South African Revenue Service

INTERPRETATION NOTE 69 (Issue 4)

DATE: 26 June 2025

ACT : INCOME TAX ACT 58 OF 1962
SECTION : SECTION 26 AND THE FIRST SCHEDULE
SUBJECT : GAME FARMING

Contents

Preamble

In this Note unless the context indicates otherwise –

- **"CGT"** means capital gains tax, being the normal tax attributable to the inclusion of a taxable capital gain in taxable income under section 26A;
- **"farmer"** means a person carrying on pastoral, agriculture or other farming operations as contemplated in section 26;
- "**game"** means wild animals, birds or fish;
- **"game farming"** means the carrying on of farming operations of game;
- **"paragraph"** means a paragraph of the First Schedule;
- **"Schedule"** means a Schedule to the Act;
- **"section"** means a section of the Act;
- **"the Act"** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the Act.

All guides. interpretation notes and returns referred to in this Note available on the SARS website at **www.sars.gov.za**. Unless indicated otherwise, the latest issue of these documents should be consulted.

1. Purpose

This Note provides guidance on the application of selected sections of the Act and paragraphs of the First Schedule to persons carrying on game farming, with its primary focus being the provisions applicable to livestock. It is not intended to deal with farming in general.[1]

2. Background

Section 26(1) provides that the taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as the income is derived from such operations, be determined in accordance with the Act but subject to the First Schedule. The First Schedule details the computation of taxable income derived from pastoral, agricultural or other farming operations.

The taxable income from farming operations is combined with the taxable income from other sources to arrive at the taxpayer's taxable income for the year of assessment.

The First Schedule applies regardless of whether a taxpayer derives an assessed loss or taxable income from farming operations. The First Schedule may also apply even after farming operations have been discontinued.[2]

Section 26 and the First Schedule apply to game farming, since it comprises farming operations.

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1 See *Guide on the Taxation of Farming Operations*.

2 See section 26(2).

3. The law

The relevant provisions of the Act are quoted in the **Annexure**.

4. Application of the law

4.1 Farming operations

The First Schedule applies to any person that derives taxable income from carrying on pastoral, agricultural or other farming operations. Such a person can include an individual (whether farming as a sole proprietor or in partnership), a deceased estate, an insolvent estate, a company, a close corporation or a trust.

The terms "agricultural" and "farming operations" are not defined in the Act and should be interpreted according to its ordinary meaning as applied to the subject matter with regard to which they are used.[3]

The word "agriculture" is defined in the *Merriam-Webster Dictionary*[4] as –

> "the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products".

Whether a person is carrying on farming operations is a question of fact[5] and must be decided considering all the facts of a particular case.

Not every activity in the nature of farming will constitute "farming operations". This principle was confirmed by Heher AJA in the Supreme Court of Appeal in *C: SARS v Smith* when he stated the following:[6]

> "In ordinary parlance the phrase 'carrying on farming operations' is capable of several meanings. In the context of s 26(1) it could mean simply 'a particular form or kind of activity' or it could bear a more commercial nuance, 'a business activity or enterprise'.
>
> The Act is directed to the taxation of profit-making activities. There is no apparent reason why the legislature should have intended a taxpayer who farms as a hobby or who dabbles in farming for his own satisfaction to receive the benefits conferred by the First Schedule."

An example of the above principle can be found in ITC 1324[7] in which it was held that a grower who merely intended to sell crops that were surplus to his needs was not carrying on farming operations.

Therefore, in order to fall within the First Schedule, a farming operation needs to be a trade of the taxpayer and there must be an overall profit-making intention.

It is now settled law that the test for determining whether a taxpayer is carrying on farming operations is a subjective one, that is, one based on the taxpayer's intention.

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3 Kellaway, EA (1995). *Principles of Legal Interpretation of Statutes, Contracts and Wills* at 224. Butterworth's.

4 **www.merriam-webster.com/dictionary/agriculture** [Accessed 26 June 2025].

5 ITC 1319 (1980) 42 SATC 263 (EC) at 264, cited with approval in *CIR v D & N Promotions (Pty) Ltd* 1995 (2) SA 296 (A), 57 SATC 178 at 183.

6 2002 (6) SA 621 (SCA), 65 SATC 6 at 9 and 10.

7 (1980) 42 SATC 288 (Z).

This was held in the *Smith case above* in which Heher JA stated that –[8]

> "a taxpayer who relies on s 26(1) is (over and above proof that he is engaged in an activity in the nature of farming) only required to show that he possesses at the relevant time a genuine intention to carry on farming operations profitably. All considerations which bear on that question including the prospect of making a profit will contribute to the answer, none of itself being decisive".

The court went on to cite ITC 1185 in which Miller J stated the following:[9]

> "It is no difficult matter to say that an important factor is: what was the taxpayer's intention when he bought the property? It is often very difficult, however, to discover what his true intention was. It is necessary to bear in mind in that regard that the *ipse dixit*[10] as to his intent and purpose should not lightly be regarded as decisive. It is the function of the court to determine on an objective review of all the relevant facts and circumstances, what the motive, purpose and intention of the taxpayer were . . . This is not to say that the court will give little or no weight to what the taxpayer says his intention was, as is sometimes contended in argument on behalf of the Secretary in cases of this nature. The taxpayer's evidence under oath and that of his witnesses, must necessarily be given full consideration and the credibility of the witnesses must be assessed as in any other case which comes before the court. But direct evidence of intent and purpose must be weighed and tested against the probabilities and the inferences normally to be drawn from the established facts."

In evaluating the genuineness of the taxpayer's intention the nature and extent of the enterprise will be relevant. The following examples of factors to be considered were provided by Erasmus J in ITC 1698:[11]

> "[T]he size and location of the property on which the operation is being conducted, the portion of that property being used for that purpose, capital expenditure, turnover, labour, the regularity and purposefulness of the activity, the time and effort spent thereon by the taxpayer in relation to his other gainful activities, if any, and the existence of a real prospect of profit (or lack thereof). The list is not exhaustive and the permutations of such activities are infinite. None of these considerations is necessarily in itself decisive."

Regard can also be had to the factors set out in section 20A(3) dealing with ring-fencing of assessed losses – see **4.9**.

It is not a requirement that a person has to own the land on which the farming operations are carried on but the person must have a right to the land and the yield from it. This principle was illustrated in ITC 1548[12] in which the court found that the shearing and harvesting activities undertaken by a person on behalf of farmers on their land was not farming and neither were the transport services the person provided. The person in question was performing a service for other farmers and did not have a right to those farmers' land or the yield from it.

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8 Above at 65 SATC 13.

9 (1972) 35 SATC 122 (N) at 123–4.

10 According to the *Glossary of Foreign Terms* by Silke J and Justice Corbett MM, which forms part of the South African Tax Cases Reports published by LexisNexis, the expression "*ipse dixit*" means "He himself said it; a bare assertion or statement without proof, resting on the authority of the person who made the assertion or statement".

11 (2000) 63 SATC 161 (SEC) at 170.

12 (1991) 55 SATC 26 (C).

The factors referred to above are not exhaustive and whether farming operations are being conducted will depend on all the facts and circumstances of each case.

The same principles for determining whether a person is carrying on farming operations apply to game farming.

Having regard to the above general principles, the activity of breeding and running game on a farm for the purpose of marketing the live animals, hunting the animals for a fee or slaughtering them for the meat, falls within the ambit of game farming.[13] A land owner who occasionally allows hunters to, for example, cull the game on the land, is unlikely to be regarded on such activities alone to carry on game farming . The person would have to satisfy the Commissioner that game is being raised with a genuine profit intention before the activities would be regarded as carrying on farming operations.[14] An occasional culling is, in isolation, unlikely to indicate and support a contention that there was a genuine intention to carry on farming activities profitably.

Raising livestock generally involves purchasing, breeding and selling or using the particular animals. The facts and circumstances of a particular case are critical because, for example, in some cases the regular purchasing of breeding stock will be required and in other cases regular purchasing will not be required. In addition, the degree of day-to-day, hands-on involvement of a game farmer in raising livestock is likely to vary depending on the particular species of game. In all instances, however, there would be a level of active involvement appropriate to the particular species and farming operations.

4.2 Game farming income

4.2.1 Income derived from game farming

Section 26(1) applies only to income derived from the carrying on of pastoral, agricultural or other farming operations. The Supreme Court of Appeal in *CIR v D & N Promotions (Pty) Ltd*[15] considered the meaning of "derived from". The court quoted with approval the explanation of the meaning of these words from the court *a quo*[16] which held that –[17]

> "the income and the source from which it arises, namely the farming operations, which embraces numerous agricultural activities, must be directly connected. An indirect connection or remote one will not suffice".

