Gross sales or turnover*

Gross sales is the total amount in cash or otherwise received by or accrued to a business.

Example: "ABC Furniture Store sold R6 000 000 worth of furniture of which R1 000 000 was received in cash and R5 000 000 was on credit. ABC Furniture Store had gross sales of R6 000 000".

<sup>12</sup> *External Guide: Guide for Employers in respect of Employees' Tax (2020 Tax Year) (PAYE-GEN-01-G13).*

<sup>13</sup> See the published *External Annexures* setting out the tax deduction tables for the 2020 tax year: *Weekly (PAYE-GEN-01-G01-A01); Fortnightly (PAYE-GEN-01-G02-A02); Monthly (PAYE-GEN-01-G01-A03); Annual (PAYE-GEN-01-G01-A04); and Other.*

- *Cost of sales*

Cost of sales is the cost to a business to buy or produce the product that is sold to the consumer. To determine cost of sales the cost of goods bought or produced during the year of assessment must be added to the cost of stock on hand at the beginning of the year of assessment. From this total the cost of stock on hand at the end of the year of assessment is subtracted.

In this example, ABC Furniture Store had R800 000 worth of furniture in store at the beginning of the year of assessment. During the year of assessment R3 000 000 worth of furniture was bought from a manufacturer. At the end of the year of assessment the store had R500 000 worth of furniture. The cost of goods sold for the year of assessment would be:

$$\begin{aligned} \text{Opening stock} + \text{Purchases} - \text{Closing stock} &= \text{Cost of sales} \\ \text{R800 000} + \text{R3 000 000} - \text{R500 000} &= \text{R3 300 000} \end{aligned}$$

- *Gross profit*

Gross profit equals gross sales less the cost of sales.

In this example, ABC Furniture Store had gross sales of R6 000 000. The cost of sales was R3 300 000. The gross profit is R6 000 000 – R3 300 000 = R2 700 000.

- *Business expenses*

Business expenses, also referred to as operating expenses, are expenses incurred in the operation of a business. ABC Furniture Store expended R1 300 000 on items such as rent, wages, telephone, electricity, stationery, travelling and other business expenses.

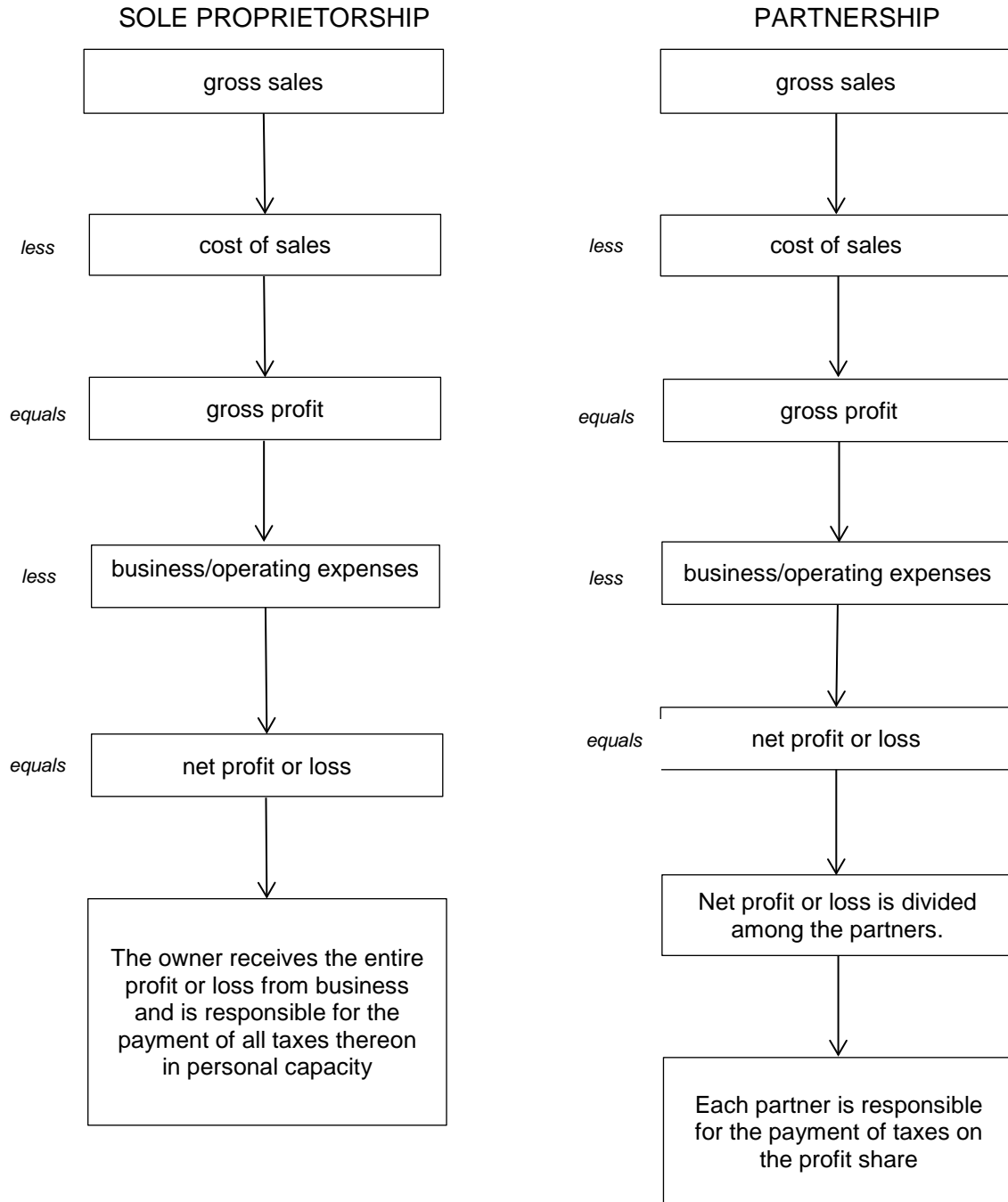
- *Net profit or loss*

Net profit is the amount by which the gross profit exceeds the business expenses. Net loss is the amount by which the business expenses exceed the gross profit.

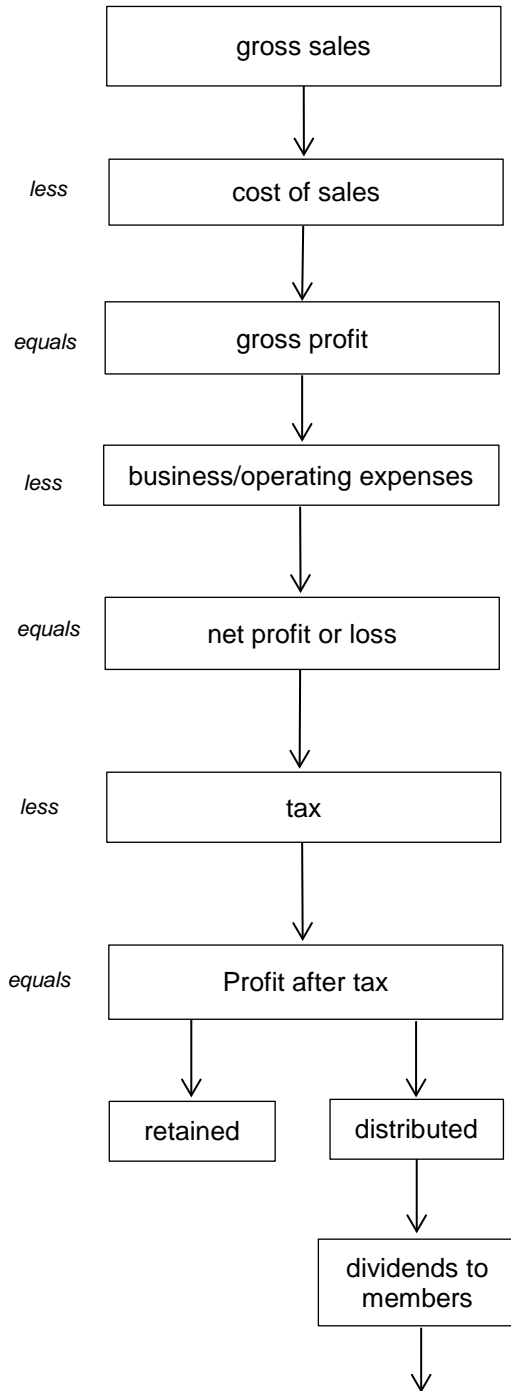
In this example, ABC Furniture Store had a gross profit of R2 700 000 and business expenses of R1 300 000, leaving ABC Furniture Store with a net profit of R1 400 000.

In the case of a business providing a service, that is, no physical goods are kept or sold, the procedure to determine business profit or loss is the same as mentioned above with the exception of cost of sales. A business that provides a service only will generally not have to calculate cost of sales. Business expenses will be deducted from the gross turnover to determine net profit or net loss.

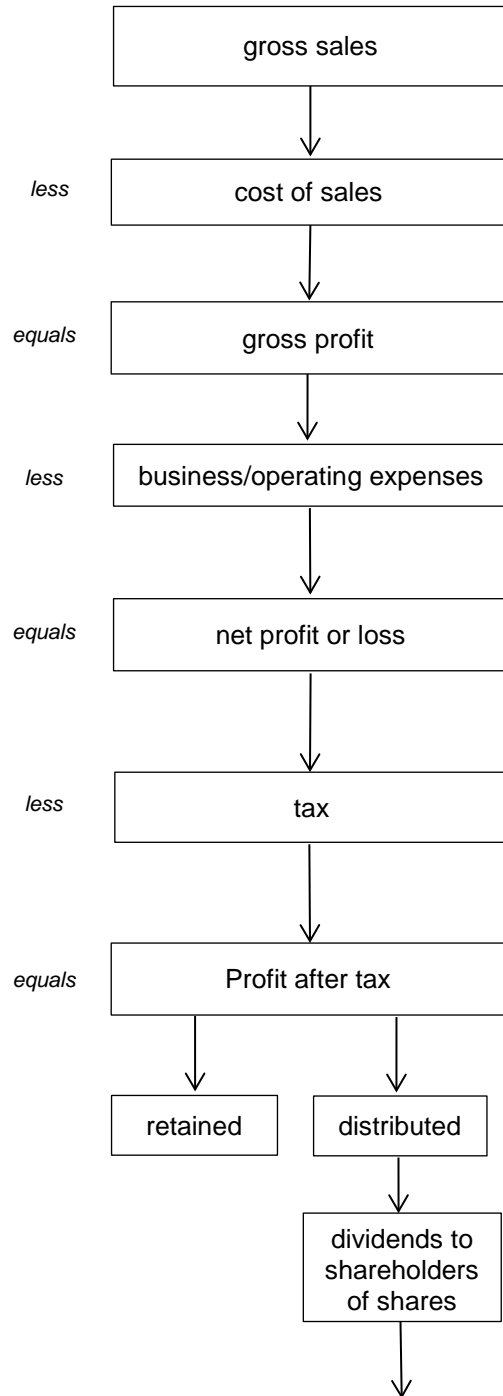
### 3.2.11 Comparative profit or loss statements



### CLOSE CORPORATION



### PRIVATE COMPANY



The CC is responsible for the payment of taxes. Any local dividend received or accrued from a CC is generally exempt from normal tax in the hands of the members. The CC must withhold dividends tax from cash dividends paid to beneficial owners. The beneficial owners are liable for dividends tax on cash dividends. The CC is liable for dividends tax on a dividend *in specie*. The CC is responsible for the payment of taxes. Any dividend declared by the CC is generally exempt from normal tax in the hands of the members (beneficial owners). A cash dividend is subject to dividends tax in the hands of the members. The CC is liable for dividends tax on a dividend *in specie*.

The company is responsible for the payment of taxes. Any local dividend received or accrued from a company is generally exempt from normal tax in the hands of the holders of shares. The company must withhold dividends tax from cash dividends paid to beneficial owners. The beneficial owners are liable for dividends tax on cash dividends. The company is liable for dividends tax on a dividend *in specie*. The company is responsible for the payment of taxes. Any dividend paid by the company is generally exempt from normal tax in the hands of the holders of the shares (beneficial owners). A cash dividend is subject to dividends tax in the hands of the holders of the shares. The company is liable for dividends tax on a dividend *in specie*.

### **3.2.12 Connection between “net profit” and “taxable income”**

The concept “net profit” is an accounting concept and describes the amount of the profit made by a business from an accounting point of view.

The term “taxable income” on the other hand is defined in section 1(1) and describes the amount on which a business’ normal tax is calculated.

These two amounts will often be different because of the basic differences in the income and deductions taken into account in determining these amounts. For example, certain income of a capital nature may be fully included for accounting purposes, while only a portion thereof may be included for normal tax purposes (see **3.2.28**). On the deduction side, there may be timing differences in the depreciation of capital assets or special deductions or allowances for income tax purposes which will cause differences in the deductions allowed for accounting purposes and those allowed for income tax purposes.

Nevertheless, the determination of net profit from an accounting point of view is an important building block in the determination of the taxable income of a business. Every business must prepare a set of financial statements (income statement and a statement of assets and liabilities). From the income statement which determines the net profit or loss of a business, certain adjustments can be made to the net profit or loss to compute (normally referred to as the tax computation) the taxable income or assessed loss of the business.

### **3.2.13 Determination of taxable income or assessed loss**

The Act provides for a series of steps to be followed in arriving at a person’s taxable income or assessed loss. The starting point is to determine the person’s gross income which is, in the case of –

- any person who is a resident, the total amount of worldwide income, in cash or otherwise, received by or accrued to or in favour of the person during the year of assessment, excluding receipts or accruals of a capital nature; or
- any person who is not a resident, the total amount of income, in cash or otherwise, received by or accrued to or in favour of the person from a source within South Africa during the year of assessment, excluding receipts or accruals of a capital nature.

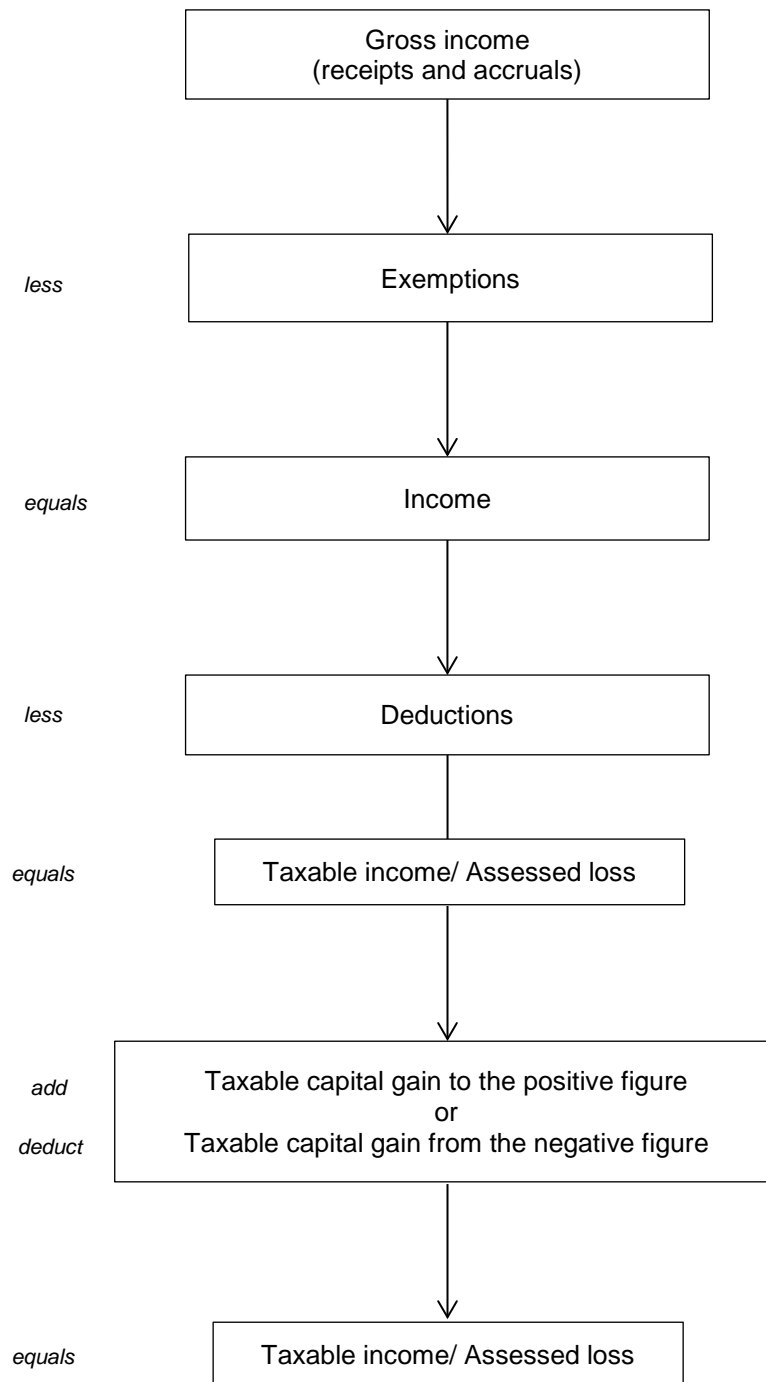
Receipts or accruals of a capital nature are generally excluded from gross income, since the Eighth Schedule deals with capital gains and capital losses. However, gross income also includes certain other receipts and accruals specified within the definition of “gross income” regardless of their nature.

The next step is to determine income which is the result of deducting from gross income all receipts and accruals that are exempt from normal tax.

Finally, the taxable income or assessed loss of a person is arrived at by –

- deducting from income, all the allowable expenses and allowances, under the Act; and
- adding all specific amounts to be included in income or taxable income under the Act.

The determination of a person's taxable income or assessed loss can be illustrated as follows:



### 3.2.14 General deduction formula

Expenditure and losses are deductible under section 11(a) read with section 23(g) for income tax purposes. To be deductible the expenditure and losses must be –

- actually incurred;
- in the production of income;
- not of a capital nature; and
- laid out or expended for the purposes of trade.

In addition, expenditure and losses must be claimed during the year of assessment in which they are actually incurred.

The above requirements form the essence of what is known as the general deduction formula.

Besides the general deductions, the Act provides for a number of special and additional deductions and allowances. The most relevant of these deductions and allowances for small businesses are discussed in **3.2.16**.

### 3.2.15 Tax rates and rebates

**(a) Taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit) of any natural person, deceased estate, insolvent estate or special trust**

Year of assessment ending during the 12-month period ending on 29 February 2020

<b>Taxable income</b>	<b>Rate of tax</b>
Not exceeding R195 850	18% of taxable income
Exceeding R195 850 but not exceeding R305 850	R35 253 plus 26% of the amount by which taxable income exceeds R195 850
Exceeding R305 850 but not exceeding R423 300	R63 853 plus 31% of the amount by which taxable income exceeds R305 850
Exceeding R423 300 but not exceeding R555 600	R100 263 plus 36% of the amount by which taxable income exceeds R423 300
Exceeding R555 600 but not exceeding R708 310	R147 891 plus 39% of the amount by which taxable income exceeds R555 600
Exceeding R708 310 but not exceeding R1 500 000	R207 448 plus 41% of the amount by which taxable income exceeds R708 310
Exceeding R1 500 000	R532 041 plus 45% of the amount by which taxable income exceeds R1 500 000

#### *Normal tax rebates*

Applicable to a natural person only – Year of assessment commencing on 1 March 2019 or ending on 29 February 2020

<b>Rebate</b>	<b>Amount</b>
Primary rebate – (Below the age of 65 years)	R14 220
Secondary rebate – (Age 65 years or older) additional to primary rebate	R7 794
Tertiary rebate – (Age 75 years or older) additional to primary and secondary rebates	R2 601



### *Medical scheme fees tax credit*

The amount of the MTC in respect of fees paid by a natural person to a medical scheme registered under the Medical Schemes Act 131 of 1998, or a fund which is registered under any similar provisions contained in the laws of any other country where the medical scheme is registered, is allowable as a rebate. The amount of the MTC is deducted from normal tax payable by the natural person and is calculated as follows –

- R310 in respect of benefits to the taxpayer, or if the taxpayer is not a member of a medical scheme or fund in respect of benefits to a dependant who is a member of a medical scheme or fund or a dependant of a member of a medical scheme or fund;
- R620 in respect of benefits to the taxpayer and one dependant; or
- R620 in respect of benefits to two dependants; and
- R209 in respect of benefits for each additional dependant,

for each month in the 2020 year of assessment for which contributions are paid. The MTC reflected above will apply to qualifying taxpayers irrespective of their age and whether or not they or their dependant(s) are persons with a disability.

If the taxpayer is not a member of a registered medical scheme, but pays fees for a dependant person, and that dependent person is a member of a registered medical scheme or fund, the MTC of R310 referred to above would also be allowed in the taxpayer's hands. An example of such a case is fees paid by a taxpayer in respect of a parent that is dependent of the taxpayer.

There may be situations in which contributions are paid to a registered medical scheme by more than one taxpayer, for example, siblings who share the costs for a parent who is a "dependant" as defined. In such cases, the MTC must be apportioned between each person paying the contributions. The following formula will be used to determine the MTC that may be claimed by each taxpayer:

$$\frac{\text{Contributions payable by the person}}{\text{Total contributions payable}} \times \text{Total MTC}$$

Any contribution or payment made by an employer for the benefit of an employee will be a taxable benefit for the employee and will be included in the employee's gross income.<sup>14</sup>

### *Additional medical expenses tax credit*

Qualifying medical expenses are allowed as a rebate and are deductible from the normal tax payable by a natural person.

Any medical expenses incurred by an employer in respect of medical, dental or similar services provided to the employee will be a taxable benefit for the employee and will be included in the employee's gross income.