Also in the court *a quo* Levinsohn J stated that –[18]

> "the legislature intended farmers to be placed in a privileged position as far as their entitlement to deduct capital expenditure from farming income and hence the concept of income derived from farming operations ought to be strictly construed, see *Ernst v Commissioner for Inland Revenue* 1954(1) SA 318(A) at 323C–D."

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13 ITC 1698 (2000) 63 SATC 161 (SEC); ITC 1414 (1986) 48 SATC 174 (T).

14 The First Schedule provides, amongst others, preferential tax treatment regarding capital development expenditure incurred in the carrying on of farming operations. Under section 102(1) of the Tax Administration Act 28 of 2011, the burden of proving that, amongst others, an amount is deductible, is on the taxpayer.

15 1995 (2) SA 296 (A), 57 SATC 178.

16 *CIR v D & N Promotions (Pty) Ltd* 1993 (3) SA 33 (N), 55 SATC 89.

17 At 57 SATC 183.

18 At 55 SATC 97.

A taxpayer may earn income from distinct businesses, namely, farming operations and other operations – it is only the income directly connected to the farming operations that falls under the ambit of section 26(1). For example, in ITC 1285[19] the court found that the prize money from racing horses, which the breeder had initially intended but had failed to sell, was not part of the taxpayer's stock farming and horse breeding business and did not therefore fall under section 26(1).

The same principle applies to game farming. Some activities will generate income directly from the game farming and will be regarded as game farming income, while other activities and the income derived from them will not be regarded as such.

The following types of income are regarded as being derived directly from game farming:

- Income from the sale of live game
- Income from the slaughter and sale of game meat, carcasses and skins
- Fees received from hunters to hunt the game
- Income derived from supplying guides and trackers used in a hunting expedition

4.2.2 Income not derived from game farming

The income earned from the following activities is not regarded as having the required direct connection to game farming and accordingly will not be regarded as game farming income:

- Accommodation and catering
- Admission charges payable by persons spending holidays on the farm

In determining whether a game-viewing fee (for example, a fee paid to partake in a game drive) constitutes income from game farming, it is necessary to determine whether the particular taxpayer is conducting a farming operation. This determination will depend on the facts and circumstances of the particular case and will take into account whether the taxpayer has a genuine intention to make a profit from the raising of livestock and whether the objective review of all the facts supports that contention. For example, game viewing conducted in conjunction with other activities such as hunting and sale of game may be a part of a valid farming operation. By contrast, income from game viewing incidental to activities not comprising farming activities will not constitute income from farming operations. For example, certain eco-tourism operations may derive their primary source of income from tourism and accommodation while game viewing may serve as an attraction and be an incidental revenue generator.

Income derived from activities which give rise to income from game farming and those which do not will have to be accounted for separately, since specified deductions under the First Schedule are restricted to income derived from farming operations.[20]

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[19] ITC 1285 (1978) 41 SATC 73 (NC); *Rex v Porterville Ko-op Landbou Mpy Bpk* [1962] 1 All SA 278 (C).

[20] For example, see paragraph 8 (ring-fencing of livestock) and paragraph 12(3) (ring-fencing of capital development expenditure.

4.3 Livestock

Various paragraphs of the First Schedule dictate how livestock should be accounted for by a farmer.

4.3.1 Meaning and nature of livestock

Meaning of "livestock"

The word "livestock" is not defined in the First Schedule or the main body of the Act. The word is described in the *Shorter Oxford English Dictionary* as –[21]

> "animals kept or dealt in for use or profit".

The above meaning was confirmed in relation to the First Schedule in *R Koster & Son (Pty) Ltd and another v CIR* in which Nicholas JA stated the following:[22]

> "Paragraph 2 of the First Schedule refers to all livestock. This is a general term which comprises any animals kept or dealt in for use or profit."

Livestock thus includes animals held for breeding purposes (often referred to as fixed capital assets) and those held for resale (often referred to as floating capital assets).

The livestock must be used in the farming operations to fall within the ambit of the First Schedule.

Nature of "livestock"

The general rule in paragraph 2 is that all farmers, including companies carrying on farming operations, are required to include in their income tax returns the value of their livestock held and not disposed of at the beginning and at the end of each year of assessment. The value of *livestock held and not disposed of at the end of the year of assessment* ("closing stock") is included in income and the value of *livestock held and not disposed of at the beginning of the year of assessment* ("opening stock") is allowed as a deduction from income[23] (see **4.3.2** for the determination of the values).

Once an animal is classified as livestock, any consideration received or accrued on its disposal must be included in the farmer's gross income regardless of whether it was acquired as fixed capital or floating capital. This principle was confirmed in *R Koster & Son (Pty) Ltd & another v CIR*[24] in which the court cited with approval the following from *Farmer v COT*[25] in which the principle was upheld in relation to equivalent provisions of the Southern Rhodesia Income Tax Act:

> "The main provision of this section is that every farmer is bound to include in the return rendered by him for income tax purposes, i.e., for the determination of his taxable income, the values of all livestock and produce held by him and not disposed of at the beginning and end of each year of assessment. The section has a wide embrace, both as to the farmer affected and the class of livestock. It makes no distinction between ranching stock and dairy, sheep, pig or other livestock, and it treats livestock in the same category as produce; in other words, it abolishes the importance or necessity of inquiring into the purpose with which the farmer has acquired his livestock or what his scheme or method of profit making is, and treats all the farmer's livestock and produce as his floating capital. In respect of these two commodities the farmer is treated, willy nilly, as an ordinary trader for

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21 Stevenson, A (2007). 6 ed vol 1. Oxford University Press.
22 1985 (2) SA 831 (A), 47 SATC 23 at 32.
23 Paragraph 3(1).
24 1985 (2) SA 831 (A), 47 SATC 23 at 33.
25 1944 SR 80, 13 SATC 158 at 159.

> income tax purposes. Dependent upon the difference in the value of his livestock at the commencement and the close of each year, there is either an accrual or a loss of his floating capital; if the former this forms part of his income, if the latter the loss is deducted from his income. His sales during each year of his livestock of whatever category, whether of part or the whole of his herd, form part of his income and his losses, whether mortality or other losses, are deducted from his income. This basis of computation for income tax purposes has been imposed compulsorily upon the farmer by legislation, and the Commissioner of Taxes and the Courts are no longer concerned to inquire whether in a particular farming business the farming livestock can be treated as fixed capital, because it must now be treated as part of the stock in trade of his farming business."

The trade of farming is specifically excluded from the opening and closing stock provisions in section 22.[26] The opening and closing stock provisions in paragraph 3 deal only with livestock and not consumable stores. Accordingly, a farmer's consumable stores, which include items such as fuel, spare parts and packing materials, do not need to be brought into account in opening stock or closing stock. Section 22(8) will apply to consumable stores of farmers, but does not apply to livestock and produce which are covered by paragraph 11.

Application to game farming

A game farmer (see **4.1**) is generally involved in the activity of breeding and running game on a farm for the purpose of marketing the live animals, hunting the animals for a fee or slaughtering the animals for meat. Game forming part of farming operations clearly falls within the definition of livestock considered above and is accordingly regarded to be livestock for purposes of the First Schedule.

Animals which are not part of the farming operations, that is, animals which the farmer is not raising with the intention of exploiting commercially, will not fall within the scope of the First Schedule. For example, a game farmer may have hyenas, foxes or rodents on the farm which are not part of the farming operation and therefore do not fall within the First Schedule.

Under paragraph 2, a game farmer must include in the income tax return the value of all livestock "held and not disposed of" at the beginning and end of each year of assessment.

In relation to the meaning of "held", *Juta's Tax Library* states the following:[27]

> "[I]t is therefore considered that a taxpayer holds stock for this purpose where that **stock is owned, and not merely physically held**. The owner, not the possessor, must therefore account for the stock. This view is shared by Meyerowitz (at 9.89). … ."

(Emphasis added)

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[26] See the wording of section 22(1) and section 22(2).

[27] Davis, D *et al* (2016). *Commentary on income tax – section 22*. Jutas Tax Library. Jutastat e-publications [online].

In ITC 1873[28] the court was called upon to decide on the meaning of "held and not disposed of" in the context of grapes that had been supplied to a co-operative by a farmer. The farmer's grapes were crushed and mixed by the co-operative with the grapes and grape juice of other members as part of the initial wine-making process. The issue was whether the farmer still had produce that could be said to be held and not disposed of which could be brought to account as closing stock. Allie J stated the following:[29]

> "The word *'held'* is supplemented and reinforced by the phrase *'and not disposed of'* because the phrase is conjunctive. The complete phrase *'held and not disposed of'* makes it patently clear that the produce must have formed part of the farmer's farming produce and the farmer must still have a legal right to the produce as at the financial year-end.
>
> It does not mean that the farmer must have had physical possession or control of the produce at the year-end. If that was what the legislature intended, it would have used words that clearly conveyed that meaning."