A person's entitlement to the additional medical expenses tax credit depends on the category in which the person falls, namely whether –

- the person is aged 65 years or older;
- the person, the person's spouse or child is a person with a "disability" as defined in section 6B(1); or

<sup>14</sup> For more information see the *Guide on the Determination of Medical Tax Credits* and section 6A.

- the person is under 65 years of age.

The amount to be deducted is calculated as follows:<sup>15</sup>

Category	Amount
The person is aged 65 years or older	<p>The aggregate of:</p> <p>(i) 33,3% of so much of the amount of the fees paid by that person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the MTC to which that person is entitled under section 6A(2)(b); and</p> <p>(ii) 33,3% of the amount of qualifying medical expenses paid by that person.</p>
The person, spouse or child is a person with a "disability" as defined in section 6B(1)	<p>The aggregate of:</p> <p>(i) 33,3% of so much of the amount of the fees paid by that person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the MTC to which that person is entitled under section 6A(2)(b); and</p> <p>(ii) 33,3% of the amount of qualifying medical expenses paid by that person.</p>
The person is under 65 years of age	<p>If the aggregate of –</p> <p>(i) the amount of the fees paid by that person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds four times the amount of the MTC to which that person is entitled under section 6A(2)(b); and</p> <p>(ii) the amount of qualifying medical expenses paid by that person, exceeds 7,5% of the person's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), 25% of the excess.</p>

**(b) Taxable income of trusts (other than special trusts or public benefit organisations, recreational clubs or small business funding entities that are trusts)**

Year of assessment commencing on 1 March 2019 and ending on 29 February 2020

<b>Rate of tax</b>
45% of taxable income

<sup>15</sup> For more information see the *Guide on the Determination of Medical Tax Credits* and section 6B.

**(c) Taxable income of companies**

- (i) Companies (including CCs but excluding companies mining for gold, oil and gas companies in respect of taxable income attributable to its oil and gas income, long-term insurance companies in respect of its individual policyholder fund, companies qualifying as small business corporations and companies qualifying as micro businesses)**

Year of assessment ending during the 12-month period ending on 31 March 2020

<b>Rate of tax</b>
28% of taxable income

**(ii) Taxable income of companies qualifying as small business corporations**

Year of assessment ending during the 12-month period ending on 31 March 2020

<b>Taxable income</b>	<b>Rate of tax</b>
Not exceeding R79 000	0% of taxable income
Exceeding R79 000 but not exceeding R365 000	7% of the amount by which taxable income exceeds R79 000
Exceeding R365 000 but not exceeding R550 000	R20 020 plus 21% of the amount by which taxable income exceeds R365 000
Exceeding R550 000	R58 870 plus 28% of the amount by which taxable income exceeds R550 000

**(iii) Taxable income of micro businesses (turnover tax)**

Year of assessment ending during the 12-month period ending on 31 March 2020

<b>Taxable turnover</b>	<b>Rate of tax</b>
Not exceeding R335 000	0% of taxable turnover
Exceeding R335 000 but not exceeding R500 000	1% of the amount by which taxable turnover exceeds R335 000
Exceeding R500 000 but not exceeding R750 000	R1 650 + 2% of the amount by which taxable turnover exceeds R500 000
Exceeding R750 000	R6 650 + 3% of the amount by which taxable turnover exceeds R750 000

### 3.2.16 Special allowances or deductions and recoupment

#### *Recoupment of allowances and deductions*

Under section 8(4)(a), any amounts allowed to be deducted under, amongst others, sections 11 to 20, that are recovered or recouped, for example when the asset is sold, should be included in a taxpayer's gross income.

Section 8(4)(e), subject to sections 8(4)(eB), (eC), (eD) and (eE), applies if the taxpayer elects that paragraph 65 or 66 of the Eighth Schedule apply to the disposal of a damaged or destroyed asset. The amount to be included in income in a year of assessment is limited to an amount apportioned to the replacement asset but in the same ratio as the deduction of the allowance is allowed for the replacement asset, which have the effect that the cost of the replacement asset is not reduced. The following provisions must be kept in mind:

- If a taxpayer acquires more than one replacement asset that taxpayer must, in applying paragraphs (eB), (eC) and (eD), apportion the recoupment to each replacement asset in the same ratio as the receipts and accruals from the disposal respectively expended to acquire each replacement asset bear to the total receipts and accruals expended in acquiring all those replacement assets [section 8(4)(eA)].
- The amount of the recoupment will be included in the taxpayer's income over the period that the replacement asset is written off for tax purposes in the same proportion as the allowance granted on the replacement asset [section 8(4)(eB)].
- In the year of assessment in which the taxpayer disposes of a replacement asset, any portion of the recoupment that is apportioned to the replacement asset that has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [section 8(4)(eC)].
- In the year of assessment in which the taxpayer ceases to use a replacement asset for the purposes of that person's trade, any portion of the recoupment that is apportioned to the replacement asset that has not been included in the taxpayer's income will be deemed to have been recouped in that year of assessment [section 8(4)(eD)].
- In the year of assessment in which the taxpayer fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraph 65 or 66 of the Eighth Schedule, section 8(4)(e) will not apply and the amount recovered or recouped as a result of the disposal of the asset will be deemed to be recouped under section 8(4)(a) on the date on which the relevant period ends [section 8(4)(eE)].

#### *Expenditure incurred in respect of moving costs*

Expenditure incurred by a taxpayer during any year of assessment in moving an asset from one location to another, for which an allowance was deducted or is deductible, will be allowed as a deduction as follows:

- If the allowance is deductible in that year of assessment and one or more succeeding years of assessment, the expenditure in respect of the moving costs will be allowed in equal instalments in each year of assessment in which the allowance is deductible.
- In any other case, the expenditure in respect of the moving costs will be allowed in that year of assessment.

**(a) Machinery, plant, implements, utensils and articles [section 11(e)]**

An allowance, equal to the amount by which the value of any machinery, plant, implements, utensils and articles, other than assets contemplated in sections 12B, 12C, 12DA, 12E(1), 12U and 37B has diminished through wear-and-tear or depreciation, as the Commissioner may think just and reasonable will be allowed.

Any foundation or supporting structure to which the asset is mounted or affixed forms part of the asset and qualifies for the allowance.

The depreciable cost of the asset is the direct cost under a cash transaction concluded at arm's length including the direct cost of the installation or erection thereof.

The value of the asset will be increased by the amount of any expenditure incurred by a taxpayer during any year in moving the asset from one location to another.

The assets must be owned by the taxpayer or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in section 1(1) of the VAT Act.

Small items costing less than R7 000 may be written off in full in the year of assessment of acquisition.<sup>16</sup>

Any recoupment of the allowance granted will be included in the taxpayer's income under section 8(4)(a).

**(b) Inventions, patents, designs, trade marks, copyrights and knowledge [sections 11(gA), 11(gB) and 11(gC)]**

*Expenditure incurred during any year of assessment commencing before 1 January 2004 [section 11(gA)]*

An allowance for expenditure actually incurred (other than expenditure which has qualified in whole or part for deduction or allowance under section 11 or under a provision of a previous Act), in –

- devising or developing any invention;
- creating or producing any design, trade mark, copyright, other property which is of a similar nature;
- obtaining or restoring any patent or the registration of any design or trade mark; or
- acquiring any such patent, design, trade mark or copyright or any other property of a similar nature or knowledge essential to use such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,

may be deducted.

These expenditure will be allowed as a deduction if the invention, patent, design, trade mark, copyright, other property or knowledge, as the case may be, is used by the taxpayer in the production of income.

---

<sup>16</sup> For more information see Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance".

In the case of expenditure exceeding R5 000 and incurred before 29 October 1999, an allowance shall not exceed for any one year the amount which is greater of –

- the expenditure divided by the number of years which represents the probable duration of use of the invention, patent, design, trade mark, copyright, other property or knowledge; or
- 4% of the said amount.

In the case of expenditure exceeding R5 000 and incurred on or after 29 October 1999, an allowance will not exceed an amount equal to –

- 5% of the expenditure incurred on any invention, patent, trade mark, copyright or property of a similar nature or any knowledge essential to the use thereof or the right to have such knowledge imparted; or
- 10% of the expenditure of any design or other property of a similar nature or any knowledge essential to the use thereof or the right to have such knowledge imparted.

No allowance may be deducted for expenditure incurred on or after 29 October 1999 for the acquisition of a trade mark or other property of a similar nature or knowledge essential to the use of such trade mark or the right to have such knowledge imparted.

This allowance will not be granted for expenditure incurred during any year of assessment commencing on or after 1 January 2004.

*Expenditure (other than expenditure which has qualified in whole or in part for deduction or allowance under any of the other provision of section 11) [section 11(gB)]*

Expenditure actually incurred in respect of the following assets will be allowed as a deduction if these assets are used in the production of income:

- Obtaining the grant of any patent.
- The restoration of any patent.
- The extension of the term of any patent.
- The registration of any design.
- Extension of the registration period of any design.
- The registration of any trade mark.
- Renewal of the registration of any trade mark.

*Expenditure incurred during any year of assessment commencing on or after 1 January 2004 [section 11(gC)]*

An allowance may be deducted for expenditure actually incurred to acquire (otherwise than by devising, developing or creating) –

- an invention or patent as defined in the Patents Act 57 of 1978;
- a design as defined in the Designs Act 195 of 1993;
- a copyright as defined in the Copyright Act 98 of 1978;
- other property which is of a similar nature (other than a trade mark as defined in the Trade Marks Act 194 of 1993); or
- knowledge essential to the use of such patent, design, copyright or other property or the right to have such knowledge imparted.

The allowance may be deducted in the year of assessment in which the abovementioned property is brought into use for the first time by the taxpayer for purposes of the taxpayer's trade if used in the production of income.

In the case of expenditure that exceeds R5 000, the allowance will not exceed in any year of assessment –

- 5% of the expenditure incurred on any invention, patent, copyright or other property of a similar nature or any knowledge essential to the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or
- 10% of the expenditure of any design or other property of a similar nature or any knowledge essential to the use of such design or other property or the right to have such knowledge imparted.

Any recoupment of an allowance granted under section 11(gA), (gB) or (gC) will be included in the taxpayer's income under section 8(4)(a).

### **(c) Expenditure incurred to obtain a licence [section 11(gD)]**

Expenditure (other than on infrastructure) incurred by a taxpayer to acquire a licence from certain government authorities to carry on a trade that constitutes the provision of a telecommunication service, the exploration, production or distribution of petroleum or the provision of gambling facilities, may be claimed as a deduction. The deduction for any year of assessment must not exceed an amount equal to the amount of the expenditure divided by the number of years for which the taxpayer has the right to the licence after the date that the expenditure was incurred or 30 years, whichever is the lesser.

### **(d) Scientific or technological research and development (sections 11D, 12C and 13)**

A deduction, equal to 150% of the expenditure incurred directly and solely on R&D undertaken in South Africa, will be allowed in the year of assessment in which the expenditure is incurred in the production of income and in the carrying on of any trade. This deduction may not be allowed for expenditure incurred in respect of –

- immovable property, machinery, plant, implements, utensils or articles excluding any prototype or pilot plant created solely for the purpose of the process of R & D and that prototype or pilot plant is not intended to be utilised or is not utilised for production purposes after that R & D is completed; and
- financing, administration, compliance and similar costs.

The R&D must be approved under section 11D(9) and the expenditure must be incurred on or after the date of receipt of the application by the Department of Science and Innovation for approval of that R&D.

If a person undertakes R&D activities on behalf of another person (the funder), only the person responsible for determining the research methodology will be eligible to qualify for the 150% deduction.

The Minister of Science and Innovation may withdraw an approval granted for R&D with effect from a specific date under certain circumstances. Under section 11D(19) an additional assessment for any year of assessment may be raised for a deduction for R&D allowed, if approval for such deduction is subsequently withdrawn.

A deduction, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of any new and unused building or part thereof, and brought into use for the purpose of carrying on therein a process of R&D in the course of that taxpayer's trade, will be allowed (section 13).<sup>17</sup>

A deduction, equal to a three year write-off at a rate of 50:30:20 will be allowed for any new and unused machinery, plant, implement, utensil or article or improvement thereto brought into use for purposes of R&D (section 12C).

Any foundation or supporting structure to which the asset, acquired under an agreement formally and finally signed by every party to the agreement on or after 1 January 2012, is mounted or affixed, forms part of the asset and qualifies for the allowance.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition.

Any recoupment of the allowance granted will be accounted for under section 8(4)(a) or (e) (see **3.2.16**).

**(e) Machinery, plant, implements, utensils or articles or improvements thereto used in farming or production of renewable energy (section 12B)**

A deduction is allowed under section 12B on machinery, plant, implements, utensils, articles and improvements (other than repairs) to these assets used in farming or the production of renewable energy if it meets all the requirements.

An allowance will be granted for these assets owned or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in section 1(1) of the VAT Act, and brought into use for the first time by the taxpayer –

- in the carrying on of farming operations except on –
  - livestock;
  - any motor vehicle of which the sole primary function is the conveyance of persons;
  - any caravan;
  - any aircraft (other than an aircraft used solely or mainly for crop spraying); or
  - any office furniture or equipment;
- for the purpose of trade to be used for the production of bio-diesel or bio-ethanol;
- for trade purposes to generate electricity from –
  - wind power;
  - (i) photovoltaic solar energy of more than 1 megawatt;
  - (ii) photovoltaic solar energy not exceeding 1 megawatt; or
  - (iii) concentrated solar energy;
  - hydropower to produce electricity of not more than 30 megawatts; or
  - biomass comprising organic wastes, landfill gas or plant material.

---

<sup>17</sup> For more information see the *Guide to Building Allowances*.



An allowance on –

- assets used to generate electricity from photovoltaic solar energy not exceeding 1 megawatt, equal to 100% of the cost of the asset (in respect of years of assessment commencing on or after 1 January 2016); and
- all other assets, equal to –
  - 50% of the cost of the asset to the taxpayer in the year of assessment (first year of assessment) in which the asset is so brought into use;
  - 30% of such cost in the second year of assessment; and
  - 20% of such cost in the third year of assessment,

may be deducted.

Any foundation or supporting structure to which the abovementioned assets are mounted or affixed forms part of the asset and qualifies for the allowance.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition.

Any recoupment of the allowance granted will be accounted for under section 8(4)(a) or (e) (see **3.2.16**).

#### **(f) Aircraft and ships (section 12C)**

An allowance, equal to 20% (five-year straight-line basis) of the cost to a taxpayer to acquire an aircraft or ship (the asset) may be deducted as from the year of assessment during which the asset is brought into use.

The asset must be owned by the taxpayer or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in section 1(1) of the VAT Act.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition.

The full amount of any recoupment of the allowance will be included in the taxpayer's income under section 8(4)(a).

#### **(g) Manufacturing assets (section 12C)**

The following assets qualify for an allowance under section 12C:

- Machinery or plant or improvements thereto owned or acquired by a taxpayer and brought into use for the first time by the taxpayer in a direct process of manufacture or similar process.
- Machinery or plant or improvements thereto owned or acquired by a taxpayer and let to a lessee who brought the assets into use for the first time in its trade as manufacturer.

- Machinery or plant owned or acquired by a taxpayer (manufacturer) that was or is made available by the manufacturer under a contract to another person for no consideration and brought into use for the first time by that other person for that other person's trade. These assets must be used by that other person solely for the benefit of the manufacturer for the purpose of the performance of the person's obligation under that contract in a process of manufacture under the Automotive Production and Development Programme administered by the Minister of Trade and Industry or Automotive Incentive Scheme administered by that Department.
- Machinery or plant or improvements thereto owned or acquired by a taxpayer and brought into use for the first time by any agricultural co-operative for storing or packing farming products.
- Machinery, implements, utensils or articles (other than those referred to in the bullet below) or improvements thereto owned or acquired by the taxpayer and brought into use for the first time by the taxpayer for purposes of trading as hotelkeeper.
- Machinery, implements, utensils or articles (other than those referred to in the above bullet) or improvements thereto owned or acquired by a taxpayer and let to a lessee who brought these assets into use for the first time in its trade as hotelkeeper.

An allowance, equal to 20% (5-year straight-line basis) of the cost to a taxpayer to acquire the asset or improvements effected thereto may be deducted.

Any foundation or supporting structure to which the asset is mounted or affixed forms part of the asset and qualifies for the allowance.

The allowance is increased for a new or unused asset, acquired on or after 1 March 2002 and brought into use by the taxpayer in its manufacture or similar process carried on in the course of its business to –

- 40% of the cost to the taxpayer in the year of assessment during which the asset was or is so brought into use; and
- 20% of the cost to the taxpayer in each of the three succeeding years of assessment.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition.

The asset must be owned or acquired by the taxpayer as purchaser under an "instalment credit agreement" as defined in section 1(1) of the VAT Act.

Any recoupment of the allowance granted will be accounted for under section 8(4)(a) or (e) (see **3.2.16**).

#### **(h) Certain pipelines, transmission lines and railway lines (section 12D)**

##### *Pipelines used for transportation of natural oil*

An allowance, equal to 10% (10-year straight-line basis) of the cost incurred by a taxpayer on the acquisition of any new or unused pipelines may be deducted.

The pipeline must be owned and brought into use for the first time by the taxpayer and used directly for the transportation of natural oil.

#### *Pipelines for transportation of water used by power stations*

An allowance, equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer to acquire any new or unused pipelines will be granted.

The pipeline must be owned and brought into use for the first time by the taxpayer and used directly for the transportation of water used by power stations in generating electricity.

#### *Lines or cables used for transmission of electricity*

An allowance, equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer to acquire any new or unused lines or cables may be deducted.

The line or cable must be owned and brought into use for the first time by the taxpayer and used directly for the transmission of electricity.

#### *Lines or cables used for transmission of electronic communications*

An allowance, equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer for any new or unused lines or cables acquired before 1 April 2015 may be deducted.

The line or cable must be owned and brought into use for the first time by the taxpayer and used directly for the transmission of telecommunication signals.

The allowance increased to 6,67% (15-year straight-line basis) for lines and cables (new or used) owned by the taxpayer and brought into use for the first time by the taxpayer. The increased allowance applies only to lines and cables acquired on or after 1 April 2015.

#### *Railway lines used for transportation of persons, goods or things*

An allowance, equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer to acquire new or unused railway lines may be deducted.

The railway line must be owned and brought into use for the first time by the taxpayer and used directly for the transportation of persons or goods or things.

Earthworks or supporting structures forming part of abovementioned assets and any improvements thereto, will also qualify for the relevant allowance.

The depreciable cost of these assets is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition.

Any recoupment of the allowance granted will be accounted for under section 8(4)(a) or (e) (see **3.2.16**).

#### **(i) Rolling stock (trains and carriages) (section 12DA)**

An allowance, equal to 20% (five-year straight-line basis) of the cost incurred by a taxpayer on rolling stock brought into use on or after 1 January 2008 may be deducted.

The depreciable cost of the stock is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price of the stock at the time of acquisition.

The rolling stock must be owned or acquired by the taxpayer as purchaser under an “instalment credit agreement” as defined in section 1(1) of the VAT Act and must be used directly by the taxpayer wholly or mainly for the transportation of persons, goods or things.

Any recoupment of the allowance granted will be accounted for under section 8(4)(a) or (e) (see **3.2.16**).

#### **(j) Airport assets (section 12F)**

An allowance equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer to acquire new and unused airport assets (including the construction, erection or installation thereof) may be deducted.

The term “airport asset” means any aircraft hangar, apron, runway or taxiway on any designated airport and any improvements to these assets (including any earthworks or supporting structures forming part of these assets).

The depreciable cost of an asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm’s length cash price at the time of acquisition.

Any recoupment of the allowance granted will be accounted for under section 8(4)(a) or (e) (see **3.2.16**).

#### **(k) Port assets (section 12F)**

An allowance equal to 5% (20-year straight-line basis) of the cost incurred by a taxpayer to acquire new and unused port assets (including the construction, erection or installation thereof) may be deducted.

The term “port asset” means any port terminal, breakwater, sand trap, berth, quay wall, bollard, graving dock, slipway, single point mooring, dolos, fairway, surfacing, wharf, seawall, channel, basin, sand bypass, road, bridge, jetty or off-dock container depot (including any earthworks or supporting structures forming part of the aforementioned and any improvements thereto).

The depreciable cost of an asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm’s length cash price at the time of acquisition.

Any recoupment of the allowance granted will be accounted for under section 8(4)(a) or (e) (see **3.2.16**).

#### **(l) Additional deduction for learnership agreements (section 12H)**

An employer is entitled to an annual allowance and a completion allowance if the employer is a party to a qualifying learnership agreement with an employee. The term “registered learnership agreement” as defined in section 12H(1) means –

“a learnership agreement that is—

- (a) registered in accordance with the Skills Development Act, 1998; and
- (b) entered into between a learner and an employer before 1 April 2022”.

Effective from 1 October 2016, the amount of the allowance will depend on the NQF level held by the learner before entering into the learnership agreement.