On appeal in *Avenant v C: SARS*[30] the SCA held that "produce on hand and not disposed of" includes the fractional ownership of pooled produce and therefore included the taxpayer's undivided share in the grapes that had been crushed and merged with the grapes of other farmers. As regards the issue of ownership and possession, the court concluded that –[31]

> "in the present case where ownership is retained by the appellant [the taxpayer] but possession is not, the produce is clearly 'held' for the purposes of para 2 of the First Schedule".

Once game livestock has been sold under an unconditional contract and the taxpayer no longer has legal ownership of it but is unconditionally entitled to the consideration for it (that is, the consideration constitutes gross income in the taxpayer's hands), the game livestock will no longer be considered to be "held and not disposed of" for the purposes of the First Schedule. Game livestock disposed of under an instalment credit agreement which provides that ownership will pass only once the whole or a portion of the purchase price has been paid is regarded as having been disposed of and hence must be excluded from closing stock. In these circumstances, section 24(1) deems the purchase price to be included in gross income when the agreement is entered into.

The expression "held and not disposed of" therefore means livestock owned by the taxpayer which has not been disposed of.

The question of ownership is particularly relevant to wild game because under the common law wild game are regarded as *res nullius*, that is, things owned by nobody but which can be owned. Ownership is established by taking control of the animal with the intention of being the owner. Typically in the game farming context this is achieved by erecting fences around the farm. The common law position has been modified by the Game Theft Act 105 of 1991 (Game Theft Act). This Act ensures that a farmer

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28 (2014) 77 SATC 93 (WC).
29 At 103.
30 [2016] JOL 36039 (SCA), 78 SATC 343.
31 Above at SATC 356 in paragraphs 25 and 28.

remains the owner of game that escapes from the farm. The term "game" is defined in the Game Theft Act as follows:

> **" '[G]ame'** means all game kept or held for commercial or hunting purposes, and includes the meat, skin, carcass or any portion of the carcass of that game.**"**

Section 2 of the Game Theft Act reads as follows:

> **"2. Ownership of game.—**
>
> (1) Notwithstanding the provisions of any other law or the common law—
>
> (*a*) a person who keeps or holds game or on behalf of whom game is kept or held on land that is sufficiently enclosed as contemplated in subsection (2), or who keeps game in a pen or kraal or in or on a vehicle, shall not lose ownership of that game if the game escapes from such enclosed land or from such pen, kraal or vehicle;
>
> (*b*) the ownership of game shall not vest in any person who, contrary to the provisions of any law or on the land of another person without the consent of the owner or lawful occupier of that land, hunts, catches or takes possession of game, but it remains vested in the owner referred to in paragraph (*a*) or vests in the owner of the land on which it has been so hunted, caught or taken into possession, as the case may be.
>
> (2) (*a*) For the purposes of subsection (1)(*a*) land shall be deemed to be sufficiently enclosed if, according to a certificate of the Premier of the province in which the land is situated, or his assignee, it is sufficiently enclosed to confine to that land the species of game mentioned in the certificate.
>
> (*b*) A certificate referred to in paragraph (*a*) shall be valid for a period of three years."

For the reasons considered above, all game livestock is dealt with on revenue account as if it were floating capital.

4.3.2 Opening and closing stock

As noted above, the value of closing stock is included in income and the value of opening stock is allowed as a deduction from income. The value of the livestock to be included in opening stock and closing stock is determined according to paragraphs 4 (opening stock) and 5 (closing stock).

Paragraph 5(1) stipulates that the value to be placed on the livestock for purposes of the First Schedule shall be the standard value applicable to that livestock. Under paragraph 6, the standard value of any class of livestock of a farmer is generally either –

- the standard value of that class of livestock fixed by regulation under the Act, or
- another standard value adopted by the farmer (or company or the executor of the estate) when a particular class of livestock is adopted for the first time and such value is within 20% of the standard values fixed in the regulations or which, in certain circumstances, has been approved by the Commissioner. Such a standard value is binding on the farmer for all future income tax returns and the value may not be varied.[32]

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[32] Paragraph 7.

Paragraph 4(1) provides that the value of the opening stock will be –

- the value of the closing stock at the end of the preceding year;
- the market value of livestock acquired during the current year of assessment otherwise than by purchase, natural increase or in the ordinary course of the farming operations carried on, for example, by donation;[33] and
- the market value of livestock which was previously held, but not as part of the farming operations, becomes part of the farming operations.[34]

Any opening stock still on hand at the end of the year of assessment must be included in the closing stock at its standard value and not market value.

The regulations do not fix a standard value for game livestock. For the purpose of standard values the Commissioner accepts that game livestock may be allocated a standard value of nil.[35]

4.3.3 The cost of acquiring game

The cost price of game livestock acquired by a person carrying on farming operations is deductible under section 11(*a*).

4.3.4 Limitation of expenditure incurred for the acquisition of livestock

Paragraph 8 provides that the deduction of expenditure incurred during the year of assessment for the acquisition of livestock, which may be allowed under section 11(*a*) in respect of its cost price, is ring-fenced. The deduction available is limited to the sum of the income received and accrued from farming operations plus the value of the livestock held and not disposed of by the farmer at the end of the year of assessment less the value of livestock held and not disposed of by the farmer at the beginning of the year of assessment. Any amount not allowed as a deduction will be carried forward to the succeeding year of assessment and will be deemed to be expenditure incurred in that year (and hence subject to potential limitation in the succeeding year depending on the facts).

This potential limitation applies only to the deduction which may be allowed under section 11(*a*). Although opening stock forms part of the limitation calculation under paragraph 8, the opening stock deduction[36] is not itself subject to the paragraph 8 limitation.

See **4.3.2** for a consideration of the opening and closing stock values to be taken into account for game livestock – the values will often be nil.

The potential limitation is assessed on the totality of all the farmer's livestock regardless of its nature. For example, if a taxpayer conducted sheep farming and game farming, a single limitation calculation taking into account both the sheep and game livestock would be performed.

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33 Paragraphs 4(1)(*a*)(ii) and 4(1)(*b*)(ii).

34 Paragraphs 4(1)(*a*)(ii) and 4(1)(*b*)(ii).

35 Paragraph 6(1)(*b*)(ii), (*c*)(ii) or (*d*)(ii) read with paragraph 6(3).

36 Provided for under paragraph 3 and 4 – in the context of game farming this will often be nil but it could include, for example, a market value deduction for game livestock acquired by donation.

A taxpayer that can demonstrate that the cost of acquisition of a particular animal, which is no longer held and not disposed of at the end of the year of assessment, is included in the amount to be carried forward under paragraph 8 (for example, the animal purchased has been hunted and killed) may exclude the cost of that particular animal from the carried-forward amount and immediately claim it as a deduction. It is considered unlikely that this will apply frequently, if at all, in the context of game farming because it is often impracticable to accurately count and track particular game livestock.

In addition, a farmer will be entitled to an immediate deduction if the opening stock value of livestock plus the amount to be carried forward under paragraph 8 exceeds the market value of all livestock held and not disposed of at the end of the year of assessment. The amount of the deduction is equal to the amount of the excess and the onus is on the taxpayer to substantiate the amount claimed. The amount to be carried forward under paragraph 8 must also be reduced by the excess (see Example 2).

Example 1 – Application of paragraph 8 limitation to game farmers

Facts:

Farmer A carries on game farming . The following information relates to Farmer A's income tax return at the end of the year of assessment:

	R
Farming income	50 000
Standard value of livestock at the end of the year of assessment:	
Game	Nil
Other livestock	300
Value of produce at the end of the year of assessment	2 000
Standard value of livestock at the beginning of the year of assessment:	
Game	Nil
Other livestock	279
Value of produce at the beginning of the year of assessment	Nil
Purchases of game livestock this year	300 000

Result:

Determination of taxable income of the farmer:

Farming income		50 000
Closing stock		
Livestock at standard value:		
Game	Nil	
Other livestock	300	
Value of produce	2 000	2 300
		52 300

		R
Less:		
Opening stock:		
Livestock at standard value		
Game	Nil	
Other livestock	279	
Produce	Nil	(279)
		52 021
Less:		
Allowable deduction – purchase of livestock [section 11(*a*) limited by paragraph 8 – see below]		(50 021)
Taxable income from the carrying on of farming operations		2 000
Limitation on the cost of acquisition of livestock (paragraph 8):		
Income received and accrued from farming operations		50 000
Value of livestock held and not disposed of at the end of the year		300
Value of livestock held and not disposed of at the beginning of the year		(279)
Maximum deduction permissible		50 021
Expenditure deductible under section 11(*a*) on the acquisition of game livestock		300 000
Less: Deductible amount current year		(50 021)
Amount of deduction carried forward to the following year		249 979

Example 2 – Application of paragraph 8 limitation to game farmers – cost of livestock exceeding market value

Facts:

The facts are the same as Example 1 except that Farmer A is able to show that the fair market value of all the livestock at year-end is R220 000.

Result:

Determination of taxable income of the farmer:

		R
Farming income		50 000
Standard value of livestock at the end of the year:		
Game	Nil	
Other livestock	300	
Value of produce at the end of the year of assessment	2 000	2 300
		52 300
Less:		
Standard value of livestock at the beginning of the year:		
Game	Nil	
Other livestock	279	
Produce	Nil	(279)
Subtotal		52 021

	R
Less:	
Allowable deduction – purchase of livestock [section 11(*a*) and paragraph 8]	(50 021)
Allowable deduction – excess above market value	(30 258)
Assessed loss from the carrying on of farming operations	(28 258)
Determination of the limitation on the acquisition of livestock:	
Income received and accrued from farming operations	50 000
Value of the livestock held and not disposed of at the end of the year	300
Value of livestock held and not disposed of at the beginning of the year	(279)
Subtotal	50 021

	R
Expenditure deductible under section 11(*a*) on the acquisition of game livestock	300 000
Less: Deductible amount current year	(50 021)
Additional amount under paragraph 8(3)(*b*) (see below)	(30 258)
Amount of deduction carried forward to the following year	219 721

Determination of the additional amount to be allowed under paragraph 8(3)(*b*):

	R
Expenditure disallowed (Example 1)	249 979
Value of opening stock	279
	250 258
Less: Market value	(220 000)
Additional amount allowable	30 258

4.4 Expenditure and allowances not provided for in the First Schedule

Expenditure and losses incurred for purposes of trade not qualifying for deduction under the First Schedule may be claimed under other provisions of the Act provided they meet the requirements of those provisions.

Section 11(a) and section 23(g)

In determining a person's taxable income derived from carrying on any trade, the general deduction formula in section 11(*a*) requires that the expenditure and losses must be actually incurred in the production of income and must not be of a capital nature. In addition, expenditure and losses must be claimed during the year of assessment in which they are actually incurred.

Section 23(*g*) prohibits the deduction of moneys not expended for the purposes of trade.

Examples of amounts generally deductible under section 11(*a*) by a game farmer are –

- normal running expenses of the farming operation (for example, expenditure on ammunition, electricity, feed, fuel, livestock, wages & salaries, and veterinary fees);
- cost of butchers, trackers and professional hunters;

- advertising and promotion costs; and
- travelling costs (both local and overseas).

This list is not exhaustive and the facts of each case will dictate which items of expenditure qualify as a deduction under section 11(*a*).

Capital allowances

Capital expenditure not qualifying as a deduction under paragraph 12 (see **4.5**) may qualify for a deduction under one of the other capital allowance provisions in the Act. Depending on the nature of the particular asset and the context in which it is used, the provisions which are likely to be of relevance in the context of game farming are sections 12B, 12BA[37], 12C or 11(*e*)[38] and in respect of buildings, sections 13*bis*,[39] 13*quin*[40] or 13*sept.*[41]

The different capital allowance provisions are not considered in detail in this Note. However, given its particular relevance to farming operations, section 12B and 12BA are briefly considered below.

Section 12B(1)(*f*) provides for the deduction of a special depreciation allowance on machinery, implements, utensils or articles (other than livestock) which are –

- owned by the taxpayer or acquired under an instalment credit agreement;
- brought into use for the first time by that taxpayer; and
- used in the carrying on of farming operations.

The deduction under section 12B(2) is –

- 50% of the cost to the taxpayer in the year of assessment during which the asset is brought into use;
- 30% of the cost to the taxpayer in the second year; and
- 20% of the cost to the taxpayer in the third year.

Examples of equipment used by game farmers generally qualifying for the special allowance under section 12B(1)(*f*) include, vehicles, firearms, meat saws and two-way radios. This list does not limit the qualifying assets and each asset must be considered on its merits.

The following assets are specifically excluded from section 12B(1)(*f*):

- Any motor vehicle the sole or primary function of which is the conveyance of persons
- Any caravan
- Any aircraft <u>other</u> than an aircraft used solely or mainly for the purpose of crop-spraying

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37 This deduction is available only if the asset is brought into use for the first time on or after 1 March 2023 and before 1 March 2025.

38 See Interpretation Note 47 “Wear-and-Tear or Depreciation Allowance”.

39 See Interpretation Note 105 “Deductions in respect of Buildings used by Hotel Keepers”.

40 See Interpretation Note 107 “Deduction in respect of Commercial Buildings”.

41 See *Guide to Building Allowances*.

- Any office furniture or equipment

An asset not qualifying under section 12B(1)(*f*) may still qualify for an allowance under another provision of the Act. For example, if a game farmer also runs a game-lodge business, the capital assets used in that business (such as beds, furniture, refrigerators and stoves) would not be considered to be used for farming operations and would not qualify for an allowance under section 12B. An allowance under section 12B would also not be available for certain assets used in the farming operations (such as aircraft used for the counting of game and office equipment), since those assets are specifically excluded. The taxpayer's assets may, however, qualify for a depreciation allowance under section 12C in some instances and in other instances under section 11(*e*).[42]

Under section 12B(1)(*h*) and (*i*), a deduction may be claimed on the cost of any asset or improvement to that asset if –

- the asset is machinery, plant, an implement, a utensil or an article;
- the asset is owned by the taxpayer or acquired by the taxpayer as a purchaser under an instalment credit agreement;
- the asset was or is brought into use for the first time by such taxpayer for the purposes of the taxpayer's trade; and
- the asset is used by that taxpayer in the generation of electricity from the following sources of renewable energy:
  - Wind power
  - Solar energy
  - Hydropower
  - Biomass made up of organic wastes, landfill gas or plant material43

Provided that all the requirements of the section are met, the deduction under section 12B(1)(*h*) and (*i*) can be claimed under section 12B(2) on a 50:30:20 basis over three years on the cost of the asset or improvements. In the case of assets used to generate photovoltaic solar energy which does not exceed one megawatt, the cost of the asset may be claimed in full (100%) in the year that the asset is brought into use by that taxpayer for the purposes of trade. In addition to the cost of the acquisition of the asset, the expenditure actually incurred on the erection of a foundation or supporting structure designed for the asset and on improvements to the asset are potentially deductible.

Under section 12BA(1), a deduction may be granted –

- in respect of any new and unused machinery, plant, implement, utensil, or article;
- which is owned by the taxpayer or acquired by the taxpayer as a purchaser under an instalment credit agreement;
- was or is brought into use for the first time by that taxpayer on or after 1 March 2023 and before 1 March 2025;

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42 See Interpretation Note 47 "Wear-and-Tear or Depreciation Allowance".

43 See *Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Elerctricity from Specified Sources of Renewal Energy*.

- for the purpose of that taxpayer's trade; and
- to be used by the taxpayer or the lessee of that taxpayer in the generation of electricity from the specified sources of renewable energy in South Africa.

The deduction equals 125% of the cost incurred by the taxpayer for the acquisition of the asset if all the requirements are met. In addition to the cost of acquisition of the asset, the expenditure actually incurred on the erection of a foundation or supporting structure designed for the asset is potentially deductible.[44]

The deductions allowed under sections 11(*e*), 12B, 12BA and 12C are included in the income of the taxpayer if subsequently recovered or recouped under section 8(4)(*a*).[45]

These deductions must also be taken into account when determining whether any deduction under section 11(*o*) is available on the alienation, destruction or loss of a depreciable asset.[46]

4.5 Capital development expenditure provided for in the First Schedule

Section 11(*a*) prohibits the deduction of expenditure of a capital nature. The First Schedule, however, provides an exception to this general rule for persons that carry on farming operations and have incurred expenditure of a capital nature as listed in paragraph 12. Paragraph 12 also applies to persons carrying on game farming

Amounts qualifying as a deduction under paragraph 12 include expenditure incurred for –

- the eradication of noxious plants and alien invasive vegetation;
- the prevention of soil erosion;
- dipping tanks;
- dams, irrigation schemes, boreholes and pumping plants;
- fences;
- erection of or extensions, additions or improvements (other than repairs) to buildings used in connection with farming operations, other than those used for domestic purposes;
- the building of roads and bridges used in connection with farming operations; and
- the carrying of electric power from the main transmission lines to the farm apparatus or under an agreement with the Electricity Supply Commission under which the farmer has undertaken to bear a portion of the cost incurred by the Commission in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes.

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44 See *Guide on the Allowances and Deductions Relating to Assets Used in the Generation of Elerctricity from Specified Sources of Renewal Energy*.