For learnership agreements entered into between the learner and the employer on or after 1 October 2016, the deduction allowed is as follows:

<p>1) During any year of assessment that a learner is a party to a registered learnership agreement with an employer and that agreement was entered into pursuant to a trade carried on by that employer.</p>	<p>R40 000 for a learner holding an NQF-level qualification from 1 to 6 or R20 000 for a learner holding an NQF-level qualification from 7 to 10.</p>
<p>2) If that agreement is for less than 12 full months during the year of assessment.</p>	<p>The above applicable amount (R40 000 or R20 000) is reduced and limited to the same ratio as the number of full months that the learner is a party to that agreement bears to 12.</p>
<p>3) During any year of assessment that a learner is a party to a registered learnership agreement with an employer for less than 24 full months, that agreement was entered into pursuant to a trade carried on by that employer and that learner successfully completes that learnership during that year of assessment.</p>	<p>R40 000 for a learner holding an NQF-level qualification from 1 to 6 or R20 000 for a learner holding an NQF-level qualification from 7 to 10.</p>
<p>4) If the learner mentioned above is a person with a disability at the time of entering into the learnership agreement.</p>	<p>R60 000 (R40 000 + R20 000) for a learner holding an NQF-level qualification from 1 to 6 or R50 000 (R20 000 + R30 000) for a learner holding an NQF-level qualification from 7 to 10.</p>
<p>5) During any year of assessment that a learner is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months, that agreement was entered into pursuant to a trade carried on by that employer and that learner successfully completes that learnership during that year of assessment.</p>	<p>R40 000 for a learner holding an NQF-level qualification from 1 to 6 multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement or R20 000 for a learner holding an NQF-level qualification from 7 to 10 multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement.</p>

<p>6) If the learner mentioned above is a person with a disability at the time of entering into the learnership agreement.</p>	<p>R60 000 (R40 000 + R20 000) multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement</p> <p style="text-align: center;">or</p> <p>R50 000 (R20 000 + R30 000) multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement.</p>
--	--

For more information see Interpretation Note 20 “Additional Deduction for Learnership Agreements”.

(m) Under section 10(1)(cP) the receipts and accruals of a company or trust contemplated in section 37A are exempt from normal tax. This exemption will not apply when –

- the constitution of the company or the instrument establishing a trust does not comply with section 37A(5)(a); and
- the person contemplated in section 37A(5)(b) does not furnish the Commissioner with a written undertaking as contemplated in that section.

**(m) Allowance for land conservation of nature reserves or national parks (section 37D)**

If land is declared as a national park or nature reserve on or after 1 March 2015 for at least 99 years, an allowance may be deducted in the year of assessment during which the land becomes declared land and in each subsequent year of assessment. The allowance is an amount equal to 4% (25-year straight-line basis) of –

- the expenditure incurred to acquire the land and improvements thereon, if the expenditure is not less than the lower of market value or municipal value of the declared land; or
- an amount determined in accordance with the formula in section 37D, if the lower of market value or municipal value exceeds the expenditure incurred.

**(n) Additional investment and training allowances for industrial policy projects (section 12I)**

*Additional investment allowance*

In addition to any other deductions allowable under the Act, a company may deduct under section 12I(2) an amount equal to –

- “(a) (i) 55 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or
- (ii) 100 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within a special economic zone; or
- (b) (i) 35 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status; or

- (ii) 75 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within a special economic zone,”<sup>18</sup>

in the year of assessment during which the asset is first brought into use by the company as the owner of the asset for the furtherance of the industrial policy project carried on by that company, if that asset was acquired and contracted for on or after the date of approval by the Minister of Trade and Industry and was brought into use within four years from the date of approval.

The deduction referred to in section 12I(2)(a)(ii) and (b)(ii) above is applicable only to projects approved on or after 1 January 2012 that are located in a SEZ.

The additional investment allowance may not exceed –

- R900 million for a greenfield project with preferred status, or R550 million for any other greenfield project from the date of approval; or
- R550 million for a brownfield project with preferred status, or R350 million for any other brownfield project from the date of approval.

The terms, “industrial policy project”, “brownfield project” and “greenfield project” are defined in section 12I(1).

#### *Additional training allowance*

In addition to any other deductions allowable under the Act, a company may deduct an amount equal to the cost of training provided to employees in the year of assessment during which the cost of training is incurred for the furtherance of the industrial policy project carried on by the company.

The cost of the training must be incurred by the end of the compliance period and the additional training allowance may not exceed R36 000 per employee.

This additional training allowance allowed to a company at the end of the compliance period from the date of approval may not exceed –

- R30 million for an industrial policy project with preferred status; and
- R20 million for any other industrial policy project.<sup>19</sup>

#### **(o) Deduction for expenditure incurred in exchange for issue of venture capital company shares (section 12J)**

Section 12J allows a deduction from the income of a taxpayer of expenditure actually incurred in a year of assessment in acquiring venture capital shares issued to that taxpayer. Certain strict requirements have to be met.

This deduction aims to encourage investors to invest in approved venture capital companies (VCCs), which in turn, invest in qualifying companies.

---

<sup>18</sup> Section 12I(2).

<sup>19</sup> For more information see Interpretation Note 86 “Additional Investment and Training Allowances for Industrial Policy Projects”.

A claim for a deduction must be supported by a certificate issued by the approved VCC.<sup>20</sup>

**(p) Deduction in respect of energy-efficiency savings (section 12L)**

A taxpayer may claim a deduction for savings derived from implementing energy-efficient methods that result from activities performed in the carrying on of any trade and in the production of income.

Section 12L became effective on 1 November 2013 and applies to years of assessment ending before 1 January 2023.

The deduction is calculated at 95 cents per kilowatt hour or kilowatt hour equivalent of energy-efficiency savings. No deduction will be allowed if the taxpayer receives any concurrent benefit in respect of energy-efficiency savings.

A taxpayer claiming a deduction must obtain a certificate issued by the South African National Energy Development Institute<sup>21</sup> in respect of the energy efficiency savings in respect of that year of assessment.<sup>22</sup>

**(q) Deduction of medical lump sum payments (section 12M)**

A taxpayer will be allowed to deduct from income derived from carrying on a trade, a lump sum payment –

- to any former employee of the taxpayer who has retired from the taxpayer's employ on grounds of old age, ill health or infirmity or to a dependant of that former employee; or
- under a policy of insurance taken out with an insurer solely in respect of one or more former employees or dependants mentioned above,

but only to the extent that the amount is paid for the purposes of making any contribution, in respect of any former employee or dependant referred to above, to a medical scheme or fund contemplated in section 6A(2)(a)(i) or (ii).

**(r) Deduction in respect of improvements not owned by taxpayers (section 12N)**

A taxpayer which holds a right of use or occupation of land or buildings and effects an improvement on the land or to the buildings in terms of, amongst others, a PPP, may claim the allowances under sections 11D, 12B, 12C, 12D, 12F, 12I, 12S, 13, 13*ter*, 13*quat*, 13*quin*, 13*sex* or 36 on the cost of the improvements as if the taxpayer owned the land and buildings on which the improvements were made. The taxpayer must use or occupy the land or building for the production of income or derive income from the land or building.

The taxpayer effecting the improvements is deemed to be the owner thereof for purposes of the Eighth Schedule. Upon termination of that right of use or occupation the taxpayer will be deemed to have disposed of the improvements to the owner of the land or building.

---

<sup>20</sup> For more information see the *Guide on Venture Capital Companies* and the *External Guide: Venture Capital Companies (GEN-REG-48-G01)*.

<sup>21</sup> Established under section 7 of the National Energy Act 34 of 2008.

<sup>22</sup> For more information see Interpretation Note 95 "Deduction for Energy-Efficiency Savings".



No deduction will be allowed if the taxpayer –

- carries on any banking, financial services or insurance business; or
- enters into an agreement whereby the right of use or occupation of the land or building is granted to any other person, unless–
  - the other person is a company which is a member of the same group of companies as the taxpayer;
  - the cost of maintaining the land or building and of carrying out repairs (in consequence of normal wear-and-tear) is carried by the taxpayer; and
  - the risk of destruction or loss of the land or building is not carried by that other person.

**(s) Deduction in respect of improvements on property in respect of which government holds a right of use or occupation (section 12NA)**

Section 12NA provides for a deduction if the taxpayer–

- is obliged to effect an improvement to land or buildings under a PPP; and
- the right of use or occupation of the land or building is held by the government in the national, provincial or local sphere.

The taxpayer may claim a deduction of the amount of expenditure actually incurred to effect the improvement, divided by the lesser of–

- the number of years for which the taxpayer will derive income from the PPP agreement; or
- 25 years.

The expenditure to be deducted under section 12NA must be reduced by an amount equal to the exempt amount received or accrued under section 10(1)(zl) for the purpose of effecting an improvement to land or a building or to defray the cost of any improvements under the relevant PPP. No deduction will be allowed if the taxpayer carries on any banking, financial services or insurance business.

**(t) Industrial buildings (buildings used in a process of manufacture or a process of a similar nature) (section 13)**

Before 1 January 1989 an allowance, equal to 2% (50-year straight-line basis) of the cost to a taxpayer of buildings, or of improvements to existing buildings used in a process of manufacture or a process of a similar nature (other than mining or farming) may be deducted.

The allowance for the erection of buildings or improvements which commenced on or after 1 January 1989 was increased to 5% (20-year straight-line basis).

The depreciable cost of the building (or improvements) is the lesser of –

- the actual cost of the building (or improvements) to the taxpayer (this excludes the cost of land and financing costs); or
- the actual cost of the building (or improvements) to the taxpayer; less any amount of an allowance recouped from a previous building (or improvements), if any.<sup>23</sup>

---

<sup>23</sup> For more information see the *Guide to Building Allowances*.

The recoupment of the allowance can at the option of the taxpayer, either be –

- set off against the cost of a further building under section 13(3), provided the requirements thereof are met; or
- included in the taxpayer's income under section 8(4)(a).

#### **(u) Buildings used by hotelkeepers (section 13bis)**

##### *Buildings and improvements*

Before 4 June 1988 an allowance, equal to 2% (50-year straight-line) of the cost to a taxpayer of the erection of buildings and improvements may be deducted.

The allowance increased to 5% (20-year straight-line basis) for buildings or improvements, the erection of which commenced on or after 4 June 1988.

##### *Improvements which commenced on or after 17 March 1993, which do not extend the existing exterior framework of the building*

An allowance, equal to 20% (five-year straight-line basis) of the cost to a taxpayer of the erection of such improvements may be deducted.

The depreciable cost of a building (or improvements) is the lesser of –

- the actual cost of the building (or improvements) to the taxpayer (this excludes the cost of land and financing costs); or
- the actual cost of the building (or improvements) to the taxpayer less any amount of an allowance recouped from a previous building (or improvements), if any.<sup>24</sup>

The recoupments of the allowance can at the option of the taxpayer either be –

- set off against the cost of a further building under section 13bis(6)(a) provided the requirements thereof are met; or
- included in the taxpayer's income under section 8(4)(a).<sup>25</sup>

#### **(v) Urban development zones (section 13quat)**

Taxpayers investing in one of the 16 demarcated urban development areas may claim special depreciation allowances for the construction or refurbishment of commercial and residential buildings<sup>26</sup> located in these areas that are used solely for trade purposes. These areas are located within the boundaries of the municipalities of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekweni, Johannesburg, Mahikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje and Tshwane.<sup>27</sup>

---

<sup>24</sup> For more information see the *Guide to Building Allowances*.

<sup>25</sup> For more information see Interpretation Note 105 "Deductions in respect of Buildings used by Hotelkeepers".

<sup>26</sup> See **3.8.6** for the VAT treatment of expenses related to residential buildings.

<sup>27</sup> For more information see the *Guide to the Urban Development Zone Allowance* and the *Guide to Building Allowances*.

**(w) Commercial buildings (section 13quin)**

An allowance, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of new and unused buildings or improvements to buildings wholly or mainly used by the taxpayer during the year of assessment for purposes of producing income in the course of the taxpayer's trade (other than the provision of residential accommodation) which were contracted for on or after 1 April 2007 and the construction, erection or installation of which commenced on or after the abovementioned date, may be deducted.

The depreciable cost of the building (or improvement) is the lesser of –

- the actual cost to the taxpayer (this excludes the cost of land and financing costs); or
- the arm's length cash price of the building or improvement at the time of acquisition.

To the extent that a taxpayer acquires a part of a building without erecting or constructing that part –

- 55% of the acquisition price, in the case of a part being acquired; and
- 30% of the acquisition price, in the case of an improvement being acquired,

will be deemed to be the cost incurred for that part or improvement, as the case may be.<sup>28</sup>

Any recoupment of the allowance will be included in the taxpayer's income under section 8(4)(a).<sup>29</sup>

**(x) Certain residential units (section 13sex)**

An allowance, equal to 5% (20-year straight-line basis) of the cost to a taxpayer of a new and unused residential unit (or of new and unused improvements to a residential unit) acquired by or the erection of which commenced on or after 21 October 2008 by the taxpayer, will be granted if –

- the unit or improvement is used by the taxpayer solely for the purposes of a trade carried on by the taxpayer;
- the unit is situated within South Africa; and
- the taxpayer owns at least five residential units within South Africa, which are used by the taxpayer for purposes of a trade carried on by the taxpayer.

An additional allowance of 5% of the cost of a low-cost residential unit<sup>30</sup> of a taxpayer will be granted if the allowance of 5% referred to above is allowable.

The percentages below will be deemed to be the costs incurred by a taxpayer on a residential unit if the taxpayer acquires a residential unit (or improvements to a residential unit) representing only a part of a building, without erecting or constructing the unit or improvement:

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

---

<sup>28</sup> For more information see the *Guide to Building Allowances*.

<sup>29</sup> For more information see Interpretation Note 107 "Deduction in respect of Certain Commercial Buildings".

<sup>30</sup> The term "low-cost residential unit" is defined in section 1(1).

These allowances are not applicable to a residential unit (or any improvement thereto) if the cost of the residential unit qualified or will qualify for a deduction under any other provisions of the Act.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer (this excludes the cost of land and financing costs); or
- the arm's length cash price at the time of acquisition.<sup>31</sup>

Any recoupment of these allowances will be included in the taxpayer's income under section 8(4)(a).<sup>32</sup>

**(y) Deduction for sale of low-cost residential units on loan account  
(section 13sept)**

A taxpayer that disposes of a low-cost residential unit<sup>33</sup> to an employee on or after 21 October 2008, may deduct an amount, equal to 10% of the amount owing to the taxpayer by the employee for the unit at the end of the taxpayer's year of assessment. No such deduction will be allowed in the eleventh and subsequent years of assessment after the disposal of the unit.

No deduction will be allowed, if –

- the disposal is subject to any condition other than that the employee may be required to transfer the low-cost residential unit back to the taxpayer –
  - upon termination of employment; or
  - upon a consistent failure (for a minimum period of three months) by the employee to pay an amount owing to the taxpayer in respect of the low-cost residential unit,
- interest is payable on the amount owing to the taxpayer by the employee; or
- the unit is disposed of to the employee for an amount that exceeds the actual cost to the taxpayer of the unit and the land on which the unit is erected.

All repayments of the amount owing on the loan trigger a potential deemed recoupment. The amount deemed to be recouped by the employer will equal the lesser of –

- the amount so paid; or
- the amount allowed as a deduction under section 13sept(1) in the current or previous years of assessment.<sup>34</sup>

---

<sup>31</sup> For more information see the *Guide to Building Allowances*.

<sup>32</sup> For more information see Interpretation Note 106 "Deduction in respect of Certain Residential Units".

<sup>33</sup> The term "low-cost residential unit" is defined in section 1(1).

<sup>34</sup> For more information see the *Guide to Building Allowances*.

## **(z) Residential buildings (section 13ter)**

Deductions are available to a taxpayer who erects at least five residential units. The taxpayer must have commenced the erection of the residential units under a housing project, on or after 1 April 1982 and before 21 October 2008. The terms “residential unit” and “housing project” are defined in section 13ter(1). The deductions are as follows:

- A *residential building initial allowance* equal to 10% of the cost to the taxpayer of the unit if it is let to a tenant for profit purposes or occupied by a full-time employee and provided at least five residential units in that housing project have been let or occupied for the first time.
- A *residential building annual allowance* equal to 2% of the cost to the taxpayer of the unit in the year in which the residential building initial allowance is deducted and in each succeeding year of assessment.

If the unit is used or dealt with by the taxpayer in such a way that the unit ceases to be available for letting to a tenant or occupied by a full time employee, these two allowances are subject to recoupment as provided for under section 13ter(7).<sup>35</sup> In the year of assessment in which the taxpayer disposes of the unit, section 8(4)(a) will apply to the balances of these two allowances not yet recouped.

## **(aa) Environmental expenditure (sections 37A and 37B)**

### *Post-trade environmental expenses (section 37A)*

Section 37A regulates mining rehabilitation funds created with the sole object of applying their property for the environmental rehabilitation of mining areas and grants a deduction for cash payments made to such dedicated rehabilitation funds. Section 37A imposes strict rules in respect of the utilisation of the assets of rehabilitation funds in accordance with their objects.

Section 37A permits a deduction from the income of certain persons carrying on any trade, of any cash paid during any year of assessment to a company or trust whose sole object is the application of its property solely for rehabilitation. In an attempt to prevent any abuse of this deduction, section 37A was amended to impose stricter penalties.

If a rehabilitation company or trust holds a financial instrument or investment other than those allowable under section 37A(2), a penalty is imposed under section 37A(6). Similarly, if a distribution is made for any other purpose than rehabilitation, there is a penalty imposed under section 37A(7). Taxpayers are also required to submit a report to the Director-General of the National Treasury within three months after the end of any year of assessment and within seven days after receiving a request from the Director-General of the National Treasury.

### *Deductions in respect of environmental expenditure (section 37B)*

An environmental treatment and recycling asset means any air, water, and solid waste treatment and recycling plant or pollution control and monitoring equipment (and improvements to the plant or equipment) used in the course of a taxpayer’s trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature and required by any law of the Republic for purposes of complying with measures that protect the environment.

---

<sup>35</sup> For more information see the *Guide to Building Allowances*.

An allowance may be deducted, equal to –

- 40% of the cost to a taxpayer to acquire the asset in the year of assessment (first year of assessment) in which the asset is brought into use; and
- 20% of such cost in each of the subsequent three years of assessment.

An environmental waste disposal asset means any air, water, and solid waste disposal site, dam, dump, reservoir, or other structure of a similar nature, or any improvement thereto if the structure is of a permanent nature, utilised in the course of a taxpayer's trade in a process that is ancillary to any process of manufacture or any other process which, in the opinion of the Commissioner, is of a similar nature and required by any law of the Republic for purposes of complying with measures that protect the environment.

An allowance, equal to 5% (20-year straight-line basis) of the cost to a taxpayer to acquire the asset may be deducted in the year of assessment that the asset is brought into use for the first time and 5% in each succeeding year of assessment.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition.

Any recoupment of these allowances will be included in the taxpayer's income under section 8(4)(a).

#### **(ab) Environmental conservation and maintenance expenditure (section 37C)**

A deduction for expenditure actually incurred by a taxpayer to conserve or maintain land is deemed to be incurred in the production of income and for purposes of a trade carried on by the taxpayer, if –

- the conservation or maintenance is carried out under a biodiversity management agreement that has a duration of at least five years and is entered into by a taxpayer under the National Environmental Management: Biodiversity Act 10 of 2004; and
- the land used by the taxpayer in the production of income and for purposes of a trade consists of, includes or is in the immediate proximity of the land that is the subject of the agreement mentioned above.

The expenditure will be limited to the income derived from the trade carried on by the taxpayer on the land mentioned above. The excess amount will be carried forward and deemed to be expenditure incurred in the next year of assessment.

Expenditure actually incurred to conserve or maintain land owned by the taxpayer is, for purposes of section 18A, deemed to be a donation if the conservation or maintenance is carried out under a declaration which has a duration of at least 30 years under the National Environmental Management Protected Areas Act 57 of 2003.

If land is declared a national park or nature reserve, and the declaration is endorsed on the title deed of the land and has a duration of at least 99 years, 10% of the lesser of the cost or market value of the land is, for purposes of section 18A and paragraph 62 of the Eighth Schedule, deemed to be a donation paid or transferred to the Government, for which a receipt has been issued under section 18A(2) in the year of assessment in which the land is so declared and each of the succeeding nine years of assessment.

If land is declared on or after 1 March 2015 as a national park or nature reserve for at least 99 years, it is not deemed to be a donation but an allowance will be allowed under section 37D (see **3.2.16(m)**).

### **3.2.17 Tax relief measures for small business corporations (section 12E)**

The SBC tax legislation allows for two major concessions to companies (private companies, CCs, co-operatives and personal liability companies) which comply with all of the following requirements:

- All the holders of shares in the company or members of the CC, co-operative or personal liability company must at all times during a year of assessment be natural persons.
- No holders of shares or members should hold any shares or have any interest in the equity of any other company, other than companies as specified in the definition of “small business corporation” in section 12E(4).
- The gross income of the entity for the year of assessment may not exceed R20 million.
- Not more than 20% of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the entity may consist collectively of “investment income” as defined in section 12E(4) and income from rendering a “personal service” as defined in section 12E(4).
- The company may not be a “personal service provider” as defined in the Fourth Schedule.

The first concession is that the company will be taxed at a progressive rate [see **3.2.15(c)(ii)**].

The second concession is the immediate write-off of all plant or machinery brought into use for the first time by the company for purpose of its trade (other than mining or farming) and used by the company directly in a process of manufacture or similar process in the year of assessment. Furthermore the company can elect under section 12E(1A) to claim depreciation on its depreciable assets (other than manufacturing assets) acquired on or after 1 April 2005 at either –

- a wear and tear allowance as calculated in **3.2.16(a)** [section 12E(1A)(a) read with section 11(e)]; or
- an accelerated write-off allowance [section 12E(1A)(b)] at –
  - 50% of the cost of the asset in the year of assessment during which it was first brought into use;
  - 30% in the first succeeding year of assessment; and
  - 20% in the second succeeding year of assessment.

An SBC can therefore elect to either claim the wear-and-tear allowance under section 11(e) or the accelerated allowance (50:30:20 deduction) under section 12E(1A)(b).

The asset must be owned by the taxpayer or acquired by the taxpayer as purchaser under an “instalment credit agreement” as defined in section 1(1) of the VAT Act.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm’s length cash price at the time of acquisition.

Any recoupment of the allowance –

- granted under section 11(e) will be included in the taxpayer's income under section 8(4)(a), and

granted under section 12E(1A)(b) will be accounted for under section 8(4)(a) or (e).

A company that is engaged in the provision of personal services will still qualify for relief provided it employs three or more full-time employees as specified in section 12E throughout the year of assessment and the service is not performed by a person who holds an interest in that company.<sup>36</sup>

### **3.2.18 Tax relief measures for micro businesses (turnover tax) (sections 48 to 48C and the Sixth Schedule)**

A person will qualify as a micro business if that person is a –

- natural person (or the deceased or insolvent estate of a natural person which was a registered micro business at the time of death or insolvency); or
- company,

and the “qualifying turnover”, as defined in paragraph 1 of the Sixth Schedule, of that person for the year of assessment does not exceed R1 million.

If that person carries on a business during a year of assessment for a period of less than 12 months, the qualifying turnover of R1 million is reduced proportionally by taking into account the number of full months that the person carried on business during that year.

Micro businesses have a simplified tax system (turnover tax) and serves as an alternative to income tax, VAT, provisional tax and CGT. A micro business may, however, be registered for VAT whilst registered under the tax regime for micro businesses.

See **3.2.15(c)(iii)** for the progressive tax rate applicable to micro businesses.<sup>37</sup>

### **3.2.19 Tax relief measures for qualifying companies within a special economic zone (sections 12R and 12S)**

Various incentives applicable to SEZs were developed to attract investors to the SEZs. The tax incentives are provided by Government to ensure SEZs' growth, revenue generation, creation of jobs, attraction of foreign direct investment and international competitiveness, which include income tax, VAT and customs related incentives.

Section 12S provides that a qualifying company<sup>38</sup> may claim an accelerated allowance equal to 10% of the cost to the qualifying company of –

- any new and unused building owned by the qualifying company, or
- any new and unused improvement to any building owned by the qualifying company,

if that building or improvement is wholly or mainly used by the qualifying company during the year of assessment for purposes of producing income within an SEZ, in the course of the taxpayer's trade, other than the provision of residential accommodation.

---

<sup>36</sup> For more information see Interpretation Note 9 “Small Business Corporations”.

<sup>37</sup> For more information see the *Tax Guide for Microbusinesses 2016/17*.

<sup>38</sup> Defined under section 12R(1).



If a qualifying company completes an improvement as contemplated in section 12N [see **3.2.16(r)**], the expenditure incurred by the qualifying company to complete the improvement must be deemed to be the cost to the qualifying company of any new and unused building or of any new and unused improvement to a building.

The depreciable cost of the asset is the lesser of –

- the actual cost to the taxpayer; or
- the arm's length cash price at the time of acquisition, erection or improvement.

No deduction under section 12S will be allowed, if the building has been disposed of by the qualifying company during any previous year of assessment.

No deduction will be allowed under another section in respect of the cost of a building or improvement if any of that cost has qualified or will qualify for a deduction under section 12S.

If a company falls within the definition of “qualifying company” in section 12R(1), such a company, will be able to apply the reduced corporate tax rate of 15%,<sup>39</sup> provided all the requirements under the Act are met.

A company operating through a fixed place of business within a designated SEZ will also be entitled to claim ETI for qualifying employees (irrespective of their age) that render services to that company mainly within that SEZ provided that all of the requirements under the ETI Act are met (see **3.21**).<sup>40</sup>

For more information on the tax incentives available to companies carrying on business within an SEZ see the *Brochure on the Simplified Overview of Special Economic Zones Tax and Customs Incentives* available on the Department of Trade and Industry's website [www.dti.gov.za](http://www.dti.gov.za).

### **3.2.20 Deduction of home office expenditure [section 11(a) read with section 23(b)]**

Subject to certain requirements and limitations, home office expenses (expenses which relate to that part of a dwelling-house or domestic premises used for purposes of trade) will be allowed as a deduction in determining taxable income.<sup>41</sup>

### **3.2.21 Deductions in respect of expenditure and losses incurred before commencement of trade (section 11A)**

A pre-trade expense qualifies as a deduction against the income from the trade to which it relates subject to the following requirements contained in section 11A(1):

- First, the trade, in respect of which the pre-trade expense was incurred, must have been commenced by the taxpayer.
- Secondly, the pre-trade expense must have been actually incurred before the commencement of and in preparation for carrying on that trade.
- Thirdly, had the pre-trade expense been incurred after the commencement of the trade to which it relates, it would have been allowed as a deduction under section 11 [other than section 11(x)], 11D or 24J.

<sup>39</sup> Section 1(1) of the Rates and Monetary Amounts and Amendment of Revenue Laws Act 32 of 2019 read with paragraph 6 of Schedule 1 to that Act.

<sup>40</sup> For more information see the *Guide to the Employment Tax Incentive*.

<sup>41</sup> For more information see Interpretation Note 28 “Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office”.

- Fourthly, the pre-trade expense must not have been allowed as a deduction in that year or any previous year of assessment.

Once these requirements have been met, the pre-trade expense will be allowed as a deduction under section 11A(1) in the year of assessment in which the trade to which it relates commences, subject to the ring-fencing requirements of section 11A(2).

For any pre-trade expenditure and losses to qualify as a deduction under section 11A(1), a pre-trade expense must pass a “post-trade” test under one of a number of specified sections, namely –

- section 11 (general deduction), excluding section 11(x);
- section 11D (deduction for R&D); or
- section 24J (incurral and accrual of interest).<sup>42</sup>

### 3.2.22 Ring-fencing of assessed losses of certain trades (section 20A)

The term “trade” is widely defined in section 1(1). Whether a specific activity amounts to the carrying on of a trade, is a question of law that depends on the facts and circumstances of the specific case. In considering whether or not an activity constitutes a trade, the intention of the person to carry on a trade profitably is of decisive importance, this being a subjective test.

While objective factors are not relevant to determine whether a trade is being carried on, they remain relevant in the objective testing of the taxpayer’s stated intention. The intention of the person will therefore be weighed against the probabilities and inferences which can be drawn from the facts of a matter.

Ring-fencing under section 20A is a measure under which the expenditure incurred in conducting a trade is limited to the income of that trade. Any excess expenditure (assessed loss from a trade) is carried forward and set off only against any income derived from that trade in a subsequent year of assessment.

Section 20A does not replace the purpose or the function of section 11(a) read with section 23(g). An assessed loss could, notwithstanding section 20A, be disallowed in its entirety under section 11(a) read with section 23(g) if the activities undertaken by a taxpayer do not constitute the *bona fide* carrying on of a trade. Section 20A comes into operation when an allowable assessed loss from a trade already exists. It is therefore applied after the application of sections 11(a) and 23(g) and provides a structure for determining whether or not a trade loss should be set off against other income, thereby reducing taxable income. Apart from specific circumstances a “ring-fenced” loss is not “lost” or “disallowed”, but merely carried forward to the next year of assessment and is available for set-off against any income derived from that specific trade in that year. A loss that is not utilised in that following year, is once again carried forward to a subsequent year of assessment, to be used against income generated from trade in that subsequent year.

The ring-fencing provisions apply only to an assessed loss from a trade carried on by a taxpayer who is a natural person and who meets specified criteria. Natural persons trading in a partnership may be subject to section 20A.<sup>43</sup>

<sup>42</sup> For more information see Interpretation Note 51 “Pre-trade Expenditure and Losses”.

<sup>43</sup> For more information see the *Guide on the Ring-Fencing of Assessed Losses Arising from Certain Trades Conducted by Individuals*.

### 3.2.23 Prohibited deductions

Prohibited deductions are listed in section 23. Some of the prohibited deductions are mentioned below:

#### (a) Domestic or private expenses [section 23(a) and (b)]

A taxpayer is prohibited from deducting any of the following expenses and payments:

- The cost incurred in the maintenance of the taxpayer, the taxpayer's family or establishment.
- Domestic or private expenses, including the rent of, cost of, repairs of, or expenses in connection with any premises not occupied for purposes of trade or of any dwelling-house or domestic premises, except on those parts as may be occupied for the purpose of trade (see 3.2.20).

#### (b) Bribes, fines or penalties [section 23(o)(i) and (ii)]

A payment of a bribe, fine or penalty will not be allowed as a deduction for income tax purposes if –

- the payment, agreement or offer to make that payment constitutes an activity contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act 12 of 2004; or
- the payment is a fine charged or penalty imposed as a result of carrying out an unlawful activity in South Africa or in another country if the activity would be unlawful had it been carried out in South Africa.<sup>44</sup>

#### (c) Other prohibited deductions [section 23(d), (e) and (g)]

Other prohibited deductions include –

- income carried to any reserve fund or capitalised in any way;
- moneys not laid out or expended for purposes of trade; and
- taxes imposed under the Act and interest or penalties imposed under other Acts administered by the Commissioner.

### 3.2.24 Exemption of certified emission reductions (section 12K)

Section 12K provides that any amount received by or accrued to or in favour of any person on the disposal of any certified emission reduction derived by the person in the furtherance of a qualifying clean development mechanism project carried on by the person will be exempt from normal tax. This section was repealed with effect from 1 June 2019.

### 3.2.25 Film owners (section 12O)

South Africa's income tax system contains an incentive aimed at stimulating the production of films within the Republic.

Section 12O provides for the exemption from normal tax of income derived from the exploitation rights of approved films. Section 12O came into effect on 1 January 2012 and applies to all receipts and accruals of approved films if principal photography commenced on or after this date but before 1 January 2022.

---

<sup>44</sup> For more information see Interpretation Note No 54 "Deductions – Corrupt Activities, Fines and Penalties".

Section 12O effectively eliminates income tax on qualifying film receipts and accruals for a 10-year period from the date the film is completed. It applies to films that have been approved by the National Film and Video Foundation as a local production or a co-production. The National Film and Video Foundation has introduced a set of qualifying criteria, the South African Film Criteria, that are used to determine whether a film constitutes a local production or a co-production based on a point system. The exemption is limited to investors who acquired the exploitation rights held before the completion date of the film.

Taxpayers may claim a net loss on a film in a year of assessment commencing at least two years after the completion date of the film. The deduction of a net loss also results in a taxpayer being unable to claim the exemption on the particular film going forward.

Section 12O(6) provides that any grant received by or accrued to a special purpose corporate vehicle from the state under the Department of Trade and Industry incentive will be exempt from normal tax but subject to the general recoupment provision under section 8(4). In certain cases, if the grant is passed on to an investor, the investor will also qualify for the exemption. A taxpayer who receives or to whom an exempt Department of Trade and Industry grant accrues must consider the provisions of section 12P(3) to (6) as there are consequences on the cost, deductions and allowances available to a taxpayer in respect of related expenditure (see **3.2.26**).<sup>45</sup>

### **3.2.26 Exemption of amounts received or accrued in respect of government grants (section 12P)**

Section 12P(2) provides for the exemption from normal tax of any amount received by or accrued to a person as a beneficiary of a government grant if that grant is –

- listed in the Eleventh Schedule; or
- identified by the Minister by notice in the *Gazette* for the purpose of exempting that government grant with effect from a date specified by the Minister in that notice after having regard to –
  - the implications of the exemption for the National Revenue Fund; and
  - whether the tax implications were taken into account in allocating that grant.

The term “government grant” is defined in section 12P(1) as –

“a grant-in-aid, subsidy or contribution by the government of the Republic in the national, provincial or local sphere”.

Effective from 1 January 2016, section 12P(2A) exempts any amount received by or accrued to a person from the government in the national, provincial or local sphere from normal tax, if the amount is granted for the performance by that person as part of that person’s obligations pursuant to a PPP.<sup>46</sup>

Such a PPP grant is exempt only if an amount at least equal to the amount received or accrued is required to be expended for the improvement on any land or to any buildings owned by the government or over which the government holds a servitude. The described grants to PPPs do not have to be listed in the Eleventh Schedule or be identified by the Minister in the *Gazette*.

---

<sup>45</sup> For more information see the *Guide to the Exemption from Normal Tax of Income from Films*.

<sup>46</sup> See **3.8.5** for the VAT treatment of grants.

Anti-double-dipping rules were introduced in section 12P(3) to (6) to ensure that exempt government grant funding is not used as a means to achieve a further tax reduction by claiming deductions for expenditure funded by government grants exempt under section 12P(2) or (2A).

The anti-double-dipping rules contained in section 12P(3) and (4) apply to a government grant as contemplated in section 12P(2) or (2A) (other than a government grant in kind), received by or accrued to a person for the acquisition, creation or improvement of trading stock or an allowance asset or as a reimbursement for expenditure incurred.

Section 12P(5) provides that if any amount is received by or accrues to a person by way of a government grant contemplated in section 12P(2) or (2A) (other than a government grant in kind) for the acquisition, creation, or improvement of an asset (other than trading stock or an allowance asset) or to reimburse expenses so incurred, the base cost of the asset must be reduced by the government grant to the extent that it is applied for that purpose.

Section 12P(6)(a) provides that if during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in section 12P(2) or (2A) (other than a government grant in kind), and section 12P(3), (4) or (5) does not apply, any deduction allowed under section 11 for that year of assessment must be reduced to the extent of the government grant.

Section 12P(6)(b) provides that if the government grant exceeds the total amount of otherwise allowable deductions under section 11 for that year of assessment, the excess is deemed to be a government grant received or accrued during the following year of assessment and should in that following year of assessment be deducted from expenditure allowable under section 11.

### **3.2.27 Exemption of income in respect of ships used in international shipping (section 12Q)**

Section 12Q(2)(a) provides that any international shipping income received by or accrued to any international shipping company derived from international shipping will be exempt from normal tax.

Any capital gain or capital loss in respect of any year of assessment of any international shipping company determined in respect of a South African ship engaged in international shipping must be disregarded in determining the aggregate capital gain or aggregate capital loss of that international shipping company.

Any dividends paid by an international shipping company on the amount of any dividend derived from international shipping income are subject to dividends tax at the rate of 0%.

Any interest paid by an international shipping company to any foreign person<sup>47</sup> in respect of debt utilised to fund the acquisition, construction or improvement of a South African ship utilised for international shipping will be exempt from withholding tax on interest.

The terms “international shipping”, “international shipping company”, “international shipping income” and “South African ship” are defined in section 12Q(1).

---

<sup>47</sup> As defined in section 50A.

### 3.2.28 Capital gains tax (the Eighth Schedule)

#### (a) Introduction

CGT was introduced in the Act with effect from 1 October 2001 and applies to the disposal by a person of an asset on or after that date. All capital gains and capital losses made on the disposal of assets are subject to CGT unless disregarded by specific provisions.

The Eighth Schedule contains the CGT provisions under which a capital gain or capital loss is determined. Section 26A provides that a taxable capital gain must be included in taxable income. An assessed capital loss is carried forward to the next year of assessment.

Since CGT forms part of the income tax system, the capital gains and capital losses must be declared in the annual income tax return. Only the most important CGT concepts are mentioned here. For a detailed discussion see the *Comprehensive Guide to Capital Gains Tax*.

#### (b) Registration

A person who is already registered as a taxpayer for income tax purposes need not register separately for CGT. A natural person who is a resident and had capital gains or capital losses exceeding R40 000 during the 2020 year of assessment, or who is a non-resident and had capital gains or capital losses from the disposal of an asset to which the Eighth Schedule applies, must register as a taxpayer and submit an income tax return for the 2020 year of assessment.

#### (c) Rates

##### *Natural persons, deceased estates, insolvent estates or special trusts*

For natural persons, deceased estates, insolvent estates or special trusts, 40% of the net capital gain is included in taxable income and is subject to income tax at the marginal rate of tax of that natural person, deceased estate, insolvent estate or special trust.

##### *Companies and trusts (other than special trusts)*

For companies and trusts other than special trusts, 80% of the net capital gain must be included in taxable income.

##### *Effective rate of tax*

The effective rate of tax on a taxable capital gain is as follows:

- Natural persons

The minimum marginal rate of income tax (normal tax) for natural persons is 18% and the maximum marginal rate is 45%. The effective CGT rate for natural persons is from 0% to 18% depending on the marginal rate of normal tax applicable to the person.

For purposes of the Eighth Schedule, the disposal of an asset by a deceased estate/insolvent estate of a natural person is treated in the same manner as if that asset had been disposed of by that person (see paragraphs 40(3) and 83(1) of the Eighth Schedule). Under section 25(5) a deceased estate must, other than for purposes of sections 6, 6A and 6B, be treated as if it were a natural person.

- Companies

The effective rate of CGT for most companies is 22,4%.

A qualifying company within an SEZ as contemplated in section 12R will have an effective rate of CGT of 12% (see **3.2.19** for a discussion on tax relief for qualifying companies within an SEZ).

#### **(d) Capital losses**

Capital losses may be set off only against capital gains. The sum of all capital gains and capital losses, less an annual exclusion if applicable, is carried forward to the next year of assessment if this amount is a negative figure. An assessed capital loss must be set off against an aggregate capital gain in a year of assessment.

#### **(e) Disposal**

CGT is triggered by the disposal of an asset. The word “disposal” is described very widely in paragraph 11 of the Eighth Schedule. Events which trigger a disposal include a sale, donation, exchange or loss of an asset. A person is deemed to have disposed of assets for CGT purposes on death or when ceasing to be a resident.

#### **(f) Exclusions**

Some capital gains or capital losses (or a portion of the gains or losses) are disregarded for CGT purposes.

The following are some of the specific exclusions:

- In the case of a natural person, or a special trust, the first R2 million of the capital gain or capital loss on the disposal of a primary residence.
- A capital gain on disposal of the primary residence of a natural person or special trust if the proceeds from the disposal do not exceed R2 million.
- A capital gain or capital loss on disposal of a personal use asset by a natural person or special trust. Examples are motor vehicles, including a motor vehicle for which a travel allowance was received, caravans, furniture and jewellery.
- Retirement benefits.
- An amount received for a long-term insurance policy by the original beneficial owner.
- A natural person and a special trust qualify for an annual exclusion of R40 000 of the sum of capital gains and losses in a year of assessment.
- The annual exclusion increases to R300 000 in the year of death for a natural person.

#### **(g) Base cost (paragraph 20 of the Eighth Schedule)**

The base cost of an asset is the amount the taxpayer incurred for acquisition of the asset plus other expenditure incurred directly relating to buying, selling, or improving it. The base cost does not include any amount otherwise allowed as a deduction for income tax purposes. Some expenditure that may form part of the base cost of an asset are –

- the expenditure incurred on acquisition of the asset;
- transfer costs (including any VAT or transfer duty paid, to the extent that the amount does not qualify as an “input tax” under the VAT Act, or is otherwise not refundable under the VAT Act or the Transfer Duty Act);
- cost of effecting an improvement to or enhancement of the value of the asset;

- advertising costs to find a buyer or seller;
- cost of having the asset valued in order to determine a capital gain or capital loss;
- costs directly relating to the buying or selling of the asset, for example, fees paid to a surveyor, broker, agent or consultant for services rendered;
- cost of establishing, maintaining or defending a legal title or right in the asset;
- cost of moving the asset from one place to another upon acquisition or disposal; and
- cost of installing the asset, including the cost of foundations and supporting structures.

A capital gain arises when the proceeds from a disposal of an asset exceed the base cost and a capital loss arises when the base cost exceeds the proceeds. As noted above certain capital gains and capital losses are disregarded for CGT purposes.<sup>48</sup>

#### **(h) Small businesses (paragraph 57 of the Eighth Schedule)**

A natural person who operates a small business as sole proprietor, in a partnership or owner in a company must, if certain requirements are met, disregard a capital gain on disposal of an active business asset, interest in the active business assets of a partnership or entire direct interest in a company. The person must have attained the age of 55 years or the disposal must be in consequence of ill-health, other infirmity, superannuation or death. The sum of amounts to be disregarded during the lifetime of the person may not exceed R1,8 million.

#### **3.2.29 Withholding of amounts from payments to non-resident sellers on the sale of immovable property (section 35A)**

A withholding amount is due in respect of the sale of immovable property in South Africa by a non-resident. The amount is to be deducted by the purchaser from the amount payable to the seller, or to any other person for or on behalf of the seller. The amount which has to be withheld and paid over to SARS is equal to –

- 7,5% of the amount payable, if the seller is a natural person;
- 10% of the amount payable, if the seller is a company; and
- 15% of the amount payable, if the seller is a trust.

The seller may apply for a directive from SARS that no amount or a reduced amount be withheld having regard to the circumstances mentioned in section 35A(2).

The amount withheld is an advance (credit) against the seller's normal tax liability for the year of assessment during which the property is disposed of.

---

<sup>48</sup> For more information see the *Comprehensive Guide to Capital Gains Tax*, the *ABC of Capital Gains Tax for Individuals*, the *ABC of Capital Gains Tax for Companies* and the *Guide on Valuation of Assets for Capital Gains Tax Purposes*.



No amount must be withheld –

- if the total amount payable for the immovable property does not exceed R2 million; or
- from any deposit paid by a purchaser for the purpose of securing the acquisition of the immovable property until the agreement for the disposal has become unconditional, in which case the withholding amount is to be withheld from the first following payments made by the purchaser for that disposal.<sup>49</sup>

### **3.3 Withholding tax on royalties (sections 49A to 49H)**

Royalties received by or accrued to a non-resident may be subject to either normal tax or withholding tax on royalties.

Amounts received for the imparting of any scientific, technical, industrial or commercial knowledge or information, commonly known as “know-how” payments, are included in the definition of “gross income”, and are taxable.

The amount of any royalty received by or accrued to a person who is a non-resident is exempt from normal tax under section 10(1)(f), unless –

- the non-resident was physically present in South Africa for more than 183 days in aggregate during the twelve-month period preceding the date on which the amount is received by or accrued to that person; or
- the intellectual property, knowledge or information for which the royalty is paid is effectively connected with a permanent establishment of the non-resident in South Africa.

Withholding tax on royalties is 15% (or a lower rate as determined in accordance with a relevant tax treaty). Withholding tax on royalties is payable on royalties paid by any person to or for the benefit of any foreign person if the amount is regarded as having been received or accrued from a source within South Africa.

The person making the payment of the royalty must withhold withholding tax on royalties from that amount. The withholding of tax is triggered by the date that the royalty is paid or becomes due and payable. The withholding tax on royalties must be paid over to SARS by the last day of the month following the month during which the royalty is paid.