45 See section 8(4)(*n*A) for the recoupment of a deduction under section 12BA.

46 See Interpretation Note 60 "Loss on Disposal of Qualifying Depreciable Assets".

The expression “in connection with” (see the sixth and seventh bullet points above) was considered by the Tax Court in ITC 885.[47] After an analysis of a number of cases dealing with the subject, the court concluded as follows:[48]

> “It seems to me that it is possible to extract from these judgments a number of guiding rules. One must give to the phrase “a wide and comprehensive meaning” but not as wide and comprehensive as to embrace a remote and indirect connection. There must be something in the nature of a direct connection and this must be subservient and ancillary to the particular business under consideration.”

The direct connection to game farming is important. Expenditure incurred on facilities like slaughter rooms, meat rooms, cooling rooms, biltong rooms, skin rooms and trophy rooms will generally have the required connection in order to qualify for a deduction under paragraph 12.

In contrast, expenditure incurred on facilities used to accommodate visitors and hunters will not have the required connection and will not qualify for a deduction by a game farmer under paragraph 12. Similarly, the cost of buildings erected in connection with a canning or other industry run in conjunction with the farming operations will not be deductible under paragraph 12.

Expenditure on the construction of roads and bridges will also qualify as a deduction for a person carrying on game farming only if they are used in connection with the game farming.

A game farmer may enter into a biodiversity management agreement and consequently incur expenditure to conserve and maintain land owned by the farmer. The incurral of certain of the capital development expenditure contemplated in paragraph 12(1) in the process of conserving or maintaining the land is deemed to have been incurred in the carrying on of farming operations and will be fully deductible.[49] These expenditure are amounts incurred in relation to –

- the eradication of noxious plants and alien invasive vegetation;[50]
- the prevention of soil erosion;[51]
- dams, irrigation schemes, boreholes and pumping plants;[52] and
- fences.[53]

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47 (1959) 23 SATC 336 (C).
48 At 338.
49 Paragraph 12(1A).
50 Paragraph 12(1)(*a*).
51 Paragraph 12(1)(*b*).
52 Paragraph 12(1)(*d*).
53 Paragraph 12(1)(*e*).

In order for the game farmer to qualify for the deduction of these amounts, the biodiversity management agreement should be entered into under section 44 of the National Environmental Management Biodiversity Act 10 of 2004[54] and should have a duration of at least five years.[55] Furthermore, the land used by the farmer for purposes of carrying on farming operations, should consist of or include or be in the immediate proximity of the land that is the subject of the biodiversity management agreement.[56]

Paragraph 12(3) provides that the deduction available for capital development expenditure (excluding expenditure incurred on the eradication of noxious plants and alien invasive vegetation or the prevention of soil erosion) is ring-fenced. The deduction available in a particular year of assessment is limited to taxable income from farming before claiming the deduction.[57] The excess is carried forward and is deemed to have been incurred in the following year of assessment.[58]

Under paragraph 20A of the Eighth Schedule a farmer who ceases to carry on farming operations and subsequently disposes of the immovable property on which they were carried on, can, subject to the limitations specified in that paragraph, elect to treat any un-deducted balance of capital development expenditure as expenditure incurred and paid in respect of the immovable property. In this way the un-deducted balance of capital development expenditure may form part of the base cost of the farm property for CGT purposes.

The development expenditure under paragraph 12(1) is not subject to recoupment under section 8(4)(*a*) because that section, with some exceptions, applies only to the deductions under sections 11 to 20. Paragraph 12(1B) and (1C) contain special recoupment provisions for assets listed in paragraph 12 that become movable assets.

4.6 Housing for guests and employees

Expenditure incurred on residential facilities such as bedrooms, dining rooms, sitting rooms and kitchen facilities made available to safari guests and hunters is not incurred directly in connection with farming operations and therefore does not qualify for deduction under the First Schedule (see **4.5**). Such buildings may qualify for an allowance under section 13*bis* if the taxpayer is carrying on the trade of "hotel keeper" as defined in section 1(1). In order to qualify as a hotel keeper, the taxpayer would have to supply, for money or its equivalent, meals and sleeping accommodation.[59]

A person carrying on farming operations that incurs expenditure on the erection of dwellings for the person's farm employees cannot deduct such expenditure under the First Schedule or under the main body of the Act. A deduction is, however, available under section 13*sept* for the sale of low-cost residential units on loan account to employees.

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54 Paragraph 12(1A)(*b*).
55 Paragraph 12(1A)(*a*).
56 Paragraph 12(1A)(*c*).
57 Technically the deduction is claimed and the excess above taxable income from farming is added back to taxable income.
58 Paragraph 12(3).
59 See Interpretation Note 105 "Deductions in respect of Buildings Used by Hotel Keepers".

4.7 Cessation of farming operations

Farming operations can be discontinued for various reasons such as voluntary cessation, death or sequestration of the taxpayer. The cessation of farming operations has tax implications for the taxpayer. The treatment of livestock under these circumstances is considered below.

4.7.1 Voluntary cessation of farming operations

A taxpayer discontinuing farming operations can decide to either dispose of all livestock or to retain all or some of the livestock. The proceeds received from the disposal of the livestock during the discontinuation process will form part of the taxable income derived from farming operations.

The position of a taxpayer who discontinues farming operations, but retains livestock or has entered into a “sheep lease” or similar agreement, is governed by section 26(2). This section provides that certain provisions of the First Schedule will remain applicable until **all** such livestock retained has been disposed of.

Section 26(2) applies to livestock that has been taken into account and for which expenditure has previously been allowed as a deduction under the Act in the determination of the taxable income derived from farming operations. It applies to game livestock of a farmer, since the cost of the game would have been claimed under section 11(*a*) and the livestock would have been included in opening and closing stock albeit at a standard value of nil.

4.7.2 Death of a farmer

Section 9HA provides for the tax treatment of the assets of a person upon death, including the value that such assets are disposed at to the deceased’s surviving spouse, heirs and legatees.

Section 25 provides for the tax treatment of the deceased’s assets in the deceased estate and also prescribes the values of assets acquired from a deceased estate that should be taken into account by spouses, heirs and legatees.

The income tax and CGT consequences for the deceased person, the deceased estate and the heirs or legatees on the death of a person (including a farmer) are considered in Interpretation Note 134 “Disposal of Assets by Deceased Person, Deceased Estate and Transfer of Assets between Spouses”.

4.7.3 Insolvency or liquidation

Section 25C deems the estate of a natural person before sequestration and that person’s insolvent estate to be one and the same person for the purpose of determining –

- any allowance, deduction or set off to which that insolvent estate may be entitled;
- any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate; and
- any taxable capital gain or assessed capital loss of that insolvent estate.

The person before sequestration must submit an income tax return for the period commencing on the first day of the year of assessment and ending on the date before

the date of sequestration.[60] Game livestock will have a standard value of nil for closing stock purposes at the end of that person's year of assessment in the normal way.

The insolvent estate must submit an income tax return for its first year of assessment from the date of sequestration until the end of that year[61] and for all subsequent years of assessment until the estate is wound up.

The insolvent estate will have an opening stock of game livestock of nil based on the "one and the same person" principle because the closing stock of the person before sequestration was nil. Any assessed loss of the person before the date of sequestration will be brought forward into the insolvent estate. Game livestock will continue to have a standard value of nil for closing stock purposes in the first year of assessment of the insolvent estate and for the purposes of determining future opening and closing stock. Any amount received by or accrued to the insolvent estate from the disposal of the livestock must be included in the gross income of the insolvent estate.

For CGT purposes there is no deemed disposal on date of sequestration as a result of the "one and the same person" principle in section 25C. Given that game livestock is floating capital, there should be no CGT implications when game livestock is disposed of by the trustee of the insolvent estate.

A company that is being wound up or liquidated remains the same taxable entity until it is finally dissolved.[62]

4.7.4 Cessation of farming owing to the sale of land to the state

Paragraph 20 provides for a concessionary rate of tax when a farmer's farming operations are wound up as a result of a sale of the farm land to the state and the farmer derives abnormal farming income. This situation could apply to, say, the expropriation of a game farm. Since this issue is not unique to game farmers, it is not explored in further detail in this Note.

4.8 Transfer of livestock between spouses

Section 9HB ensures parity of treatment of all disposals between spouses, including disposals of trading stock and livestock and produce.

For a detailed consideration of the roll-over treatment provided for under section 9HB(3) and (4) with regards to the disposal of, amongst others, livestock between spouses, see Interpretation Note 134 "Disposal of Assets by Deceased Person, Deceased Estate and Transfer of Assets between Spouses".

4.9 Ring-fencing of assessed losses

Section 20A is a ring-fencing provision which limits the use of an assessed loss from a tainted trade to income from that trade. It applies only to natural persons (individuals).

Section 20A is considered in detail in the *Guide on the Ring-fencing of Assessed Losses from Certain Trades Conducted by Individuals* ("ring-fencing guide"). It is not the purpose of this Note to deal comprehensively with section 20A. Rather, an overview of the main issues which are likely to affect game farmers, many of whom are natural persons who conduct their operations on a small scale on a part-time basis,

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60 See item (*aa*) under section 66(13)(*a*)(ii).

61 See item (*bb*) under section 66(13)(*a*)(ii).

62 *Van Zyl NO v CIR* 1997 (1) SA 883 (C), 59 SATC 105.

will be provided. Inevitably when losses arise from game farming and the taxpayer is a natural person, the issue will arise whether the loss from carrying on that trade may be set off against other taxable income.

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.

Section 20A contains four steps which determine whether an assessed loss can be ring-fenced. These are as follows:

Step 1 [section 20A(2)] – The maximum marginal rate of tax pre-requisite

Under this step it is first necessary to adjust taxable income by adding back any assessed loss and balance of assessed loss carried forward from the previous year of assessment.

If the amount so determined falls within the highest tax bracket for individuals, the taxpayer will have met the first step in the potential ring-fencing process and must proceed to steps 2 to 4.

Conversely, if the adjusted taxable income is below the level at which the maximum marginal rate of tax becomes payable, the assessed loss may not be ring-fenced. There is then no need to proceed to steps 2 to 4.

Step 2 [section 20A(2)(a) and (b)] – The "three-out-of-five-years" pre-requisite or alternatively, the "listed suspect trade" pre-requisite

Step 2 is also a pre-requisite for the application of section 20A. It comprises two alternative tests – if either of these tests is passed section 20A will potentially apply, if neither of the tests is passed section 20A can be disregarded.

Under the "three-out-of-five-years" pre-requisite, a person who makes assessed losses from game farming in at least three out of five years will meet this requirement. The five year period includes the current and four previous years of assessment. This rule applies to persons carrying on game farming on a full-time basis (see below).

Under the "suspect trade" pre-requisite section 20A lists nine suspect trades. An assessed loss arising from any one of these trades will be subject to potential ring-fencing. Farming or animal breeding is listed as a suspect trade unless such activities (including activities of a similar nature) are carried out on a full-time basis.[63] It follows that game farming which is conducted on a part-time basis will be subject to potential ring-fencing. While full-time farming is not listed as a suspect trade, it could be subject to potential ring-fencing if losses are made in three out of five years of assessment

63 Section 20A(2)(*b*)(vi). See the ring-fencing guide for more detail.

(see the "three-out-of-five years" pre-requisite above).[64]

Step 3 [section 20A(3)] – The "facts and circumstances" test (the escape clause)

Step 3 is an escape clause. In other words, an assessed loss qualifying for potential ring-fencing under steps 1 and 2 can escape ring-fencing under step 3.

Under section 20A(3) the ring-fencing provisions will not apply to a trade that constitutes a business in respect of which there is a reasonable prospect of deriving taxable income (other than taxable capital gains) within a reasonable period. Special regard must be had to –

- the proportion of the gross income derived from the trade in the year of assessment in relation to the amount of the allowable deductions incurred in carrying on that trade during that year;
- the level of activities carried on by the person or the amount of expenses incurred by that person on advertising, promoting or selling in carrying on that trade;
- whether the trade is carried on in a commercial manner, taking into account –
  - the number of full-time employees appointed for purposes of that trade (other than persons partly or wholly employed to provide services of a domestic or private nature);
  - the commercial setting of the premises where the trade is carried on;
  - the extent of the equipment used exclusively for purposes of carrying on the trade; and
  - the time that the person spends at the premises conducting the business;
- the number of years of assessment during which assessed losses were incurred in carrying on the trade in relation to the period from the date when that person commenced carrying on the trade and taking into account –
  - any unexpected events giving rise to any of those assessed losses; and
  - the nature of the business involved;
- the business plans of the person and any changes to those plans to ensure that taxable income is derived in future from carrying on the trade; and
- the extent to which any asset attributable to the trade is used, or is available for use, by the person or any relative of that person for private use (recreational purposes or personal consumption).

For a detailed consideration of these special factors, see paragraph 7 of the ring-fencing guide.[65]

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64 Under section 20A(2)(*a*).

65 Issue 2.

Step 4 [section 20A(4)] – The "six-out-of-ten-years" requirement (the "catch all" provision)

Step 4 is a "catch all" provision that applies even if a taxpayer has escaped ring-fencing under step 3. However, it does not apply to farming operations. Thus, even if a game farmer incurs losses in six out of the last ten years, ring-fencing can be prevented if the taxpayer can satisfy SARS that a business is being carried on with a reasonable prospect of deriving taxable income within a reasonable period.

5. Conclusion

The same principles used to determine whether a person carries on farming operations apply to game farmers. The test for this purpose is based on the taxpayer's intention.

Income from the sale of game, game meat, carcasses and skins and fees related to hunting constitutes farming income. However, income from accommodation, catering and admission charges is not farming income. Income not constituting farming income will be relevant when applying the ring-fencing provisions of paragraph 8 to game livestock. Game viewing fees may not constitute farming income depending on the facts and circumstances.

The rules governing the deduction of expenditure, including capital development expenditure, are similar to those applying to normal farming operations.

A farmer is required to bring to account the value of game livestock in opening and closing stock. No standard values have been prescribed by regulation for game livestock, but the Commissioner accepts that game livestock may be allocated a standard value of nil. Game livestock acquired by donation is included in opening stock in the year of acquisition at market value under paragraph 4.

The deduction under section 11(*a*) for the cost of livestock is ring-fenced under paragraph 8, while an assessed loss or balance of assessed loss from farming is subject to potential ring-fencing under section 20A.

A farmer ceasing to carry on game farming must generally continue to deal with any game livestock under the First Schedule.

Special rules apply for income tax and CGT purposes upon the death or sequestration of a farmer and the transfer of trading stock, livestock or produce between spouses.

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Annexure – The law

Section 12B(1)(*f*), (*h*), (*i*) and section 12B(2)

12B. Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy.—(1) In respect of any—

(*f*) machinery, implement, utensil or article (other than livestock) which is owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (*a*) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and brought into use for the first time by that taxpayer and used by him or her in the carrying on of his or her farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment;

(*h*) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (*a*) of the definition of "instalment credit agreement" in section 1 of the Value-Added Tax Act and which was or is brought into use for the first time by that taxpayer for the purpose of his or her trade to be used by that taxpayer in the generation of electricity from—

(i)wind power;

(ii)(*aa*) photovoltaic solar energy of more than 1 megawatt;

(*bb*) photovoltaic solar energy not exceeding 1 megawatt; or

(*cc*) concentrated solar energy;

(iii) hydropower to produce electricity of not more than 30 megawatts; or

(iv) biomass comprising organic wastes, landfill gas or plant material; or

(*i*) improvements (other than repairs) to—

(i)any machinery, plant, implement, utensil or article referred to in paragraph (*f*), (*g*) or (*h*); and

(ii) any foundation or supporting structure that is, in terms of the proviso to this subsection, deemed to be part of the machinery, plant, implement, utensil or article referred to in paragraph (*h*),

which is during the year of assessment used as contemplated in the relevant paragraph,

(2) The deduction contemplated in subsection (1) shall be calculated on the cost to the taxpayer of the asset and the rate of the allowance shall be—

(*a*) in the case of an asset other than an asset contemplated in paragraph (*b*)—

(i) in respect of the year of assessment during which the asset is so brought into use, 50 per cent of such cost;

(ii) in respect of the second year, 30 per cent of such cost; and

(iii) in respect of the third year, 20 per cent of such cost;

(*b*) in the case of an asset contemplated in subsection (1) (*h*) (ii) (*bb*), 100 per cent of such cost.

Section 12BA

12BA. Enhanced deduction in respect of certain machinery, plant, implements, utensils and articles used in production of renewable energy.—(1) In respect of any new and unused machinery, plant, implement, utensil, or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value Added Tax Act and which was or is brought into use for the first time by that taxpayer for the purpose of that taxpayer's trade on or after 1 March 2023 and before 1 March 2025 to be used by that taxpayer or the lessee of that taxpayer in the generation of electricity in the Republic from—

(*a*) wind power;

(*b*) photovoltaic solar energy;

(*c*) concentrated solar energy;

(*d*) hydropower to produce electricity; or

(*e*) biomass comprising organic wastes, landfill gas or plant material,

a deduction calculated in terms of subsection (2) shall be allowed in respect of the year of assessment during which the abovementioned assets are brought into use: Provided that where any machinery, plant, implement, utensil or article for which a deduction is allowed under this subsection is mounted on or affixed to any concrete or other foundation or supporting structure and—

(i) the foundation or supportive structure is designed for such machinery, plant, implement, utensil or article and constructed in such manner that it is or should be regarded as being integrated with the machinery, plant, implement, utensil or article; and

(ii) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, plant, implement, utensil or article mounted thereon or affixed thereto,

the foundation or supporting structure shall be deemed to be part of the machinery, plant, implement, utensil or article mounted thereon or affixed thereto.