The amount withheld, which is denominated in any currency, other than the currency of the Republic, must be translated to rand at the spot rate on the date that the amount is withheld. Overpayment of withholding tax on royalties may be refunded if the required declaration form is submitted to SARS within three years after the royalty is paid.

A foreign person may be exempt from withholding tax on royalties if the requirements of section 49D are met.<sup>50</sup>

---

<sup>49</sup> For more information see the *External Guide: Amounts to be Withheld when a Non-Resident Sells Immovable Property in SA IT-PP-02-G01*.

<sup>50</sup> For more information see the draft Interpretation Note “Withholding Tax on Royalties”.

### **3.4 Taxation of foreign entertainers and sportspersons (sections 47A to 47K)**

Any resident who is liable to pay any amount to a foreign entertainer or sportsperson who is a non-resident, for a performance in South Africa, must deduct or withhold tax at a rate of 15% of the gross payments. The rate of 15% may be reduced by the provisions of a tax treaty. The resident must pay the amount so deducted or withheld over to SARS on behalf of the foreign entertainer or sportsperson before the end of the month following the month in which the tax was deducted or withheld. Failure to deduct or withhold tax and to pay it over to SARS will render the resident personally liable for the tax. Either the foreign entertainer or sportsperson or the resident who pays the withholding tax must submit a return (NR01) together with the payment to the Commissioner.

If it is not possible for the tax to be withheld (for example, if the payer is a non-resident), the foreign entertainer or sportsperson will be liable for the tax which must be paid to SARS within 30 days after the amount is received by or accrued to that entertainer or sportsperson.

The 15% tax on foreign entertainers and sportspersons is a final tax. Any amount received by or accrued to a person who is non-resident is exempt from normal tax under section 10(1)(JA) if that amount is subject to tax on foreign entertainers and sportspersons.

A foreign entertainer or sportsperson who is –

- employed by an employer who is a resident, and
- physically present in South Africa for more than 183 days in aggregate in a 12-month period commencing or ending during a year of assessment,

will not be liable for the 15% withholding tax but will have to pay income tax on the same basis as a resident, that is, at the rates of normal tax, which may require the submission of an income tax return (ITR12).

Any person who is primarily responsible for founding, organising or facilitating a performance in South Africa and who will be rewarded for such, must notify SARS of the performance within 14 days of concluding an agreement with a performer.<sup>51</sup>

For more information contact the special team dealing with visiting artists at [nres@sars.gov.za](mailto:nres@sars.gov.za).

### **3.5 Withholding tax on interest (sections 50A to 50H)**

Any amount of interest which is paid by any person to or for the benefit of any non-resident is subject to withholding tax on interest, to the extent that the amount is regarded as being received or accrued from a source within South Africa. Withholding tax on interest is calculated at the rate of 15% of the amount of the interest or a lower rate determined in accordance with a relevant tax treaty.

The withholding tax on interest is a final tax.

The liability to withhold withholding tax on interest is that of the person paying the interest. The tax is triggered by the earlier of the date on which the interest is paid or becomes due and payable. The withholding tax on interest must be paid to SARS by the last day of the month following the month during which the interest is paid. A foreign person to which an amount of

---

<sup>51</sup> For more information see the *Guide on the Taxation of Professional Sports Clubs and Players*.

interest is paid is liable for withholding tax on interest, even though the tax is withheld by the person paying the interest.

If the amount withheld by a person is denominated in any currency other than the currency of South Africa that amount must be translated to the currency of South Africa at the spot rate on the date on which that amount was so withheld.

Overpayment of withholding tax on interest may be refunded if the required declaration form is submitted to SARS within three years after the interest is paid.

Interest paid to a non-resident may be exempt from withholding tax on interest provided the requirements of section 50D are met.

Interest received by or accrued to a non-resident may be subject to either normal tax or withholding tax on interest.<sup>52</sup>

### **3.6 Donations tax (sections 54 to 64)**

Donations tax is payable by any resident (the donor) who makes a donation to another person (the donee). Donations tax is calculated at a rate of 20% on the cumulative value of property disposed of not exceeding R30 million, and at a rate of 25% on the cumulative value of property disposed of exceeding R30 million.

The Act provides for specific donations to be exempt from donations tax under section 56.

The following donations, amongst others, are exempt from donations tax:

- Casual gifts made by a donor other than a natural person, not exceeding R10 000 during the year of assessment. If the period of assessment is less than 12 months or exceeds 12 months the R10 000 must be adjusted in accordance with the ratio that the year of assessment bears to 12 months.
- Donations by a donor who is a natural person, the sum of which does not exceed R100 000 during the year of assessment.
- The sum of all *bona fide* contributions made by a donor for the maintenance of any person as the Commissioner considers to be reasonable.

Any property that has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration is treated as having been disposed of under a donation (see section 58).

If a donor fails to pay the donations tax within the prescribed period (by the end of the month following the month during which a donation takes effect or a longer period as the Commissioner may allow from the date upon which the donation took effect), the donor and the donee (whether the donee is a resident or a non-resident) are jointly and severally liable for this tax.

### **3.7 Dividends tax (sections 64D to 64N)**

Dividends tax is levied on dividends paid by companies that are residents (other than headquarter companies). Dividends tax is also payable by foreign companies on a foreign dividend to the extent that the foreign dividend does not constitute the distribution of an asset *in specie* and it is paid to residents in respect of listed shares.

---

<sup>52</sup> For more information see the draft Interpretation Note "Withholding Tax on Interest".

Dividends tax is levied at the rate of 20% of the amount of the dividend paid. Certain dividends paid by oil and gas companies and international shipping companies are subject to dividends tax at the rate of 0%. Dividends paid to non-residents may be subject to a reduced rate of tax under a tax treaty.<sup>53</sup>

A company or regulated intermediary must withhold dividends tax on behalf of the beneficial owners when a cash dividend is paid. The company is liable for dividends tax on any dividend *in specie* paid by it.

A dividend received by or accrued to a person will be subject to either dividends tax or normal tax.

## **3.8 Value-added tax**

### **3.8.1 Introduction**

VAT is an indirect tax levied under the VAT Act and is based on the consumption of goods and services in the economy. VAT must be included in the selling price of every taxable supply<sup>54</sup> of goods or services made by certain traders (vendors) that carry on an enterprise in the Republic. A “vendor” is a person who is registered, or required to be registered for VAT. VAT is a destination-based tax which means that tax will be payable on most goods or services supplied for consumption in South Africa as well as on the importation of goods into the country. The importation of services is also subject to VAT if the recipient is a resident and the services are acquired for exempt, private or other non-taxable purposes.

### **3.8.2 Tax rates**

VAT is levied at the standard rate (currently 15%<sup>55</sup>) on most supplies and importations, but there is a limited range of goods and services which are subject to VAT at the zero rate. For example, exports and certain basic foodstuffs are taxed at the zero rate of VAT provided certain conditions are met. Certain goods and services are exempt when supplied in, or imported into South Africa.

### **3.8.3 Collection and payment of VAT**

The mechanics of the VAT system are based on a subtractive or credit-input method which allows the vendor to deduct the tax incurred on enterprise inputs (input tax)<sup>56</sup> and other permissible deductions from the tax collected on the supplies made by the vendor (output tax). The effect is that VAT is ultimately borne by the final consumer of goods and services, but it is collected and paid over to SARS by registered VAT vendors.

At the end of every tax period (see **3.8.11**) a vendor must report the VAT to SARS by submitting a VAT201 return which will indicate the input tax and other deductions which have been offset against the output tax collected for the tax period. The resultant net liability is the VAT that must be paid to SARS, or if the input tax exceeds the output tax in a tax period, SARS will refund the difference to the vendor.

---

<sup>53</sup> For more information see the *Comprehensive Guide to Dividends Tax*.

<sup>54</sup> The term “taxable supply” includes both standard rated and zero rated supplies.

<sup>55</sup> The standard rate of VAT increased from 14% to 15% with effect from 1 April 2018.

<sup>56</sup> Note, however, that input tax may not be deducted in full if the vendor makes “mixed supplies” (that is, both taxable and non-taxable supplies).

Should VAT be payable on the importation of services by a registered vendor, the taxable amount of the imported services must be declared in Block 12 of the VAT201 return and paid together with any other VAT which may be due for the tax period concerned. Non-vendors must complete and submit a VAT215 return on SARS eFiling and make payment of any VAT on imported services within 30 days of importation.

For more information on the collection and payment of VAT, see the *VAT 404 – Guide for Vendors*.

### **3.8.4 Application of VAT to supplies and imports**

Most supplies of goods or services by vendors are subject to VAT at the standard rate. The same applies to most goods imported into South Africa and any imported services if such services are acquired for non-taxable purposes. The standard rate applies as a default if there is no exemption or zero rating provision which covers the supply or the importation in question. A vendor may not charge VAT on any exempt supplies.

VAT is levied on an inclusive basis, which means that any prices marked on products in stores, and any prices advertised or quoted, must include VAT if the supplier is a vendor.

Zero-rated supplies and exempt supplies are listed in sections 11 and 12 of the VAT Act respectively. Sections 13 and 14 of the VAT Act deal with exemptions and exclusions relating to the importation of goods and imported services respectively. Schedule 1 to the VAT Act lists the specific exemptions and the relevant customs item numbers for goods that qualify for exemption on importation into South Africa. See **3.8.5** and **3.8.6** for some examples of zero-rated and exempt supplies of goods and services.

### **3.8.5 Zero-rated supplies**

The following are some examples of supplies of goods and services that are subject to VAT at the zero rate:

- Goods exported<sup>57</sup> from South Africa (see also **3.8.16**)
- Certain goods supplied to customs controlled area enterprises, SEZ enterprises, or SEZ operators situated in any customs controlled area
- Petrol, diesel and illuminating paraffin
- Certain gold coins issued by the South African Reserve Bank, including Krugerrands
- International transport and related services
- Certain services supplied to non-residents
- Services physically rendered outside South Africa
- Services which are deemed to be supplied by a grant recipient in certain cases
- Goods consisting of sanitary towels (pads),<sup>58</sup> subject to specific conditions in Part C of Schedule 2 to the VAT Act

---

<sup>57</sup> The zero rating is subject to meeting the relevant requirements set out in Interpretation Note 30 "The Supply of Movable Goods as Contemplated in Section 11(1)(a)(i) read with Paragraph (a) of the Definition of "Exported" and the Corresponding Documentary Proof" with regard to direct exports and Regulation 316 published in *Government Gazette* 37580 on 2 May 2014 with regard to indirect exports.

<sup>58</sup> The zero rate applies with effect from 1 April 2019.

- Certain basic foodstuffs supplied for human consumption, such as –
  - brown bread
  - certain types of maize meal
  - samp
  - mealie rice
  - dried mealies
  - dried beans
  - rice
  - lentils
  - fruit and vegetables
  - tinned pilchards or sardinella
  - milk, cultured milk and milk powder
  - vegetable cooking oil (excluding olive oil)
  - hen's eggs
  - edible legumes and pulse of leguminous plants
  - certain dairy powder blends
  - cake wheat flour and white bread wheat flour<sup>59</sup>

Some of the basic food items above are subject to specific conditions as set out in the relevant item descriptions in Part B of Schedule 2 to the VAT Act.

Certain agricultural products such as animal feed, seedlings and fertilisers which are for use in farming enterprises are also currently zero rated when supplied to VAT registered farmers. The VAT Act has, however, been amended to remove this zero rating with effect from a future date to be determined by the Minister of Finance by way of a notice in the *Government Gazette*.<sup>60</sup>

The effect of applying the zero rate means that the purchaser does not pay any VAT to the vendor making the supply. However, as zero-rated supplies are regarded as taxable supplies, it means that the VAT incurred on the acquisition of goods or services by the vendor to make those zero-rated supplies may generally be deducted as input tax, subject to the required documentary proof (for example a valid tax invoice) being held.

For more information on zero-rated supplies see the *VAT 404 – Guide for Vendors*.

### **3.8.6 Exempt supplies**

The following are some examples of exempt supplies of goods and services:

- Financial services (such as the provision of credit, the supply of cryptocurrency, life insurance, the services of benefit funds such as medical schemes, provident, pension and retirement annuity funds).

<sup>59</sup> As defined in Regulation 1 of the Regulations in terms of Government Notice R.405 (see *Government Gazette* 40828 of 5 May 2017). The zero rate applies with effect from 1 April 2019.

<sup>60</sup> As at the time of updating this guide, the notice had not yet been issued by the Minister.

- Services provided to members in the course of managing body corporates, share block companies, housing development schemes for retired persons, and home-owners associations which supplies are paid for out of levy contributions by such members.
- Public transport of fare-paying passengers by road and rail.
- The supply of residential accommodation (that is, a dwelling<sup>61</sup>) under a lease agreement.
- Certain educational services provided by recognised educational institutions such as primary and secondary schools and universities.
- Certain supplies of goods or services made by an employee organisation, bargaining council or political party to any of its members, subject to certain conditions.
- Childcare services provided at crèches and after-school care centres.

Unlike zero-rated supplies, an exempt supply does not qualify as a taxable supply which means that the supplier of exempt goods or services does not levy VAT (output tax) and any VAT incurred in the course of making those exempt supplies is not deductible as input tax.

### **3.8.7 Registration**

A person can register for VAT only if that person is carrying on an enterprise. The term “enterprise” basically includes any activity carried on continuously or regularly by any person in South Africa or partly in South Africa which involves the supply of goods or services for a “consideration” to another person, whether or not that enterprise or activity is carried on for profit.

#### **(a) Compulsory registration**

Any person who carries on an enterprise will be liable for compulsory VAT registration if the total value of taxable supplies (taxable turnover) made in the course of carrying on that enterprise has exceeded R1 million in any consecutive 12-month period, or will exceed that amount within the next 12-month period in terms of a written contractual obligation. The R1 million compulsory VAT registration threshold applies to the total value of taxable supplies (turnover) and not the net income (profit) that a business has made for the period. An application to register in these cases must be submitted within 21 business days reckoned from the first day of the month after the threshold was exceeded, or the contract was entered into (as the case may be).

---

<sup>61</sup> A place used (or intended to be used) predominantly as a place of residence or abode by a natural person, but excludes commercial accommodation.

Non-resident suppliers of any “electronic services” prescribed in The Electronic Services Regulation<sup>62</sup>, that meet certain minimum requirements are required to register for VAT in South Africa at the end of any month in which the total value of taxable supplies has exceeded R1 000 000.<sup>63</sup> With effect from 1 June 2014, such non-resident suppliers are required to register for VAT if at least two out of the following three circumstances are present:

1. Electronic services are supplied to recipients who are South African residents.
2. Payment for the electronic services originates from a South African bank account.
3. The recipient of the electronic services has a business address, residential address or postal address in South Africa to which the invoice for such services will be sent.

For more information on “electronic services”, refer to the *Frequently Asked Questions: Supplies of Electronic Services* on the SARS website.

### **(b) Voluntary registration**

A person making taxable supplies with a value of less than R1 million may choose to apply to the Commissioner for voluntary registration if certain conditions are met. A person may apply for voluntary registration under any of the following circumstances, amongst others:

- The person is carrying on an enterprise and the value of taxable supplies made has exceeded the minimum threshold of R50 000 in the past 12-month period.<sup>64</sup>
- The person supplies “commercial accommodation”,<sup>65</sup> provided that the threshold of R120 000 which applies to such enterprises is met.
- The person is carrying on an enterprise but the value of taxable supplies has not yet exceeded the R50 000 minimum threshold or the person carries on certain types of activities which will lead to taxable supplies being made only after a certain period of time due to the nature of the activity. However, registration in respect of these special cases will be permitted only under certain conditions prescribed by Regulations.<sup>66</sup>

The Commissioner will determine the effective date of registration, which will be on a future date.

For more information on VAT registration, see the *VAT 404 – Guide for Vendors*.

---

<sup>62</sup> See Regulation 429 (*Government Gazette 42316* dated 18 March 2019) which came into effect from 1 April 2019. Between 1 June 2014 and 30 March 2019, only a limited list of things supplied by way of the internet by non-residents for a consideration to South African customers were subject to VAT as “electronic services”. From 1 April 2019 any “electronic services” (subject to a few exceptions) supplied by a non-resident by way of the internet or electronic agent are subject to VAT in South Africa if certain conditions are met. This rule applies whether the non-resident makes the supplies directly to the South African customer or through an intermediary or platform. See the **SARS website** to view the Regulations.

<sup>63</sup> The compulsory registration threshold for non-resident suppliers of electronic services before 1 April 2019 was R50 000, which was increased to R1 million with effect from 1 April 2019. Foreign suppliers of electronic services who no longer meet the compulsory registration threshold may choose to deregister. See Binding General Ruling (VAT) 51 “Cancellation of Registration of a Foreign Electronic Services Supplier”.

<sup>64</sup> Section 23(3)(b)(i) of the VAT Act.

<sup>65</sup> Refers to “commercial accommodation” envisaged in paragraph (a) of the definition of “commercial accommodation” in section 1(1) of the VAT Act.

<sup>66</sup> See the regulations issued under section 23(3)(b)(ii) and 23(3)(d) of the VAT Act in Government Notices R446 and 447 respectively, which were published in *Government Gazette 38836* dated 29 May 2015.



### 3.8.8 Refusal of voluntary registration

A person will not qualify to register as a vendor if that person does not fall within the aforementioned categories. In addition, if only exempt supplies or other non-taxable activities are carried on, that person will not be conducting an enterprise for VAT purposes and will not be able to register.

The Commissioner must be satisfied that the person applying for voluntary VAT registration meets the following requirements:

- Keeps proper accounting records.
- Has a fixed place of business or abode in South Africa.
- Has a South African bank account.
- Has not previously been registered as a vendor under VAT or General Sales Tax (GST) and failed to perform the duties of a vendor.

In the event that any of the above requirements are not met, the Commissioner may refuse the registration.

### 3.8.9 How to register

Application for registration as a vendor must be made, on form VAT101 (obtainable from a local SARS office or on the **SARS website**), within 21 business days of becoming liable to register. The reference guide,<sup>67</sup> which is available on the **SARS website**, will assist in completing the VAT101 form.

### 3.8.10 Accounting basis

The South African VAT system generally requires vendors to account for VAT on the basis of invoices being issued or received, unless application has been made to and permission has been received from SARS to use the payments basis of accounting. The differences between these two methods, as well as the requirements of each are discussed below.

#### (a) Invoice basis

Under this method of accounting, a vendor must generally account for the full amount of VAT included in the price of goods or services in the tax period in which the time of supply has occurred. The time of supply is generally the earlier of the time that an invoice for a supply is issued or when any payment of the consideration for the supply is received.<sup>68</sup> This time of supply rule applies to the output tax liability on cash and credit sales as well as the input tax that may be deducted on cash and credit purchases.

Vendors must therefore account for the full amount of output tax on any supplies made in the tax period, even if payment has not yet been received from the recipient. Similarly, the full amount of input tax may be deducted on supplies received in the tax period, even if payment has not yet been made. A tax invoice or other documentary proof as prescribed in the VAT Act must, however, be held by the vendor at the time the deduction is made. If a vendor fails to make payment for a supply within 12 months after the end of the tax period in which input tax

---

<sup>67</sup> *External Guide: Guide for Completion of VAT Registration Application Forms (VAT-REG-02-G01).*

<sup>68</sup> Fixed property transactions are, however, treated on the payment basis even if the vendor normally accounts for VAT on the invoice basis for all other supplies.

was deducted, that vendor must make an output tax adjustment to the extent that payment has not yet been made. This rule is subject to certain exceptions.

### **(b) Payments basis**

The payments basis (or cash basis) allows certain vendors to account for VAT on actual payments made and received in respect of taxable supplies during the tax period.<sup>69</sup> Although the payments basis works according to payments made and received, the vendor must still be in possession of a valid tax invoice issued by the supplier or other documentary proof as prescribed in the VAT Act when making any input tax deduction.

A vendor must apply in writing to SARS before being allowed to apply the payments basis. A vendor may be allowed to account for VAT on the payments basis from the date of registration. However, if the vendor previously accounted for VAT on the invoice basis the change to the payments basis of accounting will apply only from a future tax period as specified by SARS. A vendor who no longer qualifies for the payments basis must also notify SARS within 21 business days of the end of the tax period concerned and use the invoice basis from the commencement of the tax period in which that vendor ceased to qualify for the payments basis.

The payments basis is available to certain vendors under the following circumstances only:

- Natural persons (or partnerships consisting of natural persons only) whose total taxable supplies at the end of a tax period have not exceeded R2,5 million in the previous 12 months, and are not likely to exceed R2,5 million in the next 12 months.
- Public authorities, water boards, municipalities, certain municipal entities, associations not for gain and welfare organisations – regardless of the value of taxable supplies.
- Non-resident suppliers of certain “electronic services” that carry on an enterprise in South Africa.
- Certain vendors that have been allowed by the Commissioner to register in accordance with the Regulations governing voluntary registration under section 23(3)(b)(ii) of the VAT Act must account for VAT on the payments basis until the R50 000 threshold is met.<sup>70</sup> Thereafter the invoice basis will apply.

For more details on the VAT accounting basis, see the *VAT 404 – Guide for Vendors*.

### **(c) Special cases**

The accounting basis will determine how much output tax must be paid or input tax may be deducted on a particular supply. There are, however, special rules that treat certain supplies differently, irrespective of the accounting basis. Examples include goods supplied under an instalment credit agreement, fixed property and second hand goods.

The VAT Act provides for certain other deductions to be made when calculating the net amount of VAT payable for a tax period. For example, when an insurer makes an indemnity payment to a person who is insured under a taxable short-term insurance policy, the insurer may deduct an amount equal to the tax fraction of the indemnity payment. The rules for making such other deductions are the same regardless of the basis of accounting used by the vendor for VAT purposes.