(2) The deduction contemplated in subsection (1) is equal to an amount of 125 per cent of the cost incurred by the taxpayer for the acquisition of the asset.

(3) For the purposes of this section, the cost to a taxpayer of any asset acquired by that taxpayer shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired the asset under a cash transaction concluded at arm's length on the date which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof.

(4) No deduction shall be allowed under this section in respect of—

(*a*) any asset the ownership of which is retained by the taxpayer as a seller in terms of an agreement contemplated in paragraph (a) of the definition of "instalment credit agreement" in section 1 of the Value Added Tax Act; or

(*b*) any asset brought into use after 28 February 2025.

Section 20A

20A. Ring-fencing of assessed losses of certain trades.—(1) Subject to subsection (3), where the circumstances in subsection (2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on that trade may not be set off against any income of that person derived during that year otherwise than from carrying on that trade, notwithstanding section 20(1)(*b*).

(2) Subsection (1) applies where the sum of the taxable income of a person for a year of assessment (determined without having regard to the other provisions of this section) and any assessed loss and balance of assessed loss which were set off in terms of section 20 in determining that taxable income, equals or exceeds the amount at which the maximum marginal rate of tax chargeable in respect of the taxable income of individuals becomes applicable, and where—

(*a*) that person has, during the five year period ending on the last day of that year of assessment, incurred an assessed loss in at least three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or

(*b*) the trade contemplated in subsection (1), in respect of which the assessed loss was incurred constitutes—

(i) any sport practised by that person or any relative;

(ii) any dealing in collectibles by that person or any relative;

(iii) the rental of residential accommodation, unless at least 80 per cent of the residential accommodation is used by persons who are not relatives of that person for at least half of the year of assessment;

(iv) the rental of vehicles, aircraft or boats as defined in the Eighth Schedule, unless at least 80 per cent of the vehicles, aircraft or boats are used by persons who are not relatives of that person for at least half of the year of assessment;

(v) animal showing by that person or any relative;

(vi) farming or animal breeding, unless that person carries on farming, animal breeding or activities of a similar nature on a full-time basis;

(vii) any form of performing or creative arts practised by that person or any relative;

(viii) any form of gambling or betting practised by that person or any relative; or

(ix) the acquisition or disposal of any crypto asset.

(3) The provisions of subsection (1) do not apply in respect of an assessed loss incurred by a person during any year of assessment from carrying on any trade contemplated in subsection (2) (*a*) or (*b*), where that trade constitutes a business in respect of which there is a reasonable prospect of deriving taxable income (other than taxable capital gain) within a reasonable period having special regard to—

(*a*) the proportion of the gross income derived from that trade in that year of assessment in relation to the amount of the allowable deductions incurred in carrying on that trade during that year;

(*b*) the level of activities carried on by that person or the amount of expenses incurred by that person in respect of advertising, promoting or selling in carrying on that trade;

(*c*) whether that trade is carried on in a commercial manner, taking into account—

(i) the number of full-time employees appointed for purposes of that trade (other than persons partly or wholly employed to provide services of a domestic or private nature);

(ii) the commercial setting of the premises where the trade is carried on;

(iii) the extent of the equipment used exclusively for purposes of carrying on that trade; and

(iv) the time that the person spends at the premises conducting that business;

(*d*) the number of years of assessment during which assessed losses were incurred in carrying on that trade in relation to the period from the date when that person commenced carrying on that trade and taking into account—

(i) any unexpected events giving rise to any of those assessed losses; and

(ii) the nature of the business involved;

(*e*) the business plans of that person and any changes thereto to ensure that taxable income is derived in future from carrying on that trade; and

(*f*) the extent to which any asset attributable to that trade is used, or is available for use, by that person or any relative of that person for recreational purposes or personal consumption.

(4) Subsection (3) does not apply in respect of a trade contemplated in subsection (2)(*b*) (other than farming) carried on by a person during any year of assessment where that person has, during the ten year period ending on the last day of that year of the assessment, incurred an assessed loss in at least six years of assessment in carrying on that trade (before taking into account any balance of assessed loss carried forward).

(5) Notwithstanding section 20 (1)(*a*), any balance of assessed loss carried forward from the preceding year of assessment, which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment, may not be set off against any income derived by that person otherwise than from carrying on the trade contemplated in subsection (1).

(6) For the purposes of this section and section 20, the income derived from any trade referred to in subsections (1) or (5), includes any amount—

(*a*) which is included in the income of that person in terms of section 8 in respect of an amount deducted in any year of assessment in carrying on that trade; or

(*b*) derived from the disposal after cessation of that trade of any assets used in carrying on that trade.

(7) Notwithstanding anything to the contrary contained in this Act, all farming activities carried on by a person shall be deemed to constitute a single trade carried on by that person for the purposes of this section.

(8) Where the provisions of subsection (2) apply during any year of assessment in respect of any trade carried on by a person, that person must indicate the nature of the business in his or her return contemplated in section 66 for that year of assessment.

(9) For the purposes of subsections (2)(*a*) and (4), any assessed loss incurred in any year of assessment ending on or before 29 February 2004 shall not be taken into account.

(10) For the purposes of this section—

(*a*) **"assessed loss"** means "assessed loss" as defined in section 20 (2); and

(*b*) **"relative"** in relation to a person means a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of that person.

Section 25C

25C. Income of insolvent estates.—For the purposes of this Act, and subject to any such adjustments as may be necessary the estate of a person prior to sequestration and that person's insolvent estate shall be deemed to be one and the same person for purposes of determining—

(*a*) the amount of any allowance, deduction or set off to which that insolvent estate may be entitled;

(*b*) any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate; and

(*c*) any taxable capital gain or assessed capital loss of that insolvent estate.

Section 26

26. Determination of taxable income derived from farming.—(1) The taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of the First Schedule.

(2) In the case of any person who has discontinued carrying on pastoral, agricultural or other farming operations and is still in possession of any livestock or produce, or has entered into a "sheep lease" or similar agreement relating to livestock or produce, which has been taken into account and in respect of which expenditure under the provisions of this Act or any previous Income Tax Act has been allowed in the determination of the taxable income derived by such person when such operations were carried on, the provisions of this Act, but subject to the provisions of paragraphs 1, 2, 3, 4, 5, 6, 7, 9, or 11 of the First Schedule, shall continue to be applicable to that person in respect of such livestock or produce, as the case may be, until the year of assessment during which he disposes of the last of such livestock or produce, notwithstanding the fact that such operations have been discontinued.

First Schedule

Paragraphs 4, 5 and 6

4. (1) The values of livestock and produce held and not disposed of at the beginning of any year of assessment shall, subject to the provisions of sub-paragraph (2), be deemed to be—

(*a*) in the case of a farmer who was carrying on farming operations on the last day of the year immediately preceding the year of assessment, the sum of—

(i) the values of livestock and produce held and not disposed of by him at the end of the year immediately preceding the year of assessment; and

(ii) the market value of livestock or produce—

(*aa*) acquired by such farmer during the current year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or

(*bb*) held by such farmer otherwise than for purposes of pastoral, agricultural or other farming operations, which such farmer during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations; or

(*b*) in the case of any person commencing or recommencing farming operations during the year of assessment, the sum of—

(i) the value of any livestock or produce held and not disposed of by him at the end of the day immediately preceding the date of such commencement or recommencement; and

(ii) the market value of livestock or produce (other than livestock or produce to which sub-item (i) refers)—

(*aa*) acquired by such person during the year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or

(*bb*) held by such person otherwise than for purposes of pastoral, agricultural or other farming operations, which such person during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations.

(2) . . . . . .

(3) . . . . . .

5. (1) The value to be placed upon livestock for the purposes of this Schedule shall, subject to the provisions of paragraph 4(1) as respects livestock held and not disposed of at the end of the year of assessment, be the standard value applicable to the livestock.

(1A) . . . . . .

(2) . . . . . .

(3) . . . . . .

6. (1) The standard value applicable to any class of livestock shall be—

(*a*) in the case of any farmer (other than a company or the estate of a deceased person) who on or after the first day of July, 1955, and before the first day of July, 1962, rendered returns of income in respect of farming operations, the standard value which in relation to such farmer applied to that class of livestock in accordance with the provisions of paragraph 13 of the Third Schedule to the Income Tax Act, 1941;

(*b*) in the case of any other farmer (other than a company or the estate of a deceased person) or in the case of any farmer (other than a company or the estate of a deceased person) who on or after 1 July 1962 includes that class of livestock in his return of income for the first time, either—

(i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

(ii) such other standard value as the farmer may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering his return of income on or after the said date in respect of farming operations, or when so including in any return of income such a class of livestock for the first time;

(*c*) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for the first year of assessment of that company or estate ending on or after 1 January 1977 includes that class of livestock, either—

(i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

(ii) such other standard value as such company or the executor of such estate, as the case may be, may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income;

(*d*) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for a year of assessment subsequent to the year of assessment referred to in item (c), includes that class of livestock for the first time, either—

(i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

(ii) such other standard value as such company or the executor of such estate, as the case may be, may subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income.