---

<sup>69</sup> Supplies made under an instalment credit agreement and supplies with a consideration of R100 000 or more must, however, be treated as if the vendor is registered on the invoice basis, even if that person has been granted approval to account for VAT on the payments basis.

<sup>70</sup> These vendors are automatically registered on the payments basis without having to apply to SARS for approval (Section 15(2B) of the VAT Act).

See section 15 of the VAT Act for further information.

### 3.8.11 Tax periods

A tax period refers to a predetermined period of time in respect of which a vendor is required to calculate the VAT liability or refund and submit a VAT return. There are five different categories of tax periods.<sup>71</sup>

Monthly (Category C)	Applies to vendors that have an annual turnover of more than R30 million a year.
Two-monthly (Category A or B)	Applies to vendors whose annual turnover is less than R30 million a year. The applicable category (A or B) is determined by the Commissioner.
Six-monthly (Category D)	Applies to small farmers with an annual turnover of less than R1,5 million. Micro businesses that are registered for turnover tax may also account for VAT under this category if registered for VAT.
12-monthly (Category E)	Generally this tax period ends on the last day of the vendor's "year of assessment" for income tax purposes. It applies only to companies or trusts whose income consists solely of property rentals, management or administration fees charged to connected persons that are entitled to a full deduction of input tax on such fees.

### 3.8.12 Calculation of VAT

For ease of reference the terms "output tax" and "input tax", as defined in section 1(1) of the VAT Act, are briefly explained below:

#### *Output tax*

Output tax is the VAT charged at the standard rate on a taxable supply of goods or services by a vendor. Certain events also give rise to deemed supplies even though a vendor has not actually made a supply. The VAT Act contains deeming provisions which both widen the range of transactions subject to VAT and clarify the instances when certain transactions will be deemed to be in the course or furtherance of an enterprise or not. Deemed supplies will generally attract VAT at either the standard rate or zero rate. Output tax will therefore also include VAT charged at the standard rate on the deemed supplies. Examples of deemed supplies on which a vendor has to account for output tax at the standard rate include –

- trading stock taken out of the business for private use;
- certain fringe benefits provided to staff;
- assets retained upon ceasing to carry on an enterprise;
- betting and other gambling transactions;<sup>72</sup>
- change in use adjustments; and
- short-term insurance payments received for loss or damage to business assets which are applied for "enterprise" purposes.

<sup>71</sup> See section 27 of the VAT Act for more details regarding the requirements.

<sup>72</sup> See Interpretation Note 41 "Application of the VAT Act to the Gambling Industry".

For more details on standard rated supplies and output tax see the *VAT 404 – Guide for Vendors*.

### *Input tax and other deductions*

As discussed in **3.8.3**, a vendor is allowed to deduct input tax and to make certain other deductions when calculating the net amount of VAT payable or refundable for a tax period. Input tax is the VAT charged on the supply of goods or services at the standard rate and paid by a vendor on the acquisition of such goods or services for purposes of making taxable supplies.<sup>73</sup> In certain other cases, the vendor may also deduct a deemed or notional input tax on the acquisition, under a non-taxable supply, of “second-hand goods”<sup>74</sup> or goods repossessed or surrendered under an instalment credit agreement, when such goods are acquired for the purpose of making taxable supplies.<sup>75</sup> Examples of other specified deductions that a vendor is allowed to make in the calculation of its VAT liability or refund include –

- indemnity payments made by the insurer to an insured person under a contract of insurance;
- amounts paid as a prize or winnings under betting transactions; or
- change in use adjustments.

A vendor is required to be in possession of certain documentary proof prescribed by the Commissioner when making a deduction of input tax or other specified deductions.

In some cases, input tax is specifically denied. The following are some examples:

- Purchase, lease or hire of a “motor car” as defined in the VAT Act.
- Most expenses relating to entertainment.
- Membership fees for sporting and recreational clubs (for example, country clubs and golf clubs).

The VAT incurred on any goods or services acquired by a vendor may be deducted to the extent that it constitutes “input tax”. This means that the VAT so incurred must be used by a vendor wholly for consumption, use or supply in the course of making its taxable supplies, or it will have to be apportioned accordingly. Any VAT incurred on expenses which are for both taxable and non-taxable purposes must be apportioned in accordance with section 17(1) of the VAT Act. The method of apportionment generally prescribed for vendors under this provision can be found in Binding General Ruling (VAT) 16: “Standard Apportionment Method” (BGR 16). A vendor may, however, apply for a ruling to use a special method of apportionment if the prescribed method in BGR 16 proves to be unfair or unreasonable in the vendor’s circumstances.<sup>76</sup>

A vendor must therefore directly attribute the VAT incurred on goods or services acquired according to the intended purpose for which the goods or services will be consumed, used or supplied, before applying the apportionment method to any mixed expenses.

---

<sup>73</sup> Such deductions are, however, limited to a 5 year prescription period.

<sup>74</sup> Refers to “second-hand goods” as defined in section 1(1) of the VAT Act. Certain things like animals, certain prospecting and mining rights as well as gold, gold coins and certain goods containing gold do not qualify as second-hand goods. For more information see Binding General Ruling (VAT) 43 “Deduction of Input Tax in respect of Second-hand Gold”.

<sup>75</sup> The amount of input tax that is deductible is the tax fraction (currently 15/115) of the purchase price.

<sup>76</sup> See Chapter 7 of the TA Act and section 41B of the VAT Act.

For more details on input tax and other deductions, see the *VAT 404 – Guide for Vendors*.

### **(a) How to calculate VAT**

In determining the VAT liability or refund, the vendor has to subtract the allowable input tax and other deductions from the output tax declared in the VAT201 return. The vendor has to pay the difference to SARS if the output tax exceeds the input tax and other deductions or the vendor will be entitled to a refund from SARS if the input tax and other deductions exceed the output tax declared. However, any refund will be offset against amounts owing by the vendor on any taxes administered by SARS before refunding any remaining balance.

Late payments of VAT attract a penalty of 10% of the outstanding amount.<sup>77</sup> Interest also accrues and is payable at the rate prescribed by SARS on any outstanding amounts of VAT which have not been paid. The interest accrues from the first day of the month following the period allowed for payment to be made.

Interest will also be paid by SARS at the prescribed rate if a vendor does not receive any refund which was due and payable within 21 business days of submitting the correctly completed VAT201 return. However, the payment of interest may be suspended or reduced in relation to the period during which the vendor has not complied with certain requirements.<sup>78</sup> For example, if the vendor –

- has not provided SARS with the banking details of the enterprise;
- has prevented SARS from gaining access to the records of the enterprise to verify the validity of the refund;
- has failed to rectify a material defect in the refund return concerned; or
- has outstanding taxes or returns for past tax periods.

### **3.8.13 Documentation**

Tax invoices for supplies made, bills of entry for goods imported and the general maintenance of proper accounting records and documents are all very important aspects of how the VAT system operates. These documents form an audit trail which SARS uses to verify that the vendor has complied with the law and may also serve as documentary evidence to substantiate an input tax and/ or any other deduction made by the vendor.

One of the most important documents in the VAT system is the tax invoice. For instance, a vendor is required to issue a tax invoice within 21 days of making a taxable supply. A vendor must be in possession of a valid tax invoice in order to deduct input tax, when applicable. The following information must be reflected on the tax invoice if the consideration exceeds R5 000, for the tax invoice to be valid:

- The words “Tax Invoice”, “VAT invoice” or “Invoice”.
- The name, address and VAT registration number of the supplier.
- The name, address and VAT registration number of the recipient.
- An individual serialised number and the date upon which the tax invoice is issued.

---

<sup>77</sup> Depending on the circumstances, an understatement penalty may also be imposed if there is a substantial understatement of tax or non-compliant behaviour by the vendor.

<sup>78</sup> For more information see paragraph 12.5 of the *Short Guide to the Tax Administration Act, 2011 (Act 28 of 2011)* and section 45(1) and (2) of the VAT Act.

- A full and proper description of the goods or services supplied (indicating, if applicable, that the goods are second-hand goods).
- The quantity or volume of the goods or services supplied.
- Either –
  - the value of the supply, the amount of tax charged and the consideration for the supply; or
  - if the amount of tax charged is calculated by applying the tax fraction (currently 15/ 115) to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax is charged.

An abridged tax invoice may be issued when the consideration for the supply does not exceed R5 000. An abridged tax invoice contains the same information as a tax invoice, except that the quantity or volume of the goods or services supplied and recipient's particulars need not appear on the document. The invoicing requirements for non-resident suppliers of electronic services are set out in Binding General Ruling (VAT) 28 "Electronic Services".

For more information on VAT documentation, see the *VAT 404 – Guide for Vendors*.

### **3.8.14 Submission of VAT returns**

#### **(a) Manual submission**

A vendor that manually submits a VAT201 return to SARS must ensure that it is received by the 25<sup>th</sup> of the month following the end of the vendor's tax period. Payment must, if applicable, also be made on or before such 25<sup>th</sup> day. In the event that the 25<sup>th</sup> of the month falls over a weekend or on a public holiday, the vendor must ensure that the submission of the VAT201 return and the payment are made to SARS no later than the last business day before such 25<sup>th</sup> day.

Note, however, that SARS branches or offices do not accept manual forms of payment of the VAT amount due, including payment by cheque (either posted or dropped off at SARS drop-boxes). Payment must be made electronically or over the counter at the bank.

#### **(b) Electronic submission**

A vendor that makes use of SARS eFiling to submit the VAT201 return and makes payment electronically (that is, on SARS' eFiling facility or effected by EFT through internet banking) must ensure that the VAT201 return and the payment are received by no later than the last business day of the month following the end of the vendor's tax period.

See the *VAT 404 – Guide for Vendors* and the **SARS website** for more information on electronic submission of returns and managing of payments.

### **3.8.15 Duties of a vendor**

Once registered as a vendor, that person has certain responsibilities under the TA Act and the VAT Act, including, amongst others, the following:

- Providing correct and accurate information to SARS.
- Collecting VAT and submitting VAT returns and payments on time.
- Including VAT in all prices on advertisements and quotes.
- Keeping accurate accounting records.

- Producing relevant documents when required by SARS.
- Notifying SARS about any changes affecting the business, for example, any change of the representative vendor; the business address; trading name; the names of partners, or members; or changes in bank details.
- Issuing tax invoices, debit and credit notes in connection with any taxable supplies made.

Failure to meet these responsibilities is an offence which could lead to a fine, penalty or other punishment prescribed under the TA Act or VAT Act (as the case may be).

### **3.8.16 Exports to foreign countries**

A vendor may apply the zero rate when supplying movable goods and consigning them to a recipient at an address in an export county.

If a non-resident or a foreign enterprise purchases goods in South Africa and subsequently exports the goods, the VAT may be refunded by the VAT Refund Administrator (VRA). In certain circumstances a vendor may elect to apply the zero rate of VAT if goods are indirectly exported from South Africa under specific conditions relating to certain modes of transport as set out in Part 2 of the Export Regulations and provided that the vendor obtains and retains the proof of export as required.

For more information on the export timeframes, see Binding General Ruling (VAT) 52 “Timeframe for the Export of Goods by Vendors and Qualifying Purchasers Affected by the Global COVID-19 Pandemic”.

For more information on the VAT treatment of supplies, including exports, see the *VAT 404 – Guide for Vendors*.

## **3.9 Estate duty (the Estate Duty Act 45 of 1955)**

### **3.9.1 Introduction**

The estate of a deceased person who was ordinarily resident in South Africa at the time of death will, for estate duty purposes, consist of all property wherever situated, including deemed property (for example, life insurance policies). However, property physically situated outside South Africa will be excluded from the deceased’s estate if the deceased was not ordinarily resident in South Africa at the time of death. A deduction against the net value of an estate will also be allowed on the value of property situated outside the Republic which was acquired before the deceased person became ordinarily resident in South Africa for the first time, or after that person became ordinarily resident in South Africa for the first time and had acquired such property under a donation or inheritance from a person who was not ordinarily resident in South Africa at the date of such donation or inheritance. The deduction also applies to property situated outside South Africa which was acquired by the deceased out of profits and proceeds of any such property.

The estate of a person who was not ordinarily resident in South Africa is subject to estate duty only to the extent that it consists of certain property of the deceased in South Africa.

The Estate Duty Act does not define “resident” and refers to persons who are “ordinarily resident” or not “ordinarily resident”. It follows, therefore, that any natural person, who was not ordinarily resident in South Africa but who may have become a resident of South Africa under

the physical presence test for income tax purposes, will be regarded as a non-resident for estate duty purposes.<sup>79</sup>

The duty is calculated on the dutiable amount of the estate. Certain admissible deductions are made from the total value of the estate including the following:

- The value of property in the estate that accrues to the surviving spouse.
- All debts due by the deceased.

The net value of the estate is reduced by a R3,5 million general deduction to arrive at the dutiable amount of the estate (section 4A(1) of the Estate Duty Act).

If a person was a spouse at the time of death of one or more previously deceased persons, the dutiable amount of the estate of that person will be determined by deducting from the net value of that estate, an amount equal to –

- the specified amount (R3,5 million) multiplied by two (R3,5 million × 2 = R7 million); and
- reduced by so much of the specified amount (R3,5 million) already allowed as a deduction from the net value of the estate of any one of the previously deceased persons (section 4A(2) of the Estate Duty Act).

If that person was one of the spouses at the time of death of a previously deceased person, the dutiable amount of the estate of that person will be determined by deducting from the net value of that estate, an amount equal to the sum of –

- the specified amount (R3,5 million); and
- the specified amount (R3,5 million), reduced by so much of the specified amount already allowed as a deduction from the net value of the estate of the previously deceased person, divided by the number of spouses of that previously deceased person (section 4A(3) of the Estate Duty Act).

### 3.9.2 Rate of estate duty

Estate duty is charged at a rate of 20% on the first R30 million of the dutiable amount of the estate and 25% on any dutiable amount of the estate exceeding R30 million. This applies in respect of the estate of a person who dies on or after 1 March 2018.

#### Example 1 – Estate duty calculation

Y passed away on 1 March 2019 with an estate with a net value of R3 600 000. Y did not have a spouse at the date of death.

	R
Net value of estate	3 600 000
Less: General deduction – section 4A(1) of the Estate Duty Act	<u>(3 500 000)</u>
Dutiable amount	<u>100 000</u>
Estate duty payable on R100 000 at 20%	20 000

<sup>79</sup> For further information on “ordinarily resident” see Interpretation Note 3 “Resident: Definition in relation to a Natural Person – Ordinarily Resident”.



### Example 2 – Estate duty calculation<sup>80</sup>

X passed away and bequeathed her estate to Z. X was the spouse at the time of death of a previously deceased person, Y. No amount was previously allowed as a deduction against the net value of Y's deceased's estate.

	R
Net value of X's estate	7 100 000
Less: General deduction – section 4A(2) of the Estate Duty Act (2 × R3,5 million)	<u>(7 000 000)</u>
Dutiable amount	<u>100 000</u>
Estate duty payable on R100 000 at 20%	20 000

### Example 3 – Estate duty calculation

Z passed away on 2 April 2019 with an estate with a net value of R45 million. Z did not have a spouse at the date of death.

	R
Net value of Z's estate	45 000 000
Less: General deduction – section 4A(1) of the Estate Duty Act	<u>(3 500 000)</u>
Dutiable amount	<u>41 500 000</u>
Estate duty payable:	
First R30 000 000 of dutiable amount at 20%	6 000 000
Amount exceeding R30 000 000: R41 500 000 – R30 000 000 = R11 500 000 at 25%	<u>2 875 000</u>
Total estate duty payable	8 875 000

Interest at 6% per year is charged on unpaid estate duty under section 10 of the Estate Duty Act.

The South African government has entered into agreements with Botswana, Lesotho, Swaziland,<sup>81</sup> Zimbabwe, the United Kingdom and the United States of America to eliminate double taxation relating to death duties. These agreements are available on the **SARS website**.

### 3.9.3 Taxation of deceased persons and deceased estates (sections 9HA, 9HB and 25 and paragraph 40(2) of the Eighth Schedule)

#### (a) Capital gains tax

The death of a person triggers potential CGT consequences. The deceased person is deemed to have disposed of all assets at their market value at the date of death, except for –

- assets disposed of to a surviving spouse, either under the law of intestate succession or by means of a will, by means of the redistribution of assets in the course of the liquidation or distribution of the deceased estate, or by the settlement of a claim arising due to the spouses being married with the accrual system, in which case the disposal by the deceased is deemed to be at the base cost of that asset;

<sup>80</sup> Death on or after 1 January 2010.

<sup>81</sup> The change of name from “the Kingdom of Swaziland” to “the Kingdom of Eswatini” came into effect on 19 April 2018 but not all the tax acts have yet been amended in this regard. The name “Swaziland” and “Eswatini” is used interchangeably in this Guide.

- a long-term insurance policy, if the proceeds of that policy are disregarded for capital gains tax purposes; or
- the interest of the deceased person in a pension, pension preservation, provident, provident preservation, retirement annuity or a similar fund, if the lump sum benefit therefrom is disregarded for capital gains tax purposes.

Assets disposed of to the spouse of the deceased in the manner indicated above result in the spouse “stepping into the shoes” of the deceased with regard to the date of acquisition of the asset, expenditure incurred by the deceased, how the asset was used by the deceased and any allowances or deductions which the deceased was allowed to claim on that asset.

An asset directly transferred to an heir or legatee of the deceased person, will result in a deemed acquisition by the heir or legatee of that asset at the market value thereof at the date of death of the deceased.

Should the taxable capital gain from this deemed disposal result in tax due which exceeds 50% of the net value of the deceased estate and the executor has to dispose of an asset of the deceased estate in order to settle this tax liability, the heir or legatee who would have been entitled to receive that asset may elect to receive that asset in exchange for settling that tax due within three years of the deceased estate becoming distributable. This tax is then a debt due by that heir or legatee to the deceased estate.

An asset acquired by a deceased estate from the deceased, other than assets disposed of to the spouse, is acquired at the market value of the asset at the date of death of the deceased. The disposal of an asset by the deceased estate to an heir or legatee, and the acquisition of that asset by the heir or legatee will occur at the market value thereof at the date of death of the deceased, being the expenditure incurred by the deceased estate in respect of that asset.

#### **(b) Income tax**

Income received by or accrued to the executor of a deceased estate, which would have been income in the hands of the deceased, is deemed to be income of the deceased estate and is taxable in the deceased estate. The deceased estate is treated as a natural person for this purpose, although the rebates and medical scheme tax credits discussed in **3.2.15(a)** are not available to it.

### **3.10 Securities transfer tax (the Securities Transfer Tax Act 25 of 2007)**

STT is a tax levied under the Securities Transfer Tax Act 25 of 2007 and is payable on the transfer of any security issued by a CC or company incorporated in South Africa as well as foreign companies listed on a South African stock exchange, and on the reallocation of securities between different stock accounts. A transfer for STT purposes includes any disposal of a security held, or the cancellation or redemption of that security under certain circumstances, which results in a change in beneficial ownership.

For purposes of this tax, “security” means –

- any share or depository receipt in a company; or
- any member’s interest in a CC.

The debt portion in respect of a share linked to a debenture is excluded from a “security”.

The STT rate is 0.25% of the taxable amount in respect of any transfer of a security which is the higher of the consideration paid for or the market value of the security.

STT is payable on securities that are listed on an exchange and those that are not listed (unlisted). The person liable to pay the STT is determined based on whether the relevant security is listed or unlisted:

- Listed securities:
  - When that security is transferred through or from an authorised user of the relevant exchange, the said user is liable to pay the STT. The authorised user may, however, recover the tax from the person to whom the securities are transferred.
  - When the listed security is not transferred through or from an authorised user of the relevant exchange, the person to whom the security is transferred is liable to pay the STT.
- Unlisted securities – the company which issued the unlisted security is liable for STT. The company may, however, recover the tax payable from the person to whom the security is transferred.

STT on the transfer of securities must be paid as follows:

- Listed securities – by the 14<sup>th</sup> day of the month following the month during which transfer of the securities occurred.
- Unlisted securities – within two months from the end of the month during which the transfer of the securities occurred.

Payment of STT must be made electronically through the SARS e-STT system. If any tax remains unpaid after the due date, a penalty of 10% of the unpaid tax is imposed. The Commissioner may, however, remit the penalty (or any portion thereof) in accordance with Chapter 15 of the TA Act.<sup>82</sup>

The transfer of securities to certain entities and certain types of transactions are exempt from STT, for example –

- transfers to any sphere of the government of South Africa or to any sphere of the government of any other country;
- transfers to certain public benefit organisations (PBOs);
- heirs or legatees that acquire securities through an inheritance; or
- certain share transactions which are subject to transfer duty such as the acquisition of shares in a share block company.

For more information, see the *External Reference Guide: Securities Transfer Tax*.

### **3.11 Transfer duty (the Transfer Duty Act 40 of 1949)**

#### **3.11.1 Introduction**

Transfer duty is payable on transactions constituting “property” as defined in section 1(1) of the Transfer Duty Act subject to certain exemptions and exceptions.

Transfer duty is levied on –

- the value of the property acquired by any person under a transaction or in any other manner; and

---

<sup>82</sup> Section 6A of the Securities Transfer Tax Administration Act 26 of 2007.

- the value by which the property is enhanced by the renunciation of an interest in or restriction upon the use or disposal of that property.

The most common forms of property transactions on which transfer duty is levied includes –

- physical property such as land and any fixtures thereon, including sectional title units;
- real rights in land including limited real rights such as a *usufruct*, *usus*, *habitatio* and *fideicommissum*, but excluding rights under mortgage bonds or leases (other than the leases mentioned below); and
- rights to minerals or rights to mine for minerals (including any sub-lease of such a right).

(Transfers of these types of property must be recorded in a Deeds Registry.)

The definition of “property” also specifically includes –

- certain shares, contingent rights and other interests in entities such as companies, CCs and discretionary trusts that own residential property;
- fractional ownership timeshare schemes; and
- shares in a share block company.

(Transfers of these specific rights and interests in property are not recorded in a Deeds Registry.)

Regardless of the type of property and whether the transfer of the property must be recorded in a Deeds Registry or not, the transfer duty payable is based on the higher of the following values:

- The amount of the consideration payable
- The declared value
- The fair value of the property

In a transaction between persons transacting at arm’s length, the fair value is generally equal to the consideration paid or payable for the property. If property is acquired for no consideration, or if the consideration is not market related, transfer duty is paid on the consideration, or the fair value, or the declared value of the property – whichever is the higher amount.

Transfer duty must be paid within six months of the date of acquisition of the property. The date of acquisition will depend on the type of transaction. The most common date of acquisition for a normal sale of property is the date of the last signature to the agreement. If the tax has not been paid within the prescribed period, interest is payable at the rate of 10% a year,<sup>83</sup> calculated for each completed month during which the transfer duty remains unpaid.<sup>84</sup>

<sup>83</sup> Interest will be charged at the “prescribed rate” under the TA Act from the effective date that the Presidential Proclamation on interest comes into effect for all taxes.

<sup>84</sup> Currently, the rate of 10% is prescribed in the Transfer Duty Act. Once the interest provisions in the TA Act become effective, the “prescribed rate” as defined in that Act will apply. At the date of publication of this guide, the Proclamation had not yet come into effect.

The general rule is that transfer duty is payable on the acquisition of all forms of property unless –

- the transaction is subject to VAT and qualifies for exemption under section 9(15) of the Transfer Duty Act;
- the transaction is exempt under any other specific exemption provided under section 9 of the Transfer Duty Act;
- the transaction is exempt from transfer duty under any other Act of Parliament; or
- the consideration or the fair value of the property is R900 000 or less (see the rates in 3.11.2 below for the thresholds before 1 March 2017).

### 3.11.2 Transfer duty rates

Transfer duty is levied on a progressive sliding scale. This means the higher the value of the property, the higher the rate of tax that will apply. The rates are also based on the date of acquisition which applies to the transaction concerned. The following rates are applicable from 1 March 2017 to 29 February 2020:

Fair market value or consideration	Rate of duty
Not exceeding R900 000	0%
Exceeding R900 000 but not R1 250 000	3% of the value exceeding R900 000
Exceeding R1 250 000 but not R1 750 000	R10 500 + 6% of the value exceeding R1 250 000
Exceeding R1 750 000 but not R2 250 000	R40 500 + 8% of the value exceeding R1 750 000
Exceeding R2 250 000 but not R10 000 000	R80 500 + 11% of the value exceeding R2 250 000
Exceeding R10 000 000	R933 000 + 13% of the value exceeding R10 000 000

The following rates are applicable from 1 March 2020:

Fair market value or consideration	Rate of duty
Not exceeding R1 000 000	0%
Exceeding R1 000 000 but not R1 375 000	3% of the value exceeding R1 000 000
Exceeding R1 375 000 but not R1 925 000	R11 250 + 6% of the value above R 1 375 000
Exceeding R1 925 000 but not R2 475 000	R44 250 + 8% of the value above R 1 925 000
Exceeding R2 475 000 but not R11 000 000	R88 250 +11% of the value above

	R2 475 000
Exceeding R 11 000 000	R1 026 000 + 13% of the value exceeding R11 000 000

The above rates apply to all persons, regardless of whether the person acquiring the property is a natural person, trust, company or other juristic person. See the *Transfer Duty Guide* for the rates that apply when the date of acquisition of the property is before 1 March 2017.

### 3.11.3 Transfer duty or VAT payable

In order to ensure that the sale of fixed property is not subject to both VAT and transfer duty, the Transfer Duty Act contains an exemption from transfer duty to the extent that the supply is subject to VAT. The provisions of the VAT Act will therefore, normally take precedence over the Transfer Duty Act if the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a vendor's private residence, or the sale of property used by a vendor for the purposes of employee housing will be subject to transfer duty, since these supplies are not in the course or furtherance of the enterprise carried on by the vendor.

If the sale of fixed property is part of the supply of an entire enterprise to another VAT vendor, which meets the requirements of a going concern under section 11(1)(e) of the VAT Act, VAT will be charged at the zero rate on all the enterprise assets (including the fixed property). In this case, no transfer duty will be payable on the property.

All payments of transfer duty and any TDC01 returns which may be required for the processing of transactions must be submitted to SARS via SARS eFiling, since the manual submission of forms or payments is no longer accepted. SARS issues a transfer duty receipt on payment of the tax, or an exemption receipt is issued if the transaction is exempt from transfer duty. Note, however, that a transaction falling under the threshold is not exempt from transfer duty. It simply means that the receipt will be issued at 0% and no transfer duty will be charged.

In most cases, the property transaction will have to be lodged in the Deeds Registry to effect transfer of the property into the transferee's name. In these cases, the receipt or exemption receipt must be lodged together with the transfer documents prepared by the conveyancer attending to the transfer. In cases involving the acquisition of shares, rights and other interests in entities that own residential property, no transfer of property is registered in the Deeds Registry. However, any changes to the shareholding of a company or the membership of a CC or changes in a trust deed which are necessary as a result of the transaction will need to be submitted to the Companies and Intellectual Property Commission (CIPC) or the office of the Master of the High Court (as the case may be).

For more information see the *Transfer Duty Guide* and the *External Guide for Transfer Duty via eFiling (TD-AE-02-G02)*.

## **3.12 Importation of goods and payment of customs and excise duties**

### **3.12.1 Introduction**

Goods arriving in South Africa may enter only through designated places of entry. The list of these ports together with operating hours, are available on the SARS website. These goods must be declared to SARS within the prescribed time periods. The applicable customs duties, if any, must be paid when the goods are entered for home consumption, that is, for use in the Southern African Customs Union comprising South Africa, Botswana, Lesotho, Namibia and Eswatini (BELN countries). The rate of duty is dependent on the tariff category (code) under which the goods are classified and duty is usually payable on the value (customs value) or the volume or quantity of the goods imported. The customs duty may, however, be –

- deferred for a specific period, if the importer is a participant in the SARS deferment scheme;
- rebated if the goods meet certain conditions as provided for in Schedules 3 and 4 of the Customs and Excise Act; or
- suspended temporarily if the goods are entered for storage in a licensed warehouse or are in transit to a destination outside the Republic.

Imported goods may also qualify for a preferential rate of duty under free or preferential trade agreements to which South Africa is a party. The goods may be subject to import control as well as sanitary and photo-sanitary requirements under such agreements.

In addition, VAT at the standard rate is also payable on goods imported and cleared for home consumption unless exempted under section 13(3) of the VAT Act, read with Schedule 1 to the VAT Act. See **3.8.4**.

### **3.12.2 Registration as an importer**

Any person who intends importing goods must register with SARS as an importer. Importers of goods of which the value for each consignment is less than R50 000, subject to the limitation of three such consignments per calendar year, are excluded from the registration requirement. The generic code 70707070 can be used for such importers.

### **3.12.3 Goods imported through designated places of entry**

Goods imported into South Africa are accepted at designated places of entry, which include –

- customs-appointed airports;
- customs-appointed land border posts;
- customs-appointed harbours; and
- the South African postal service.

### **3.12.4 Import declarations**

An importer is required to complete the prescribed clearance declaration within the stipulated time period for goods imported. Goods that are not declared within this time period will be detained and removed to a state warehouse.

The importer must ensure to be in possession of all supporting documents that may include an import permit or a certificate or other authority issued under any law authorising the importation of the goods. The importer must further ensure that the declaration is fully and accurately completed before submitting it electronically or manually to SARS. However, the supporting documents as mentioned above must be submitted to SARS only upon request.

Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Provision exists for the imposition of penalties, in addition to seizure of the goods if goods have been dealt with irregularly or false declarations have been made, irrespective of the duty implication. In instances of fraud or criminality, offenders may also be prosecuted criminally.

### **3.12.5 Tariff classification**

Tariff classification is the process whereby goods imported are categorised under the Harmonised System by virtue of what it is, what it is made of or its use. The rate of duty is dependent on the tariff category (code) under which the commodity is classified.

### **3.12.6 Customs value**

Customs value is established under Article VII of the General Agreement on Tariffs and Trade (GATT). Provision is made for six valuation methods. The majority of goods are valued using method 1, which is the actual price paid or payable by the buyer of the goods. The Free on Board (FOB) price forms the basis for the value, allowing for certain deductions (for example, interest charged on extended payment terms) and additions (for example, certain royalties) to be effected.

In determining the customs value, SARS pays particular attention to the relationship between the buyer and seller, payments outside of the normal transactions, for example, royalties and licence fees and restrictions that have been placed on the buyer. These aspects can result in the price paid for the goods being increased for the purpose of determining a customs value and thus directly affecting the customs duty payable.

### **3.12.7 Duties and levies**

As a general rule customs duties listed in Part 1 of Schedule 1 to the Customs and Excise Act are protective towards local industries and not levied to generate revenue for the *fiscus*. Excise duty, fuel and environmental levies are forms of indirect taxation used by government to influence consumer behaviour and also to generate revenue for the *fiscus*. SARS also collects the Road Accident Fund (RAF) levy.

#### **(a) Customs duty**

Customs duty, if expressed as a percentage (*ad valorem*), is always calculated as a percentage of the value of the goods. However, with certain products the duty is expressed as a specific rate, for example, cents per kilogram, cents per litre etc. based on the volume of the goods.

#### **(b) Excise duty**

Specific excise duty, ad valorem excise duty, fuel and RAF levies, environmental levies, and health promotion levy are levied on certain locally-manufactured goods and on imported goods of the same class or kind. The duties on imports are levied at the same rate as for locally manufactured goods and are payable in addition to the ordinary customs duty of Part 1 of Schedule 1 to the Customs and Excise Act.

#### **(c) Anti-dumping, countervailing and safeguard duties on imported goods**

Anti-dumping, countervailing and safeguard duties are trade remedies used to protect local industries against goods imported at dumped prices, subsidised imports or disruptive competition (in a form of sudden surge in imports).



### **3.12.8 Value-added tax on the importation of goods**

VAT is levied at the standard rate on the importation of goods from export countries, including the BELN countries.

For VAT purposes the value to be placed on the importation of goods into South Africa is deemed to be the value of the goods for customs duty purposes, plus any duty levied under the Customs and Excise Act on the importation of those goods, plus a further 10% of the said customs value for goods not originating from the BELN countries. The value of any goods which have their origin in any of the BELN countries which are imported into South Africa from any of those countries is not increased by the factor of 10% as is the case for imports from other countries.

### **3.12.9 Deferment, suspension and rebate of duties**

Participation in the SARS deferment scheme allows an importer to defer duty and VAT for up to 30 days after clearance of goods imported for home consumption. At the conclusion of the period of deferment the client is allowed a further seven days to settle the account. A requirement for participation in the deferment scheme is the furnishing of adequate security to cover the amount of duty and VAT deferred.

The payment of duty and VAT is suspended for up to two years when goods are entered into a licensed customs and excise storage warehouse for storage. Duty and VAT must be brought to account when the goods are cleared for home consumption.

## **3.13 Exportation of goods**

### **3.13.1 Introduction**

Goods exported from South Africa may be exported only through designated places of exit. Any exporter of any goods must within the prescribed period declare such goods for export. The goods may also be subject to export control being either totally prohibited from export or subject to the production of a permit from the issuing authority at the time of clearance.

### **3.13.2 Registration as an exporter**

Any person who intends exporting goods from South Africa must register with SARS as an exporter. Exporters who export goods of which the value for each consignment is less than R50 000, provided that the number of exports are limited to three consignments per calendar year, are excluded from registration.

### **3.13.3 Export declarations**

Any exporter of any goods must, before such goods are exported from South Africa deliver to the Controller an export bill of entry in the prescribed form. Declarations may be submitted either manually or electronically to SARS. Goods may be stopped or detained, on a risk basis in order to verify the correctness of the declaration. Provision exists for the imposition of penalties, in addition to seizure of the goods if goods have been dealt with irregularly or false declarations have been made. In instances of fraud, offenders may also be prosecuted criminally.

### **3.14 Free trade agreements and preferential arrangements with other countries**

A number of agreements have been concluded or are in the process of being negotiated with other countries and trading blocs, which provide for preferential market access into South Africa as well as for South African products into other markets. See below.

#### **3.14.1 Bi-lateral Agreements (non-reciprocal)**

This includes trade agreements between the governments of South Africa and the Republic of Malawi, providing for preferential access of specific products into South Africa subject to specific origin requirements and quota permits.

#### **3.14.2 Preferential dispensation for goods entering the Republic of South Africa (non-reciprocal)**

These include goods produced or manufactured in Mozambique (Rebate Item 412.25), providing for free or reduced duties subject to specific origin requirements.

#### **3.14.3 Free or preferential trade agreements (reciprocal)**

These include –

- SACU – The Southern African Customs Union consists of South Africa and the BELN countries. Its aim is to facilitate the cross-border movement of goods between member countries.
- SADC – EPA - Economic Partnership Agreement between the SADC Economic Partnership Agreement states, of the one part, and the European Union and its member states of the other part which was implemented on 10 October 2016.
- MERCOSUR – SACU - Common Market of the South (MERCOSUR) comprising of Argentina, Brazil, Paraguay and Uruguay and the South African Customs Union (SACU) comprising of Botswana, Lesotho, Namibia, South Africa and the Kingdom of Eswatini which was implemented on 1 April 2016.
- SADC – Agreement of the Southern African Development Community, which was implemented on 12 September 2000.
- EFTA – European Free Trade Association Agreement between Ireland, Liechtenstein, Norway and Switzerland on the one part and SACU on the other part, which was implemented on 1 May 2008.

#### **3.14.4 Generalised Systems of Preference (non-reciprocal)**

These include –

- AGOA – Preferential tariff treatment of textile and apparel articles imported directly into the territory of the United States of America from South Africa as contemplated in the African Growth and Opportunity Act.
- Norway – Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Kingdom of Norway.
- Russia – Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Russian Federation.
- Turkey – Non-reciprocal preferential tariff treatment under the Generalised System of Preference granted to developing countries by the Republic of Turkey.

### **3.15 Environmental levy**

An environmental levy is collected on specific products to encourage more environmentally sustainable business and consumer practices.

#### **3.15.1 Plastic bags (Part 3A of Schedule 1 of the Customs and Excise Act)**

A levy is charged on certain plastic carrier bags and flat bags (bags generally regarded as “grocery bags” or “shopping bags”).

Local manufacturers of such bags must license their premises as manufacturing warehouses with their local Customs and Excise Office and submit quarterly excise accounts.

Payment of this levy is additional to any customs or excise duty payable under Part 1 or Part 2 of Schedule 1 to the Customs and Excise Act. On 1 April 2013 this levy was increased from 4 cents per bag to 6 cents per bag. On 1 April 2016 the levy was increased from 6 cents to 8 cents per bag. On 1 April 2018 the levy was increased to 12 cents per bag. On 1 April 2020 the levy was increased to 25 cents per bag.

Plastic bags used for immediate wrapping or packing, zip-lock bags and household bags including refuse bags and refuse bin liners are excluded from paying this levy.

#### **3.15.2 Electricity generated in South Africa (Part 3B of Schedule 1 of the Customs and Excise Act)**

Non-renewable electricity generated at an electricity generation plant is liable to a levy calculated on the quantity generated at the time such generation of electricity takes place and any losses incurred subsequent to the electricity generation process or electricity exported shall not be deducted or set off from the total quantity of electricity accounted for on the monthly environmental levy account.

Electricity must be generated in a licensed customs and excise manufacturing warehouse in accordance with the provisions of Chapter VA and the rules contained in the Customs and Excise Act.

Renewable electricity generated under specific circumstances as outlined in Note 2 in Part 3B of Schedule 1 to the Customs and Excise Act will not be liable for this levy.

On 1 July 2012 the levy was increased from 2,5 cents per kWh to 3,5 cents per kWh.

#### **3.15.3 Electrical filament lamps (Part 3C of Schedule 1 of the Customs and Excise Act)**

A levy is charged on electrical filament lamps to promote energy efficiency and to reduce the demand on electricity.

This levy is additional to any customs or excise duty payable under Parts 1 or 2 of Schedule 1 to the Customs and Excise Act and was increased from R3 per lamp to R4 per lamp on 1 April 2013. On 1 April 2016 the levy was increased from R4 to R6 per globe. On 1 April 2018 the levy was increased to R8 per globe. On 1 April 2020 the levy was increased to R10 per globe.

#### **3.15.4 Carbon dioxide (CO<sub>2</sub>) vehicle emissions levy (Part 3D of Schedule 1 of the Customs and Excise Act)**

A CO<sub>2</sub> emissions levy is charged on new passenger motor vehicles and double-cab vehicles. The main objective of this levy is to influence the composition of South Africa’s vehicle fleet to become more energy-efficient and environmentally-friendly.

The emissions levy is in addition to the current *ad valorem* luxury tax on new vehicles. The levy is based on certification provided by the vehicle manufacturer, or in the absence thereof according to the set methods of calculation as described in Note 5 in Part 3D of Schedule 1 to the Customs and Excise Act. The tax is included in the price of the vehicle before calculating the VAT payable on the sale of the vehicle. The levy was increased on 1 April 2018 to R110 per gCO<sub>2</sub>/km on emissions exceeding the threshold of 120gCO<sub>2</sub>/km for passenger vehicles and in the case of double-cab vehicles the rate was increased to R150 per gCO<sub>2</sub>/km on emissions exceeding the threshold of 175gCO<sub>2</sub>/km. The levy was increased on 1 April 2020 to R120 per gCO<sub>2</sub>/km on emissions exceeding the threshold of 95gCO<sub>2</sub>/km for passenger vehicles and the levy on double cab vehicles increased to R160 per gCO<sub>2</sub>/km on emissions exceeding the threshold of 175gCO<sub>2</sub>/km.

#### **Example 4 –Carbon dioxide (CO<sub>2</sub>) vehicle emissions levy**

If the certified CO<sub>2</sub> emissions of a new vehicle (transport of persons) bought since 1 April 2020 are 140 gCO<sub>2</sub>/km, the tax payable will be calculated as follows:

$$\begin{aligned} &(140 \text{ gCO}_2/\text{km} - 95\text{gCO}_2/\text{km}) \times \text{R}120 \\ &= 45\text{gCO}_2/\text{km} \times \text{R}120 \\ &= \text{R}5\,400 \end{aligned}$$

In this example, R5 400 will be added to the price of the vehicle before calculating the VAT inclusive price.

Guides on environmental levy (such as on emissions tax and plastic bags) are available on the **SARS website**.

#### **3.15.5 Tyre environmental levy (Part 3E of Schedule 1 of the Customs and Excise Act)**

An environmental levy on new tyres is applicable since 1 February 2017 on those pneumatic tyres listed in Part 3E to Schedule 1 of the Customs and Excise Act at a rate of R2,30 per kilogram of the nett mass of the tyre.

The tyre levy rules define “nett mass” as the design mass in respect of any tyre that has been verified and specified in writing by the tyre manufacturer to its customer. The term “design mass” is defined as the weight in respect of a certain size, type or class of tyre that forms part of the design specifications for that particular category of tyre.

The tyre levy rules also provide a proxy formula to calculate the net mass for tyre levy purposes when the actual nett mass is unknown. In such instances, proof of the design mass of a similar size, type and class of tyre must be obtained in writing and then increased by 10 per cent to account for typical variances in tyre weights.

Domestic manufacturers of tyres must licence manufacturing warehouses and submit quarterly tyre levy accounts and payments. Vehicle manufacturers may utilise their special manufacturing warehouse licences for tyre levy accounting purposes.

The tyre levy is payable in addition to any customs duty of Part 1 of Schedule 1 of the Customs and Excise Act.

#### **3.15.6 Carbon emissions (Part 3F of Schedule 1 of the Customs and Excise Act)**

A carbon tax on greenhouse gas emissions generated domestically was implemented with effect from 1 June 2019 in terms of the Carbon Tax Act 15 of 2019.

The carbon tax is administered as an environmental levy under the Customs and Excise Act.

The rate on 1 June 2019 was R120 per tonne of carbon dioxide equivalent. The rate increased to R127 per tonne of carbon dioxide equivalent from 1 January 2020.

A separate carbon fuel levy in terms of the Customs and Excise Act was implemented with effect from 5 June 2019 at a rate of 7c per litre on petrol and 8c per litre on diesel. The carbon fuel levy and general fuel levy form the two constituent components of the fuel levy since 5 June 2019. See details below in section 3.16 on the fuel levy.

### **3.16 Fuel levy and Road Accident Fund levy (Parts 5A and 5B of Schedule 1 to the Customs and Excise Act)**

These levies are imposed on distillate fuel (diesel), aviation kerosene, illuminating kerosene, petrol and hydrocarbon solvents manufactured in or imported into South Africa.

The following are some of the fuel levy products and their respective levy rates with effect from 1 April 2020:

<b>Fuel levy products</b>	<b>Rate of levy</b>
Petrol (leaded and unleaded)	377c/li
Aviation kerosene	Free
Illuminating kerosene (marked)	Free
Illuminating kerosene (unmarked)	363c/li
Distillate fuel (diesel)	363c/li
Road accident fund levy on petrol and diesel	207c/li

The fuel levy comprises of the general fuel levy plus the carbon fuel levy. The rates thereof on petrol versus diesel, unmarked kerosene and unmarked hydrocarbon solvents with effect from 1 April 2020 are:

- The general fuel levy at a rate of 370c/l and 355 c/l respectively.
- The carbon fuel levy at a rate of 7c/l and 8c/l respectively.