(2) No standard value adopted under subparagraph (1)(*b*)(ii), (1)(*c*)(ii) or (1)(*d*)(ii) in respect of any class of livestock shall be more than twenty per cent higher or lower than the standard value fixed by regulation under this Act in respect of livestock of that class.

(3) Any farmer who classifies any kind of his livestock on a basis other than that applied by a regulation referred to in subparagraph (1)(*b*)(i), (1)(*c*)(i) or (1)(*d*)(i), may adopt in respect of any class into which he so classifies that livestock such a standard value as may be approved by the Commissioner with due regard to the values fixed by regulation.

Paragraph 8

8. (1) Where any farmer has during any year of assessment incurred expenditure in respect of the acquisition of livestock, the deduction which may be allowed to him under section 11(*a*) of this Act in respect of the cost price of such livestock shall be limited to an amount which, together with the value of livestock held and not disposed of by him at the beginning of such year, does not exceed the income received by or accrued to him from farming during such year and the value of livestock held and not disposed of by him at the end of such year.

(2) Any amount which has been disallowed under the provisions of subparagraph (1) shall be carried forward and be deemed to be expenditure incurred by the farmer in respect of the acquisition of livestock during the succeeding year of assessment.

(3) The provisions of this paragraph shall not apply—

(*a*) in any case where it is shown by the farmer that livestock the cost of which falls to be dealt with under such provisions is no longer held and not disposed of by him; and

(*b*) to so much of any expenditure (including any amount which has been carried forward under the provisions of subparagraph (2)) which falls to be disallowed under subparagraph (1) as, together with the value of livestock held and not disposed of by him at the beginning of the year of assessment, exceeds such amount as is shown by him to be market value of all livestock held and not disposed of by him at the end of such year.

Paragraph 12

12. (1) Subject to the provisions of subparagraphs (2) to (6), inclusive, there shall be allowed as deductions in the determination of the taxable income derived by any farmer the expenditure incurred by him during the year of assessment in respect of—

(*a*) the eradication of noxious plants and alien invasive vegetation;

(*b*) the prevention of soil erosion;

(*c*) dipping tanks;

(*d*) dams, irrigation schemes, boreholes and pumping plants;

(*e*) fences;

(*f*) the erection of, or extensions, additions or improvements (other than repairs) to, buildings used in connection with farming operations, other than those used for domestic purposes;

(*g*) the planting of trees, shrubs or perennial plants for the production of grapes or other fruit, nuts, tea, coffee, hops, sugar, vegetable oils or fibres, and the establishment of any area used for the planting of such trees, shrubs or plants;

(*h*) the building of roads and bridges used in connection with farming operations;

(*i*) the carrying of electric power from the main transmission lines to the farm apparatus or under an agreement concluded with the Electricity Supply Commission in terms of which the farmer has undertaken to bear a portion of the cost incurred by the said Commission in connection with the supply of electric power consumed by the farmer wholly or mainly for farming purposes;

(*j*) . . . . . .

(1A) For purposes of this Schedule, expenditure incurred in respect of any matter contemplated in subparagraph (1) (*a*), (*b*), (*d*) or (*e*) to conserve and maintain land owned by the taxpayer shall be deemed to be expenditure incurred in the carrying on of pastoral, agricultural or other farming operations if—

(*a*) conservation and maintenance is carried out in terms of a biodiversity management agreement that has a duration of at least five years; and

(*b*) the agreement contemplated in item (*a*) is entered into by the taxpayer in terms of section 44 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); and

(*c*) land utilised by the taxpayer for purposes of carrying on the pastoral, agricultural or other farming operations consists or includes or is in the immediate proximity of the land that is the subject of the agreement contemplated in item (*a*).

(1B) (*a*) Where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (1A) (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer, there shall be included in his income so much of the amounts received by or accrued to or in favour of the farmer in respect of such disposal as does not exceed the expenditure in respect of such asset allowed under subparagraph (1) or the original cost to him of such asset taken into account under subparagraph (1A), as the case may be, less any amounts which in terms of item (*c*) of this subparagraph are not allowable as deductions under subparagraph (1A) in respect of such asset in respect of the succeeding year or years of assessment referred to in the said item.

(*b*) Where any allowance was granted in respect of such asset under the provisions of section 11 (*e*) of this Act the provisions of section 8 (4) (*a*) of this Act shall not apply in respect of any amount recovered or recouped in respect of such allowance.

(*c*) . . . . . .

(1C) For the purposes of this paragraph, where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (1A) (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer to any other person by way of donation or for a consideration which is not an adequate consideration or is not readily capable of valuation, a consideration equal in value to the fair value of such asset shall be deemed to have been received by the farmer in respect of his disposal of the asset and to have been paid by such other person in respect of his acquisition of the asset: Provided that the last-mentioned consideration shall not exceed the cost to the farmer of such asset.

(1D) If during the current or any previous year of assessment deductions are allowed to the taxpayer in terms of subparagraph (1A) in respect of capital expenditure incurred to conserve or maintain land in terms of an agreement contemplated in that subparagraph and the taxpayer is in breach of that agreement or violates that declaration, an amount equal to the deductions allowed in respect of expenditure incurred within the period of five years preceding the breach of violation must be included in the income of the taxpayer for the current year.

(2) No deduction under section 11 (*e*) or (*o*) of this Act shall be allowed in respect of any machinery, implements, utensils or articles for which a deduction is allowable under subparagraph (1) or (1A) of this paragraph.

(3) The amount by which the total expenditure incurred by any farmer during any year of assessment in respect of the matters referred to in items (*c*) to (*i*), inclusive, of subparagraph (1) exceeds the taxable income (as calculated before allowing the deduction of such expenditure and before the inclusion as hereinafter provided of the said amount in the farmer's income) derived by him from farming operations during that year of assessment shall be included in his income from such operations for that year and be carried forward and be deemed for the purposes of subparagraph (1) to be expenditure which has been incurred by him during the next succeeding year of assessment in respect of the matters referred to in the said items.

(3A) For the purposes of subparagraph (3) any amount which has been carried forward from the year of assessment ended 30 June 1961 in terms of the proviso to paragraph 17 (3) of the Third Schedule to the Income Tax Act, 1941, shall be deemed to be an amount which has been so carried forward in terms of the said subparagraph.

(3B) Where an amount (hereinafter referred to as the recoupment) falls to be included in a farmer's income for any year of assessment under the provisions of subparagraph (1B) and an amount (hereinafter referred to as the qualifying balance) has in terms of subparagraph (3) been carried forward to the year of assessment in question from the preceding year of assessment the recoupment shall to the extent that it does not exceed the qualifying balance be deducted therefrom, and in such case—

(*a*) the recoupment shall, to the extent that it has been deducted from the qualifying balance, not be included in the farmer's income under subparagraph (1B); and

(*b*) only so much of the qualifying balance as remains after the deduction therefrom of the recoupment shall be taken into account for the purposes of subparagraph (3) as expenditure incurred during the year of assessment in question in respect of the matters mentioned in that subparagraph.

(3C) The amount of any expenditure carried forward and deemed to be incurred by a person in the next succeeding year in terms of subparagraph (3) must be reduced by any amount of expenditure in respect of which an election has been made in terms of paragraph 20A (1) of the Eighth Schedule.

(4) (*a*) For the purposes of this paragraph "employees", in relation to any farmer, means persons employed by that farmer in connection with his or her farming operations, but does not include his or her relatives or, where the farmer is a company, the holders of shares (or the relatives of holders of shares) in that company or in any company which is associated with it by virtue of the holding of shares.

(*b*) For the purposes of item (*a*) "holders of shares" in relation to any company does not include persons who hold all their shares in that company solely because they are employed by that company and who will, in terms of the articles of association of that company, not be entitled to hold those shares after they cease to be so employed.

(5) . . . . . .

(6) If in any year of assessment any building in relation to which a deduction has been allowed to any farmer under item (*f*) of sub-paragraph (1) of this paragraph or item (*f*) of sub-paragraph (1) of paragraph 17 of the Third Schedule to the Income Tax Act, 1941, whether in the current or in any previous year of assessment, is used for the domestic purposes of any person other than an employee of that farmer, there shall be included in the income of that farmer for the current year of assessment the amount of such deduction less one-tenth of the said amount in respect of each completed period of one year, but not exceeding ten years, during which such building was used by the said farmer in connection with his farming operations other than for the domestic purposes of persons who are not his employees.