### **3.17 Air passenger departure tax (section 47(B) of the Customs and Excise Act)**

From 1 October 2011 to date –

- passengers departing to Botswana, Lesotho, Namibia and Eswatini pay R100 per passenger.
- passengers departing to other international destinations pay R190 per passenger.

### **3.18 Health Promotion Levy**

#### **3.18.1 Sugary beverages levy (Part 7A of Schedule 1 of the Customs and Excise Act)**

The sugary beverages levy applies to specific sugary drinks, as well as preparations and concentrates used in the manufacture of sugary drinks. The policy objective with the levy is to combat obesity and promote healthier consumer beverage choices.

With effect from 1 April 2019, the levy rate is 2.21 cents per gram of the sugar content of the finally mixed beverage that exceeds 4 grams per 100 millilitres and applies to locally manufactured and imported products that are consumed locally. Local manufacturers of sugary beverages levy goods must license their premises as manufacturing warehouses with their local Customs and Excise Office and submit monthly excise accounts.

#### **3.19 Skills development levy (the Skills Development Levies Act 9 of 1999)**

SARS administers the collection of SDL. SDL is levied on payrolls in order to finance the development of skills and thus enhance productivity.

An employer must pay SDL if the employer pays salaries, wages and other remuneration in excess of R500 000 per annum. Employers with an anticipated payroll of R500 000 or less (whether registered for PAYE purposes with SARS or not) during the following 12-month period are exempt from the payment of this levy.

SDL is payable by employers at a rate of 1% of the payroll. Employers providing training to employees will generally receive grants from the Sector Education and Training Authorities (SETAs) under this initiative, to be used for, amongst other things, developing the skills of the South African workforce. The Minister of Higher Education and Training in conjunction with the various Sector Education and Training Authorities (SETAs) is responsible for the administration of the Skills Development Act 97 of 1998. Any enquiries regarding the levy grant scheme must therefore be referred to the relevant SETA or the Minister of Higher Education and Training.

The application form to register for SDL is the same form that is used to register for PAYE (EMP101e). The monthly return for SDL is combined with the monthly return for PAYE (EMP201) which means that the same provisions apply for submission and payment.<sup>85</sup>

#### **3.20 Unemployment insurance fund contributions (the Unemployment Insurance Contributions Act 4 of 2002 and the Unemployment Insurance Act 63 of 2001)**

The UIF gives short-term relief to workers when they become unemployed or are unable to work because of maternity, adoption leave, or illness. It also provides relief to the dependants of a deceased contributor.

---

<sup>85</sup> For more information see the *External Guide: Guide for Employers in respect of Skills Development Levy (SDL-GEN-01-G01)*.

SARS administers the collection of the bulk of UIF contributions. UIF contributions, which are equal to 2% of the remuneration (subject to specified exclusions) paid or payable by an employer to its employees, are collected from employers on a monthly basis. The total amount of contributions so collected consist of –

- the sum of the contribution made by each employee equal to 1% of the employee's remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating the PAYE) paid or payable by the employer to the employee during any month; and
- a contribution made by the employer equal to 1% of the remuneration (before taking into account any allowable deductions which the employer may deduct for purposes of calculating PAYE) paid or payable by the employer to its employees during any month.

UIF contributions are calculated on so much of the remuneration paid or payable by the employer to its employee as does not exceed –

- R14 872 per month (R178 464 a year); or
- R3 432 per week.

Employers must pay the total contribution of 2% to SARS within seven days after the end of the month during which the amount was deducted from the remuneration of their employees.<sup>86</sup>

### **3.21 Employment tax incentive (the Employment Tax Incentive Act 26 of 2013)**

The ETI was introduced by the ETI Act which was promulgated on 18 December 2013.

The ETI is a temporary tax incentive that may be claimed by eligible employers as encouragement to employ –

- young employees between the ages of 18 and 29 years;
- employees of any age employed by an employer that is a qualifying company as contemplated in section 12R and renders services to that employer mainly within the special economic zone<sup>87</sup> in which the qualifying company that is the employer carries on trade; or
- employees of any age in any industry identified by the Minister by notice in the *Government Gazette*.

Payment of the incentive is effected by eligible employers reducing the PAYE due by the amount of the ETI that may be claimed, provided that the requirements of the ETI Act are met. The ETI is administered by SARS through the PAYE system. PAYE is deducted and withheld from the remuneration of the employees and accounted for to SARS (usually monthly) via the PAYE system.

---

<sup>86</sup> For more information see the *External Guide: Guide for Employers in respect of the Unemployment Insurance Fund (UIF-GEN-01-GO1)* Revision 6 and refer to [www.labour.gov.za](http://www.labour.gov.za) or [www.ufiling.co.za](http://www.ufiling.co.za).

<sup>87</sup> As defined in section 12R(1).

The ETI is a temporary programme which commenced on 1 January 2014 and will end on 28 February 2029.<sup>88</sup> During this period the employer may claim the ETI for a maximum of 24 individual months per qualifying employee. The ETI is subject to continuous review of its effectiveness and impact in order to determine the extent to which its core objective of reducing youth unemployment is achieved. It applies to qualifying employees employed on or after 1 October 2013 by eligible employers.

The employer is required to perform a monthly calculation to determine the amount of the ETI which may be claimed per qualifying employee. The calculation takes into account –

- the monthly remuneration paid to the qualifying employee;
- the period for which the qualifying employee is employed; and
- the amount or percentage which may be claimed.

With effect 1 August 2019, the ETI Act was amended to align the minimum wage provisions to that of the National Minimum Wage Act 9 of 2018.<sup>89</sup>

The table below illustrates how the ETI is calculated in relation to the remuneration received by a qualifying employee.

<b>Monthly remuneration</b>	<b>ETI per month during the first 12 months in which the employee qualified</b>	<b>ETI per month during the next 12 months in which the employee qualified</b>
R0 – R1 999	50% of monthly remuneration	25% of monthly remuneration
R2 000 – R4 499	R1 000	R500
R4 500 – R6 499	Formula: R1 000 – [0,5 × (monthly remuneration – R4 500)]	Formula: R500 – [0,25 × (monthly remuneration – R4 500)]

The employer must add any amounts rolled over from previous months to the amount of the ETI for the current month.<sup>90</sup> With effect from 1 March 2017, any excess ETI contemplated under section 9(2) will be deemed to be nil on the day following the end of the period for which the employer is required to render a reconciliation return (namely 1 September and 1 March respectively).

Any excess ETI rolled over that has not been deducted at the end of the period for which a return must be submitted under paragraph 14(3)(a) of the Fourth Schedule (these reconciliation returns are normally submitted for the six-month periods ending August and February), may be claimed from SARS. The reimbursement claimed from SARS will however not be made if an employer has any outstanding tax returns or an outstanding tax debt.<sup>91</sup>

<sup>88</sup> The incentive was extended until 28 February 2029 by section 102 of the Taxation Laws Amendment Act 23 of 2018.

<sup>89</sup> Section 79(1) of the Taxation Laws Amendment Act 34 of 2019.

<sup>90</sup> This may be subject to a limitation as the rollover amounts under section 9(2) are subject to a limitation under section 9(4).

<sup>91</sup> For more information see the *Guide to the Employment Tax Incentive*.



## **4. A business and other authorities**

### **4.1 Introduction**

Before commencing with business activities it may be necessary to register a business with certain other authorities to comply with certain laws or regulations. Some of the authorities that may require registration of a business are mentioned below.

### **4.2 Municipalities**

Municipalities will provide information with regard to the rules or regulations laid down for businesses in their respective areas.

### **4.3 Unemployment Insurance Commissioner**

Those employers who are not liable to register with SARS for PAYE and SDL purposes, but are liable for the payment of UIF contributions must pay such contributions for all its employees to the Unemployment Insurance Commissioner at the Department of Employment and Labour. (See 3.20.)

### **4.4 South African Reserve Bank – Exchange control**

Exchange control regulations restrict the in and out flow of capital from South Africa.

The administration of exchange control is performed by the South African Reserve Bank. The Reserve Bank has delegated some of its powers to deal with exchange control related matters to commercial banks. These banks are known as “authorised dealers” in foreign exchange.

Residents of South Africa wishing to remit, invest or lend amounts abroad are, as a general rule, subject to exchange control restrictions and will need to approach these authorised dealers.

A person in good standing and over the age of 18 years, can invest up to R10 million outside the Common Monetary Area (CMA – Lesotho, Eswatini and Namibia), per calendar year. A Tax Clearance Certificate (TCC) or a Tax Compliance Status (TCS) pin (in respect of foreign investments) must be obtained.<sup>92</sup> These funds may not be reinvested into the CMA countries thereby creating a loop structure or be re-introduced as a loan to a CMA resident. In addition, up to R1 million, within the single discretionary allowance facility, can be transferred abroad per calendar year, without the requirement to obtain a TCC or TCS.

South African companies (excluding CCs) can make *bona fide* new outward foreign direct investments into companies outside the CMA up to R1 billion per company per calendar year through any bank.<sup>93</sup>

### **4.5 Department of Trade and Industry**

Information on SMMEs, details of various assistance schemes, rebates, incentives and information such as how to start a business, type of business entities and requirements of registration of a business entity can be obtained from the Department of Trade and Industry or on its website [www.dti.gov.za](http://www.dti.gov.za).

---

<sup>92</sup> The issuing of the printed TCC was stopped from 2 November 2019. All TCCs currently in circulation will be cancelled and taxpayers will be required to use the TCS pin.

<sup>93</sup> For more information visit [www.resbank.co.za](http://www.resbank.co.za).

#### **4.6 Broad-Based Black Economic Empowerment Act 53 of 2003**

This Act provides a legislative framework for the promotion of black economic empowerment and for the issuing of the codes of good practice. For more information contact the Department of Trade and Industry or visit its website [www.dti.gov.za](http://www.dti.gov.za).

#### **4.7 Environmental legislation**

Various Acts exist with regard to the control and management of pollution which are administered by different government departments. Persons conducting businesses which may cause harm to the environment should approach the relevant department to ensure that they comply with the relevant environmental standards. Acts in this regard include, among others, the following:

- National Environmental Management Act 107 of 1998 (management of pollution in general)
- National Environmental Management: Air Quality Act 39 of 2004 (management of air pollution)
- National Water Act 36 of 1998 (management of water resources)
- Mineral and Petroleum Resources Development Act 28 of 2002 (rehabilitation of mining areas)
- Hazardous Substances Act 15 of 1973

#### **4.8 Safety and security**

Below is a list of some legislation relating to safety, security and health issues, which will enable businesses to ensure that their work places are safe and secure environments to work in:

- Explosives Act 15 of 2003
- National Nuclear Regulator Act 47 of 1999
- Nuclear Energy Act 46 of 1999
- Occupational Health and Safety Act 85 of 1993
- Tobacco Products Control Act 83 of 1993

#### **4.9 Employment and Labour**

Various Acts, administered by the Department of Employment and Labour, govern the relationship between employers and employees. These Acts include the following:

- Basic Conditions of Employment Act 75 of 1997
- Labour Relations Act 66 of 1995
- Employment Equity Act 55 of 1998
- Skills Development Act 97 of 1998
- National Minimum Wage Act 9 of 2018
- Compensation for Occupational Injuries and Diseases Act 130 of 1993

Employers are required to make contributions calculated on a certain percentage of their employees' earnings to the Compensation Fund, from which compensation is paid for injuries or diseases sustained or contracted by employees in the course of their employment or for death resulting from such injuries or diseases. For more information visit the Department of Employment and Labour's website [www.labour.gov.za](http://www.labour.gov.za).

#### **4.10 Promotion of Access to Information Act 2 of 2000**

Under this Act, government departments, public and private companies, including registered CCs and businesses are required to compile and publish manuals containing, amongst other things, a description of the entity's structure and functions and a description of the records held. The Department of Justice and Constitutional Development's website [www.justice.gov.za](http://www.justice.gov.za) has more information in this regard. See the *South African Revenue Service Manual on the Promotion of Access to Information Act, 2000*.

#### **4.11 Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002**

The purpose of Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA), in broad terms, is to regulate or control the interception of electronic and other communications.

#### **4.12 Electronic Communications and Transactions Act 25 of 2002**

The Electronic Communications and Transactions Act regulates the electronic communications, including digital signatures, electronic agreements and storage requirements. All persons making use of electronic communications are affected by this legislation.

#### **4.13 Prevention of Organised Crime Act 121 of 1998**

The purpose of the Prevention of Organised Crime Act is to combat organised crime activities such as racketeering and money laundering. Under section 7A of this Act, businesses must report any unlawful activities. Failure to do so is an offence.

#### **4.14 Financial Intelligence Centre Act 38 of 2001**

The Financial Intelligence Centre Act (FICA) sets up a regulatory anti-money laundering regime which is intended to break the cycle used by organised criminal groups to benefit from illegitimate profits. This Act aims to maintain the integrity of the financial system. Apart from the regulatory regime this Act also creates the Financial Intelligence Centre.

The regulatory regime of FICA imposes "know your client", record-keeping and reporting obligations on accountable institutions. It also requires accountable institutions to develop and implement internal rules to facilitate compliance with these obligations.

FICA imposes a duty on accountable institutions to establish and verify the identity of clients. Detailed records of clients and the transactions entered into by clients must be kept. Records obtained by an accountable institution must be kept for at least five years after a transaction was concluded and for a minimum of five years after the date which a business relationship was terminated. These records must be kept in electronic form.

For further information on FICA see [www.fic.gov.za](http://www.fic.gov.za).

#### **4.15 Financial Advisory and Intermediary Services Act 37 of 2002**

The Financial Advisory and Intermediary Services Act has been enacted to regulate the provision of a wide range of financial and intermediary services to clients. This Act seeks to protect the public from unscrupulous and unprofessional investment advisors, intermediaries and representatives. It outlines areas such as codes of conduct, licensing requirements, the appointment of external auditors, reporting and retention obligations of financial advisors, and the declaration of “undesirable practices”.

#### **4.16 Prevention and Combating of Corrupt Activities Act 12 of 2004**

The Prevention and Combating of Corrupt Activities Act aims to prevent and combat corruption and corrupt activities and lays out the offences relating to those activities. This Act requires that a person who holds a position of authority, who knows or ought to reasonably have known or suspected that any other person has committed a specified act of corruption or the offence of fraud, theft, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion.

#### **4.17 Companies Act 71 of 2008**

A company is a separate legal entity as from the date of incorporation and continues in existence until it is deregistered or liquidated, irrespective of whether there is a change in shareholding from time to time.

The Companies Act requires that companies must submit annual returns to the Companies and Intellectual Property Commission (CIPC) which include information such as confirmation that the company is still in business. For more information, visit [www.cipc.co.za](http://www.cipc.co.za).

#### **4.18 National Small Enterprise Act 102 of 1996**

This Act provides for the establishment of an Advisory Body and the Small Enterprise Development Agency to make provision for the incorporation of the Ntsika Enterprise Promotion Agency, the National Manufacturing Advisory Centre and any other designated institution into the Small Enterprise Development Agency and to provide guidelines for organs of state to promote small enterprises in South Africa. The Ntsika Enterprise Promotion Agency is an agency of the Department of Trade and Industry and facilitates non-financial support and business development services to SMMEs through a broad range of intermediary organisations.

#### **4.19 Lotteries Act 57 of 1997**

Regulations under the Lotteries Act provide the extent to which one may lawfully hold a lottery or other competition to promote the sale or use of any goods or services.

#### **4.20 Promotion of Administrative Justice Act 3 of 2000**

Under the Constitution of South Africa, 1996 everyone has the right to administrative action that is lawful, reasonable and procedurally fair and everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. The Promotion of Administrative Justice Act gives effect to this right.

#### **4.21 Protected Disclosures Act 26 of 2000**

This Act provides for procedures in terms of which employees in both the private and public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees and for the protection of employees making that disclosure.

#### **4.22 National Credit Act 34 of 2005**

The purposes of this Act are, amongst others, to promote a fair, transparent, competitive, sustainable, responsible and accessible credit market and industry and to protect consumers. It also discourages reckless granting of credit, assists people who are heavily in debt and regulates credit information. For more information see the National Credit Regulator's website [www.ncr.org.za](http://www.ncr.org.za).

#### **4.23 Consumer Protection Act 68 of 2008**

The aim of this Act, which came into operation on 31 March 2011, is to protect consumers against unfair market practices and unsafe products. For more information see the Department of Trade and Industry's website [www.dti.gov.za](http://www.dti.gov.za).

### **5. Duty to keep records, retention period in case of audit, objection or appeal and records**

A person (taxpayer/ vendor) is required to keep records<sup>94</sup> (such as ledgers, cash books, journals, cheque books, paid cheques, bank statements, deposit slips, invoices, stock lists and registers), books of accounts, data in electronic form and records or documents for five years from the date of submission of a return or if a person is not required to submit a return, for five years from the end of a relative tax period.

However, if an objection or appeal<sup>95</sup> has been lodged against an assessment, all records,<sup>96</sup> books of account or documents relevant to the objection or appeal must be retained until the assessment or decision becomes final.

### **6. Appointment of auditor or accounting officer**

A company is generally required by law to appoint an auditor who will audit and sign an audit report in respect of its financial statements. Similarly a CC is required to appoint an accounting officer.

### **7. Representative taxpayer**

Any company or CC which conducts business or has an office in South Africa must, within one month from the commencement of business operations or acquisition of an office for the purposes of section 246 of the TA Act, appoint an individual residing in the Republic as the public officer of the company or CC. The representative must be approved by SARS.

---

<sup>94</sup> Section 29 of the TA Act.

<sup>95</sup> Section 32 of the TA Act.

<sup>96</sup> Section 55 of the VAT Act.

## 8. Tax clearance certificates and Tax Compliance Status

Exchange controls have been relaxed since 1 July 1997, allowing South African residents to invest funds abroad, or to hold funds in foreign currencies at local banks (see 4.4).

Investors are required to apply for a tax clearance certificate (TCC)<sup>97</sup> or a tax compliance status (TCS) pin from SARS.<sup>98</sup> The TCS pin can be used instead of or in place of a TCC by authorised third parties to verify a compliance status online of a person via SARS eFiling.

## 9. Non-compliance with legislation

Taxes are collected to enable the government to provide essential services such as education, health, security and welfare to the people of South Africa. Additional tax, penalties and interest may be levied when taxpayers ignore their tax obligations such as failing to register or to submit tax returns.

## 10. Interest, penalties and additional tax

The TA Act provides for, amongst other things, –

- the imposition of interest (Chapter 12 of the TA Act);
- the imposing of penalties (fixed amount penalties and percentage-based penalty) (Chapter 15 of the TA Act); and
- the imposing of understatement penalties up to 200% for failure to submit a return, an omission from a return, an incorrect statement in a return, if no return is required, the failure to pay the correct amount of tax, or an impermissible avoidance arrangement (Chapter 16 of the TA Act).

The above provisions exclude customs and excise legislation.<sup>99</sup> A person may also be liable on conviction of criminal offences relating to non-compliance with Tax Acts to a fine or to imprisonment on matters such as non-payment of taxes, failure to submit tax returns, failure to disclose income, false statements, helping any person to evade tax or claiming a refund to which that person is not entitled (Chapter 17 of the TA Act).

## 11. Request for correction

A taxpayer, who makes an error in the return submitted, and wishes to correct this mistake, is to submit a Request for correction (RFC) which is available through SARS eFiling or at a SARS branch. This action allows the taxpayer to correct a previously submitted return or declaration for income tax and in certain circumstances for VAT. If the RFC function is not available to the taxpayer through SARS eFiling an objection is to be lodged.<sup>100</sup>

---

<sup>97</sup> The issuing of the printed TCC was stopped from 2 November 2019. All TCCs currently in circulation will be cancelled and taxpayers will be required to use the TCS pin.

<sup>98</sup> For more information see the **SARS website**.

<sup>99</sup> See Chapter XI of the Customs and Excise Act which contains provisions dealing with penalties.

<sup>100</sup> For more information see the **SARS website**.

## 12. Objection against assessment or decision

A taxpayer, who is –

- not able to submit a RFC (see above); or
- not satisfied with an assessment, decision or determination received from SARS,

may lodge an objection in writing stating fully, and in detail the grounds on which the objection is lodged.

The objection must be submitted within 30 business days from –

- the date of the assessment; or
- the date that written reasons (decision or determination) for the assessment were provided by SARS.

If the taxpayer's objection has been disallowed (in part or in full), the taxpayer has the right to note an appeal (see 13).<sup>101</sup>

## 13. Dispute resolution

As part of a process of reducing the costs associated with dispute resolution, the formal dispute resolution process (the appeal process) has been supplemented by an alternative dispute resolution (ADR) process. A dispute which is subject to ADR may be resolved by agreement whereby the taxpayer or SARS accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.<sup>102</sup>

The Customs and Excise Act, contains its own provisions relating to dispute resolution.

## 14. Complaint Management Office

The Complaint Management Office (CMO), also referred to as the Office of the Tax Ombud, is a special office operating independently of SARS branch offices. The CMO facilitates the resolution of problems of a procedural nature that have not been resolved by SARS branch offices through the normal channels.

A complaint can be lodged in the following ways:

- Via e-filing.<sup>103</sup>
- By visiting a SARS branch office.
- By calling the CMO on 0860 12 12 16.

## 15. Further information

Further information about the different taxes administered by SARS is available on the **SARS website**.

---

<sup>101</sup> For more information see Interpretation Note 15 "Exercise of Discretion in Case of Late Objection or Appeal" and the Rules Promulgated under section 103 of the TA Act.

<sup>102</sup> For more information see Interpretation Note 15 "Exercise of Discretion in Case of Late Objection or Appeal", *Dispute Resolution Guide: Guide on the Rules Promulgated in terms of section 103 of the Tax Administration Act, 2011 (Rules under s. 103)* and *Alternative Dispute Resolution: Quick Guide*.

<sup>103</sup> For more information see the *Guide to the Complaints Functionality on E-filing*.